

Orders of the Royal Court

**II
2012**

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 27th day of July, 2012 before John Russell Finch, Esquire, Judge of the Royal Court; present:- Stephen Edward Francis Le Poidevin, Esquire, Susan Mowbray, John Ferguson, Peter Sean Trueman Girard, Esquires, Constance Helyar-Wilkinson, David Percy Langley Hodgetts LVO, Niall David McCathie, Esquires, Margaret Ann Spaargaren, Terry John Ferbrache, Esquire, Jurats.

No. II Order, 2012

ENTITLED

**THE FORFEITURE OF MONEY, ETC IN CIVIL PROCEEDINGS
(BAILIWICK OF GUERNSEY) RULES, 2012**

The Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Rules, 2012

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The Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Rules, 2012

THE ROYAL COURT, in exercise of the powers conferred upon it by sections 62 and 64 of the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007¹ and of all other powers enabling it in that behalf, hereby orders:-

Part I

Introductory

Interpretation.

1. (1) For the purposes of these Rules, unless the context otherwise requires –

"**clear day**" means a period of 24 hours ending at midnight and does not include any non-business day as defined by the Non-Business Days Order, 1993²,

"**enactment**" includes a Law, an Ordinance and any subordinate legislation,

"**the Law**" means the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007,

"**subordinate legislation**" means any statutory instrument, regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

and any other expressions have the same meaning as in the Law.

¹ Order in Council No. XVII of 2008; amended by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 (Amendment) Ordinance, 2008 (Recueil d'Ordonnances Tome XXXIII, p. 133); and the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010).

² Guernsey Statutory Instrument No. 28 of 1993.

(2) Unless the context otherwise requires, a reference in these Rules to any enactment is a reference thereto as from time to time amended, repealed and replaced, extended or applied.

(3) The Interpretation (Guernsey) Law, 1948³ applies to the interpretation of these Rules as it applies to the interpretation of an enactment.

Service of documents.

2. (1) Any document which must or may be served under these Rules or the Law may be served on –

- (a) an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) a body corporate with a registered office in Guernsey or Alderney, by being left at, or sent by post or transmitted to, that office,
- (c) a body corporate without a registered office in Guernsey or Alderney, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no such place, its registered office or principal or last known principal place of business elsewhere,
- (d) an unincorporated body -
 - (i) by being served on any partner, member of the committee or other similar governing body, manager, director or other similar officer thereof in accordance with paragraph (a), or

³ Ordres en Conseil Vol. XIII, p. 355.

- (ii) by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in the Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) a department or committee of the States, a committee of the States of Alderney or a committee of the Chief Pleas of Sark, by being left at, or sent by post or transmitted to, the principal offices of that department or committee in Guernsey, Alderney or Sark, as the case may be.

(2) However, a document may only be served for the purposes of these Rules or the Law by being transmitted if the party to be served has given his prior written consent to that manner of service.

This paragraph does not apply if the party to be served appears (in person or by his Advocate) or expressly accepts service.

(3) For the purposes of paragraph (1)(a), "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication (in which event the document shall be regarded as served when it is received).

Part II

Applications for Warrants

Applications for warrants under section 1(2) of the Law.

3. (1) An application to the Bailiff or appropriate judicial officer for a warrant under section 1(2) of the Law may be made ex parte and without notice being given to any other person.

(2) The Bailiff or appropriate judicial officer shall conduct any hearing in chambers.

Part III

Applications in respect of detention, freezing and release of monies

Applications for the detention of seized cash.

4. (1) An application for an order to detain seized cash under section 7(2) of the Law shall (without prejudice to the provisions of section 7(7) of the Law) –

(a) be made in writing and supported by an affidavit,

(b) in the case of a second or subsequent such application, append any notice of objection served under paragraph (4).

(2) An application under paragraph (1) may be determined without a hearing, unless the Bailiff directs otherwise.

(3) A second or subsequent application for an order under section 7(2) of the Law and a copy of the affidavit given in support of the application shall, not less than 7 days before the day of the hearing of the application, be served on every person known by Her Majesty's Procureur to be affected by the order made under that section to which the application relates.

(4) Any person who wishes to oppose the application for further detention shall serve on Her Majesty's Procureur notice of objection not later than 3 clear days after the day of service of the application under paragraph (3).

(5) Notice of objection under paragraph (4) shall be made in writing and supported by an affidavit which must give full details of the grounds for objection.

(6) If an application is not served under paragraph (3) the application may nevertheless proceed, but in that case paragraphs (4) and (5) do not apply and the person who wishes to oppose the further detention may make representations at the hearing.

Applications for the freezing of bank accounts.

5. (1) An application for an order freezing funds in an account maintained by a bank under section 10(1) or (3) of the Law shall (without prejudice to the provisions of section 10(7) of the Law) –

- (a) be made in writing and supported by an affidavit, and
- (b) in the case of an application under section 10(3), append any notice of objection served under paragraph (4).

(2) An application under paragraph (1) shall be determined without a hearing, unless the Bailiff directs otherwise.

(3) An application for an order under section 10(3) of the Law and a copy of the affidavit given in support of the application shall, not less than 7 days before the day of the hearing of the application, be served on every person known by Her Majesty's Procureur to be affected by the order made under section 10(1) to which the application relates.

(4) Any person who wishes to oppose the application for a further order shall serve on Her Majesty's Procureur notice of objection not later than 3 clear days after the day of service of the application under paragraph (3).

(5) Notice of objection under paragraph (4) shall be made in writing and supported by an affidavit which must give full details of the grounds for objection.

(6) If notice of an application is not served under paragraph (3) the application may nevertheless proceed, but in that case paragraphs (4) and (5) do not apply and the person who wishes to oppose the further order may make representations at the hearing.

Applications for the release of detained cash and frozen bank accounts.

6. (1) An application for a direction for the release of detained cash under section 9(2) of the Law or funds in an account maintained at a bank under section 11(2) of the Law shall (without prejudice to the provisions of sections 9(4) and 11(4) of the Law) be made in writing and supported by an affidavit.

(2) An application under paragraph (1) and a copy of the affidavit given in support of the application shall be served by the applicant on Her Majesty's Procureur and every person known to be affected by the order made under section 7(2) or 10(1) or (3) of the Law to which the application relates.

(3) Her Majesty's Procureur and any other person served with the application under paragraph (1) shall, if wishing to oppose the application, serve notice of objection on the applicant not later than 14 days after the day of service of the application or within such longer period as the parties may agree or as the Bailiff thinks fit.

(4) Notice of objection under paragraph (3) shall be made in writing and supported by an affidavit which must give full details of the grounds for objection.

(5) An order made under section 9(2) or 11(2) of the Law shall provide for the release of the cash or the funds in the account within 7 days after the date of the making of the order, or such longer period as the Bailiff thinks fit, except that cash or funds shall not be released where it is prohibited by section 13(3) of the Law.

Applications to transfer funds to an interest-bearing account.

7. (1) An application by a person whose account is frozen or by or with the authority of Her Majesty's Procureur for an order to transfer frozen funds to an interest-bearing account under section 10(10) of the Law shall (without prejudice to the provisions of section 10(12) of the Law) –

(a) be made in writing and supported by an affidavit,

(b) append any notice of objection served under paragraph (4).

(2) An application under paragraph (1) shall be determined without a hearing, unless the Bailiff directs otherwise.

(3) An application for an order under section 10(10) of the Law shall be served on Her Majesty's Procureur (where the application is made by the person whose account is frozen) or on that person (where the application is made by or with the authority of Her Majesty's Procureur).

(4) Her Majesty's Procureur or (as the case maybe) the person whose account is frozen shall, if wishing to oppose the application for a transfer, serve notice of objection on the applicant not later than 14 days after the day of service of the application or within such longer period as the parties may agree or as the Bailiff thinks fit (and sufficient notice of the application shall accordingly be given by the applicant for the purposes of section 10(12)(b) of the Law).

(5) Notice of objection under paragraph (4) shall be made in writing and supported by an affidavit which shall give full details of the grounds for objection.

Applications for release of detained or frozen money by victims and other owners.

8. (1) An application for an order for money to be released under section 16 of the Law shall be made in writing and supported by an affidavit.

(2) An application under paragraph (1) and a copy of the affidavit given in support of the application shall be served by the applicant on Her Majesty's Procureur and every person known to be affected by the order made under section 7(2) or 10(1) or (3) of the Law.

(3) Her Majesty's Procureur and any other person served with the application under paragraph (1) shall, if wishing to oppose the application, serve notice of objection on the applicant not later than 14 days after the day of service of the application or within such longer period as the parties may agree or as the Royal Court thinks fit.

(4) Notice of objection under paragraph (3) shall be made in writing and supported by an affidavit which shall give full details of the grounds for objection.

(5) An order made under section 16 of the Law shall provide for release of any sum found to belong to the applicant and ordered to be released under that section within such period as the Royal Court thinks fit.

Release of detained or frozen money with the authority of Her Majesty's Procureur.

9. Where a police officer acting with the authority of Her Majesty's Procureur releases detained cash under section 9(5) or frozen funds under section 11(5) of the Law, or a part thereof, Her Majesty's Procureur shall notify Her Majesty's Greffier, and every person known to be affected by the order made under section 7(2) or 10(1) or (3) of the Law, of –

- (a) the sum released,
- (b) the identity of the person to whom the sum will be released, and
- (c) the date upon which it will be released.

Service of affidavit on banks.

10. For the avoidance of doubt and notwithstanding any provision of the Law or of these Rules, Her Majesty's Procureur shall not be required to serve a copy of the affidavit given in support of an application for the detention or freezing of monies on any bank known to be affected by the terms of the order.

Part IV

Applications for Forfeiture

Applications for the forfeiture of money.

11. (1) An application by Her Majesty's Procureur under section 13 of the Law for the forfeiture of money (a "**forfeiture application**") shall be –

- (a) accompanied by a draft of the order sought, and
- (b) made in writing and supported by an affidavit.

(2) The forfeiture application and a copy of the affidavit given in support of the application must be served on every person who Her Majesty's Procureur knows would be affected by the order for forfeiture.

Notice of objection to forfeiture application.

12. (1) Any person who wishes to oppose the forfeiture application shall, within 28 days after the date of service of the application on him, serve written notice of objection on Her Majesty's Procureur and every other person served with the application.

(2) The notice of objection shall contain –

- (a) a summary of the points of objection, and
- (b) the evidence relied upon in support of the points of objection.

(3) A person who complies with the requirements of paragraphs (1) and (2) shall be deemed to be a party to the forfeiture application.

Reply to notice of objection to forfeiture application.

13. Her Majesty's Procureur and any other party to the forfeiture application may, within 28 days after the date of service of notice of objection on him, file and serve further evidence in reply to that notice of objection on all parties to the application.

Managing the forfeiture application.

14. (1) The Royal Court may give directions immediately upon filing of the forfeiture application or at any time thereafter either of its own motion or on the application of Her Majesty's Procureur or any other party to the application.

(2) In the absence of any notice of objection being filed, the Royal Court may immediately proceed to set a date for the hearing of the forfeiture application.

Extension of time for service of evidence.

15. (1) A person intending to give notice of objection under Rule 12(1) may, within 28 days after the date of service of the forfeiture application on him, apply to the Royal Court for an extension of time to serve notice of objection.

(2) Her Majesty's Procureur and any other party to the forfeiture application may, within 28 days after the date of service of notice of objection on him, apply to the Royal Court for an extension of time to file and serve further evidence under Rule 13.

(3) An application to the Royal Court for an extension of time under paragraph (1) or (2) may, with leave of the Royal Court, be made after the expiration of the period of 28 days mentioned in those paragraphs; but the Royal Court shall not grant leave unless satisfied that –

(a) it is in the interests of justice to do so, and

(b) it was not reasonably practicable for the application for an extension of time to be presented within the said period of 28 days.

(4) Where the Royal Court –

(a) grants an application for an extension of time under paragraph (1) or (2), or

(b) grants leave under paragraph (3),

it may do so on such terms and conditions as it thinks fit.

Failure to file and serve notice of objection to forfeiture application.

16. (1) Where a person -

(a) has failed to serve a notice of objection under Rule 12(1), and

- (b) has not received the permission of the Royal Court for an extension of time under Rule 15,

he may attend the hearing of the forfeiture application but shall not be a party to the application unless the Royal Court gives permission.

(2) The Royal Court may give permission under paragraph (1) on such terms and conditions as it deems fit including (without limitation) terms and conditions as to the payment of security for costs.

Evidence: general.

17. (1) No evidence may be relied on at the hearing of the forfeiture application unless -

- (a) it has been served in accordance with these Rules, or
- (b) the Royal Court gives permission.

(2) Without prejudice to its powers arising otherwise than under these Rules, the Royal Court may -

- (a) require or permit a party to the application to give oral evidence at the hearing, and
- (b) give directions requiring the attendance for cross-examination of a witness who has given an affidavit.

Applications for compensation.

18. An application under section 17 of the Law for compensation shall be-

- (a) made in writing and supported by an affidavit, and
- (b) served on Her Majesty's Procureur.

Part V
Applications for Investigatory Orders

Applications for investigatory orders.

19. (1) An application under Part IV of the Law for a production order, a customer information order, an account monitoring order or a disclosure order shall (without prejudice to section 20(6), 28(8), 35(8) or 41(6) of the Law, as the case may be) -

- (a) be made in writing and supported by an affidavit,
- (b) be accompanied by a draft of the order sought, and
- (c) be determined without a hearing, unless the Bailiff directs otherwise.

(2) The affidavit mentioned in paragraph (1)(a) shall set out all the matters relied upon in support of the application, including any matters required to be stated by the relevant section of the Law.

Confidentiality of Royal Court documents.

20. (1) When an application under Part IV of the Law for an order referred to in Rule 19(1) is made, the court file shall be marked "not for disclosure" and, unless the Bailiff orders otherwise on such terms and conditions as he thinks fit, and without prejudice to any other rule of law, practice or procedure prohibiting or restricting the publication or disclosure of documents by the court, the court records relating to the application (including the application notice, documents in support, and any order or warrant that is made) shall not be made available by the Royal Court for any person to inspect or copy, either before or after the hearing of the application.

(2) An application for permission to inspect or copy any court record referred to in paragraph (1) must be made in writing and may not be made until notice of the application has been given to Her Majesty's Procureur.

Part VI

Overseas forfeiture orders

Registration of an overseas forfeiture order.

21. (1) An application by Her Majesty's Procureur to register an overseas forfeiture order under section 49 of the Law shall be made in writing and supported by an affidavit.

(2) An application under paragraph (1) shall -

(a) include a copy of the overseas forfeiture order,

(b) contain the evidence upon which Her Majesty's Procureur intends to rely to establish that the order sought to be registered is an overseas forfeiture order within the meaning of the Law, and

(c) where the sum specified in the overseas forfeiture order is expressed in a currency other than sterling and there are not funds held in the Bailiwick in the currency in which the sum specified is expressed sufficient to satisfy the overseas forfeiture order, state the sterling equivalent of the sum specified.

(3) For the purposes of paragraph (2)(c), the sterling equivalent is to be calculated in accordance with the exchange rate prevailing at the end of the day on which the overseas forfeiture order is made.

(4) An application to register an overseas forfeiture order under section 49 of the Law and a copy of the affidavit given in support of the application shall, not less than 7 days before the day of the hearing of the application, be served on every person who Her Majesty's Procureur knows would be affected by registration of the order.

(5) Any person who wishes to oppose the application for registration shall serve on Her Majesty's Procureur notice of objection not later than 3 clear days after the day of service of the application under paragraph (4).

(6) Notice of objection under paragraph (5) shall be made in writing and supported by an affidavit which must give full details of the grounds for objection.

(7) If an application is not served under paragraph (4) the application may nevertheless proceed, but in that case paragraphs (5) and (6) do not apply and the person who wishes to oppose registration may make representations at the hearing.

(8) Her Majesty's Procureur shall serve -

(a) a copy of any order made, and

(b) a copy of the affidavit given in support of the application,

on every person known by Her Majesty's Procureur to be affected by the registration of the order.

Subparagraph (b) does not apply if a copy of the affidavit has previously been served on the person in question under paragraph (4).

(9) However, Her Majesty's Procureur shall not be required to serve a copy of the affidavit given in support of the application on any bank known to be affected by the terms of the order.

Part VII
General

Citation.

22. These Rules may be cited as the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Rules, 2012.

Commencement.

23. These Rules shall come into force on the 27th July, 2012.