

ORDER IN COUNCIL

**XVI
2012**

ratifying a Projet de Loi

ENTITLED

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

(Registered on the Records of the Island of Guernsey
on the 5th November, 2012.)



2012

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

5th day of November, 2012 before John Russell Finch, Esquire, Judge of the Royal Court; present:- Susan Mowbray, Barbara Jean Bartie, David Osmond Le Conte, Stephen Murray Jones, Esquires, Claire Helen Le Pelley, Terry George Snell, David Percy Langley Hodgetts LVO, Esquires, Margaret Ann Spaargaren, Terry John Ferbrache, Esquire, Jurats.

Judge Finch having this day placed before the Court an Order of Her Majesty in Council dated 17th October, 2012 approving and ratifying a Projet de Loi entitled “The Forfeiture of Money etc, in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ORDERED:

1. That the said Order be registered on the records of this Island;
and
2. That an extract of this present Act, together with a copy of the said Order be sent by Her Majesty’s Greffier to the Greffier of the Court of Alderney and to the Sénéchal of Sark for registration on the records of those Islands respectively.



At the Court at Buckingham Palace

THE 17th DAY OF OCTOBER 2012

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“In accordance with Your Majesty’s General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

“That, in pursuance of their Resolution of 26th January 2011, the States of Deliberation at a meeting on 6th March 2012 approved a *Projet de Loi* entitled the *Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012* and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the States of the Island of Alderney at a meeting held on 18th April 2012 considered the *Projet de Loi* when a Resolution was passed agreeing to the application to Alderney. That the Chief Pleas of the Island of Sark at a meeting held on 18th April 2012 considered the *Projet de Loi* when a Resolution was passed agreeing to the application to Sark. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction the *Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012*, and to order that it shall have force of law in the Bailiwick of Guernsey.

“The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it”.

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Bailiwick of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty’s Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty’s Order and to proceed accordingly.

Richard Tilbrook

PROJET DE LOI

ENTITLED

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

THE STATES, in pursuance of their Resolution of the 26th January, 2011^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Amendment of 2007 Law.

1. The Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007^b is amended as follows.

2. In the arrangement of sections -

(a) the entry relating to section 12 is repealed, and

(b) after the entry relating to section 55 insert the following entry -

"55A. Categorisation of proceedings under this

^a Article IV of Billet d'État No. I of 2011.

^b 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 (No. XXX of 2008); and the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010).

Law."

3. After section 1(6) insert the following subsection -

"(7) A warrant under this section -

- (a) may be granted ex parte and in chambers,
- (b) may be granted notwithstanding that notice of the application for it has not been given to any other person, and
- (c) may be granted subject to such terms and conditions as the Bailiff or appropriate judicial officer thinks fit."

4. In section 3(1) the words "found at any place in the Bailiwick" are repealed.

5. Section 3(2)(a) is repealed.

6. For section 7(4)(a)(ii) substitute the following subparagraph -

"(ii) proceedings in connection with the cash under Part III or V of this Law or proceedings under legislation in force in a country designated under section 53 relating to the forfeiture of cash or other property by a court in non-conviction based proceedings, or".

7. For section 7(5)(a)(ii) substitute the following subparagraph -

"(ii) proceedings in connection with the cash under Part III or V of this Law or proceedings under legislation in force in a country designated under section 53 relating to the forfeiture of cash or other property by a court in non-conviction based proceedings, or".

8. After section 7(5) insert the following subsection -

"(5A) An application for an order under subsection (2) may also be made by or with the authority of Her Majesty's Procurer where he has grounds for believing that an application may be made under section 49 for the registration of an overseas forfeiture order in respect of the cash to be further detained, and the Bailiff may make the order if satisfied that there are reasonable grounds for such belief.".

9. For section 10(5)(a)(ii) substitute the following subparagraph -

"(ii) proceedings in connection with the funds under Part III or V of this Law or proceedings under legislation in force in a country designated under section 53 relating to the forfeiture of funds or other property by a court in non-conviction based proceedings, or".

10. For section 10(6)(a)(ii) substitute the following subparagraph -

"(ii) proceedings in connection with the funds under

Part III or V of this Law or proceedings under legislation in force in a country designated under section 53 relating to the forfeiture of funds or other property by a court in non-conviction based proceedings, or".

11. After section 10(6) insert the following subsection –

"(6A) An application for an order under subsection (1) or (3) may also be made by or with the authority of Her Majesty's Procurer where he has grounds for believing that an application may be made under section 49 for the registration of an overseas forfeiture order in respect of any funds or part of any funds in an account maintained at a bank, and the funds or the part of the funds are not less than the minimum amount, and the Bailiff may make the order if satisfied that there are reasonable grounds for such belief."

12. Section 12 is repealed.

13. In section 16 –

(a) in subsection (2) for "section 7, 10 or 13" substitute "section 7, 10, 13 or 49",

(b) at the beginning of subsection (4)(b)(i) insert the following –

"except where an application described in subparagraph (ii) or (iii) has been made,"

(c) at the end of subsection (4)(b)(ii) for the word "and" substitute "or", and

(d) after subsection (4)(b)(ii) insert the following subparagraph –

"(iii) if an application for the registration of an overseas forfeiture order has been made under section 49, decides not to register the order in the records of the Court, and".

14. In section 18 for the words following paragraph (c) substitute the following -

"with a view to proceedings in connection with the money being taken under Part III or V of this Law or proceedings being taken under legislation in force in a country designated under section 53 relating to the forfeiture of money or other property by a court in non-conviction based proceedings".

15. For section 47(1) substitute the following subsection -

"(1) If Her Majesty's Procureur receives from a country designated under section 53 a request in connection with a civil forfeiture investigation being conducted there with a view to proceedings in connection with money with which the investigation is concerned being taken under Part III or V of this Law or under legislation in force in that country relating to the forfeiture of money or other property by a court in non-conviction based proceedings, Her Majesty's Procureur may apply for an order under section 20, 28, 35 or 41."

16. For section 49(2) substitute the following subsections -

"(2) An overseas forfeiture order is an order of a court exercising jurisdiction in a country designated under section 53 for the forfeiture of monies found by that court to be the proceeds of unlawful conduct or intended for use in unlawful conduct, being an order made in non-conviction based proceedings under legislation in force in that country relating to the forfeiture of money by a court in non-conviction based proceedings.

(2A) Where an application for the registration of an overseas forfeiture order is made under this section, the money to which that order relates is to be detained or, as the case may be, frozen (and may not, subject to sections 16 and 54, be released under any power conferred by this Law) until any proceedings in pursuance of the application for registration are concluded."

17. For section 53(1) substitute the following subsection -

"(1) The Home Department may by regulations made after consultation with the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark designate any country for the purposes of this Law if it appears to the Home Department to have legislation in force relating to the forfeiture by a court in non-conviction based proceedings of money or other property which is the proceeds of unlawful conduct or intended for use in unlawful conduct."

18. In section 55(1) for the words following paragraph (b) substitute the

following -

"are, except when and to the extent that the Royal Court orders otherwise under subsection (2), unaffected by -

- (i) an order freezing funds under section 10,
- (ii) proceedings for the forfeiture of money under Part III, or
- (iii) proceedings for the registration of an overseas forfeiture order under Part V."

19. After section 55 insert the following section -

"Categorisation of proceedings under this Law.

55A. For the avoidance of doubt, proceedings under this Law (other than proceedings for an offence) are for the purposes of the law of the Bailiwick (including, without limitation, the purposes of evidence and procedure) to be categorised as civil proceedings."

20. In section 56(1) -

- (a) in the definition of "Bailiff" after the words "Lieutenant Bailiff" insert ", Judge of the Royal Court",
- (b) in the definition of "bank" immediately before the word "means" insert ", in relation to the Bailiwick,",
- (c) after the definition of "country" insert the following

definition-

"**court**" includes any tribunal or person holding judicial office,"

- (d) for the definition of "legislation" substitute the following definition -

"**legislation**", in sections 7(4)(a)(ii), 7(5)(a)(ii), 10(5)(a)(ii), 10(6)(a)(ii), 18, 47(1), 49(2), 53(1) and 55(1), includes law of any description,"

- (e) for the definition of "money" substitute the following definition -

"**money**" means cash and funds,"

- (f) after the definition of "money laundering" insert the following definition -

"**non-conviction based proceedings**" : see subsection (1A),".

21. After section 56(1) insert the following subsection -

"(1A) Non-conviction based proceedings are those pursuant to which an order for the forfeiture of money or other property which is the proceeds of unlawful conduct or intended for use in unlawful conduct may be made by a court on grounds or in circumstances which are not dependent upon the conviction of any person of unlawful conduct.".

22. In paragraph 1 of the Schedule -

(a) after the words "Part III (forfeiture and release of money)" insert "or Part V (enforcement of orders made outside the Bailiwick)", and

(b) for subparagraph (a) substitute the following subparagraph -

"(a) which are detained or frozen under section 7 or 10, or which may not be released by virtue of section 13(3) or 49(2A), and".

23. In paragraph 2 of the Schedule after the words "an order made under section 7 or 10" insert "or (as the case may be) the prohibition on the release of the monies imposed by section 13(3) or 49(2A)".

Citation.

24. This Law may be cited as the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012.

Commencement.

25. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions and different purposes.

S. M. SIMMONDS,
Her Majesty's Deputy Greffier.

**Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey.**

PRICE £3.00

Printed by Image Group, Caslon Court, Pitronnerie Road, St Peter Port, Guernsey GY1 3NE