

# **The Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Ordinance, 2022**

THE STATES, in pursuance of their Resolution of 30<sup>th</sup> September, 2022<sup>a</sup>, and in exercise of the powers conferred on them by sections 63 and 64 of the Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) Law, 2007<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

## **Amendment of the Civil Forfeiture Law.**

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

(2) After section 12, under the heading "*Forfeiture*", insert -

### **"Summary forfeiture notice**

**12A.** (1) In any case that comes within subsection (2), His Majesty's Procureur may serve a summary forfeiture notice in accordance with subsection (3) upon the holder of an account held at a bank in the Bailiwick.

(2) A case is within this subsection if –

(a) His Majesty's Procureur has reasonable grounds to believe that funds in the account

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<sup>a</sup> Article X of Billet d'État No. XVII of 2022.

<sup>b</sup> Ordres en Conseil Vol. XXXIX, p. 137. This enactment has been amended.

are-

- (i) any person's proceeds of unlawful conduct, or
  - (ii) intended by any person for use in unlawful conduct,
- (b) in relation to the bank account or any funds in the bank account, a consent request has been made by any person,
- (c) the requested consent has been refused by a member of the Financial Intelligence Unit within the meaning of the Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2021<sup>c</sup>, and
- (d) notification of the refusal of the requested consent was given to the person making the request at least 12 months before the date on which the summary forfeiture notice is to be served.

(3) A summary forfeiture notice shall be in writing and

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<sup>c</sup> Order in Council No. XII of 2022.

shall –

- (a) state the name of the holder of the bank account to whom it is addressed,
- (b) specify the details of the bank account and of the funds in the bank account which in the opinion of His Majesty's Procureur are -
  - (i) any person's proceeds of unlawful conduct, or
  - (ii) intended by any person for use in unlawful conduct,
- (c) state a date on which, and a place and time at which, the holder of the bank account is required to attend a hearing of the Royal Court to show cause why the funds so specified are not within paragraph (b)(i) or (ii), and should not be forfeited, and
- (d) be served on -
  - (i) the holder of the bank account, and
  - (ii) the bank at which the account in question is held,

and if an address for service on the holder of the bank account is not known, service on the bank only shall be taken as sufficient for the purposes of this subsection.

(4) For the purposes of this section, a "consent request" means a request under –

(a) section 38, 39 or 40 of the Criminal Justice (Proceeds of Crime) Bailiwick of Guernsey Law, 1999<sup>d</sup> for consent to do any act or deal with property held in the bank account in any way which would comprise an offence under the section in question in the absence of such consent, or

(b) section 14 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002<sup>e</sup> for consent to do any act or deal with property held in the bank account in any way which would comprise an offence under section 8, 9, 10, 11 or 11A of that Law in the absence of such consent.

**Summary forfeiture procedure.**

**12B.** (1) If the person ("P") on whom a summary forfeiture notice under section 12A is served fails to attend the hearing as required by the

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<sup>d</sup> Ordres en Conseil Vol. XXXIX, p. 137. This enactment has been amended.

<sup>e</sup> Ordres en Conseil Vol. XLII, p. 427. This enactment has been amended.

summary forfeiture notice, His Majesty's Procureur may apply forthwith to the Royal Court for a forfeiture order, and the Court may make such an order, without further notice to P.

(2) If P appears at the hearing (whether in person or by a legal representative), P may -

(a) at the hearing, satisfy the Court that the funds are not -

(i) any person's proceeds of unlawful conduct, or

(ii) intended by any person for use in unlawful conduct, or

(b) request that the question of whether or not the funds are within paragraph (a) (i) or (ii) be determined at such later date as the Court may order.

(3) Where P fails to satisfy the Royal Court on the balance of probabilities (whether at a hearing under subsection 2(a) or at such later date as the Court may order) that the funds are not within subsection (2)(a)(i) or (ii), the Court shall, on the application of His Majesty's Procureur, make a forfeiture order in relation to the funds specified in the summary forfeiture notice or any part of them."

(3) In section 13 –

- (a) for the heading, substitute "Standard forfeiture",
- (b) in subsection (1), delete the words "sitting as an Ordinary Court ("**the Royal Court**")", and
- (c) for subsection (2), substitute –

" (2) The Royal Court shall order the forfeiture of the money or any part of the money unless satisfied on the balance of probabilities, by the person against whom such an order is proposed to be made, that the money or the part is not -

- (a) any person's proceeds of unlawful conduct, or
- (b) intended by any person for use in unlawful conduct."

- (4) After section 14, insert the following –

**Reconsideration based on new evidence.**

**14A.** (1) The Committee for Home Affairs may, by regulations made after consultation with the Policy and Finance Committee of the States of Alderney, the Policy and Finance Committee of the Chief Pleas of Sark, the Royal Court and His Majesty's Procureur, make provision for any party affected by a forfeiture order to make an application to the Royal Court for the matter to be reconsidered in the light of new evidence.

- (2) Any provision made by regulations made under this

section shall be without prejudice to the right of appeal under section 14, and shall be construed accordingly."

(5) For section 17, substitute the following –

**"Limitation of liability.**

17. (1) Subsection (2) applies to –

- (a) His Majesty's Procureur,
- (b) His Majesty's Sheriff,
- (c) the Director of the Economic and Financial Crime Bureau,
- (d) the Head of the Financial Intelligence Unit,
- (e) a police officer or senior officer, and
- (f) any member, officer, servant or agent of any of the aforesaid.

(2) Subject to subsection (4), and without prejudice to section 17A, a person to whom this subsection applies is not liable in costs or damages for anything done or omitted to be done in relation to an application under this Part.

(3) For the avoidance of doubt, an act or omission in relation to an application under this Part includes any act or omission in the

exercise of any related investigatory functions or powers under this Law.

(4) Subsection (2) does not apply so as to prevent an award of damages made in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000.

**Compensation in case of bad faith.**

17A. (1) Where it is shown that anything done or omitted to be done by a person within section 17(1) in relation to an application under this Part was done in bad faith, the person to whom the property belongs may make an application to the Royal Court for compensation.

(2) The Royal Court may, on an application under subsection (1), order compensation to be paid to the applicant if –

- (a) the Court is satisfied that the person has suffered loss as a result of the said act or omission, and
- (b) having regard to all the circumstances the Court considers it appropriate to make such an order.

(3) The amount of compensation to be paid under subsection (2) is the amount the Royal Court thinks reasonable having regard to the person's loss and to any other relevant circumstances.

(4) Compensation ordered to be paid under this section shall be paid by the States of Guernsey."

**Transitional provision.**

2. For the avoidance of doubt -
  - (a) in any case where a notification of refusal of a requested consent, within the meaning of section 12A(2)(d) of the Law, was given before the commencement of section 1(2) of this Ordinance, the time that has passed between the giving of the notification and the commencement of section 1(2) shall be taken into account for the purposes of calculating the 12 month period referred to in section 12A(2)(d) of the Law, and
  - (b) the amendments to section 13 of the Law made by section 1(2) of this Ordinance shall apply to any money detained or frozen under the Law before the commencement of section 1(2), except where an application for forfeiture has been made in respect of that money before the commencement of that section.

**Extent.**

3. This Ordinance has effect throughout the Bailiwick of Guernsey.

**Citation.**

4. This Ordinance may be cited as the Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Ordinance, 2022.

**Commencement.**

5. This Ordinance shall come into force on the day appointed for this

purpose by regulations made by the Committee for Home Affairs; and different dates may be appointed for different provisions and for different purposes.