

# **The Criminal Justice (Proceeds of Crime and Drug Trafficking – Money Laundering, etc) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023**

THE STATES, in pursuance of their Resolutions of the 24<sup>th</sup> May, 2023<sup>a</sup>, and in exercise of the powers conferred on them by sections 53A and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>b</sup>, sections 71A and 72 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000<sup>c</sup>, and all other powers enabling them in that behalf, hereby order:-

## **Amendment of the Proceeds of Crime Law.**

1. (1) The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 is amended as follows.

(2) For the heading and subsections (1) and (2) of section 38 (concealing or transferring proceeds of criminal conduct), substitute -

### **"Concealing or transferring criminal property.**

38. (1) A person ("P") is guilty of an offence if -

(a) P -

(i) conceals or disguises criminal

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<sup>a</sup> Article XI of Billet d'État No. VII of 2023.

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

<sup>c</sup> Order in Council No. VII of 2000. This enactment has been amended.

property,

(ii) converts or transfers criminal property, or

(iii) removes criminal property from the Bailiwick, and

(b) where the criminal property constitutes or represents another person's benefit from criminal conduct, P knows or suspects that it constitutes or represents such a benefit."

(3) In section 38(3), for "subsections (1) and (2)" substitute "subsection (1)".

(4) In section 38(3A) -

(a) for "is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct" substitute "is criminal property", and

(b) in paragraph (a), for "subsection (2)" substitute "subsection (1)".

(5) In section 38(3C), for "an offence under subsection (2)" substitute "an offence under subsection (1) where the criminal property constitutes or represents another person's benefit from criminal conduct".

(6) In section 38(3E), for "subsection (2)" substitute "subsection (1)".

(7) For the heading and subsections (1) and (2) of section 39 (concealing or transferring proceeds of criminal conduct), substitute -

**"Assisting another person to retain criminal property."**

39. (1) A person ("P") commits an offence if P enters into or becomes concerned in an arrangement which P knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person."

(8) In section 39(4) -

(a) in paragraph (a), for "any person's proceeds of criminal conduct" substitute "criminal property", and

(b) for section 39(4)(b), substitute -

"(b) that the person did not know or suspect that the arrangement facilitated the acquisition, retention, use or control of any property by or on behalf of another person, or".

(9) In section 40 (acquisition, possession or use of proceeds of criminal conduct) -

(a) for the heading of section 40, substitute "Acquisition, possession or use of criminal property.",

(b) in subsection (1), for ", or in whole or in part directly or indirectly represents, the proceeds of criminal conduct" substitute "criminal property", and

(c) in subsection (5), for ", or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct" substitute "criminal property".

(10) At the end of section 44A (interpretation of Part II), insert -

"(3) For the purposes of this Part of this Law, "**criminal property**" means property constituting a person's proceeds of criminal conduct, or representing such proceeds (in whole or part and whether directly or indirectly).

(4) For the purposes of subsection (3) it is immaterial -

- (a) who carried out the criminal conduct,
- (b) who benefitted from the criminal conduct, and
- (c) whether the criminal conduct occurred before or after the coming into force of this provision."

(11) After section 45 (order to make material available) insert -

**"Offences in relation to orders under section 45.**

**45A.** (1) A person commits an offence if the person fails to comply with a requirement imposed upon that person by or under an order made under section 45 (a "**section 45 order**").

(2) It is a defence for a person charged with an offence under subsection (1) to prove (for the avoidance of doubt, on a balance of

probabilities) that the person had a reasonable excuse for the failure to comply with the requirement.

(3) A person guilty of an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the uniform scale, or to both.

(4) A person commits an offence if, in purported compliance with a section 45 order, the person -

(a) makes a statement, or provides any information or document, which that person knows to be false or misleading in a material particular, or

(b) recklessly makes a statement, or recklessly provides any information or document, which is false or misleading in a material particular.

(5) A person commits an offence if the person obstructs any person acting under the authority of a section 45 order.

(6) A person guilty of an offence under subsection (4) or (5) is liable -

(a) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the uniform scale, or to both, or

- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both."

(12) After section 47 (offence of prejudicing an investigation), insert -

**"Offence of destruction etc of documents relevant to an investigation.**

**47A.** (1) Where a person ("P") -

- (a) knows or suspects that an investigation of a nature described in section 45(1) or 46(1) is being or is likely to be carried out, and
- (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which P knows or suspects are or would be relevant to such an investigation,

P shall be guilty of an offence unless P proves that he or she had no intention of concealing the facts disclosed by the documents from persons carrying out such an investigation.

(2) A person guilty of an offence under subsection (1) shall -

- (a) on conviction on indictment, be liable to imprisonment for a term not exceeding seven years or to a fine or to both, and

- (b) on summary conviction, be liable to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the uniform scale or to both."

(13) In section 52 (index of defined expressions), after the entry for the expression "criminal conduct" insert -

**"criminal property"** (section 44A(3)),

(14) For the cross-heading immediately preceding section 53 substitute "*Constitution of Court, and exercise of powers*", and after section 53 insert -

**"Powers of Court and His Majesty's Sheriff, etc.**

**53ZA. (1)** This section applies to -

- (a) the powers conferred on the Court by section 26(1) and (4), 27(1), and 28(1),
- (b) the powers conferred on His Majesty's Sheriff and police officers by section 26(6), and
- (c) the powers of His Majesty's Sheriff where appointed as, and in the capacity of, a receiver appointed under section 26(4) or 29(2).

(2) Subject to the requirements set out in subsection (3), the powers referred to in subsection (1) -

- (a) must be exercised with a view to the value for

the time being of realisable property being made available (by the property's realisation) for satisfying any confiscation order that has been or may be made against the defendant,

- (b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property,
  - (c) must be exercised without taking account of any obligation of the defendant or a recipient of a gift caught by this Law if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the defendant, and
  - (d) may be exercised in respect of a debt owed by the Crown.
- (3) The requirements referred to in subsection (2) are that -
- (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a gift caught by this Law to retain or recover the value of any interest held by him,
  - (b) in the case of realisable property held by a recipient of a gift caught by this Law, the powers must be exercised with a view to

realising no more than the value for the time being of the gift, and

- (c) in a case where a confiscation order has not been made against the defendant, property must not be sold if the Court so orders under subsection (4).

(4) If on an application by the defendant, or by the recipient of a gift caught by this Law, the Court decides that property cannot be replaced, it may order that it must not be sold.

(5) An order under subsection (4) may be revoked or varied."

**Amendment of the Drug Trafficking Law.**

2. (1) The Drug Trafficking (Bailiwick of Guernsey) Law, 2000 is amended as follows.

(2) After section 49 (enforcing external forfeiture orders), insert -

**"Deemed designation of all countries on 24<sup>th</sup> July, 2023.**

**49A.** (1) With effect on and from 24<sup>th</sup> July, 2023 any country or territory which is not already designated for the purposes of section 49(1) (including any country or territory which comes into existence after that date) is designated for the purposes of this Law and any Ordinance or subordinate legislation made under this Law.

(2) Without prejudice to the generality of subsection (1), a country or territory which is designated for the purposes of that subsection is

a designated country for the purposes of the Drug Trafficking (Bailiwick of Guernsey) (Enforcement of External Forfeiture Orders) Ordinance, 2000."

(3) For the heading and subsections (1) and (2) of section 57 (concealing or transferring proceeds of drug trafficking), substitute -

**"Concealing or transferring drug trafficking property.**

57. (1) A person ("P") is guilty of an offence if -

(a) P -

(i) conceals or disguises drug trafficking property,

(ii) converts or transfers drug trafficking property, or

(iii) removes drug trafficking property from the Bailiwick, and

(b) where the drug trafficking property constitutes or represents another person's benefit from drug trafficking, P knows or suspects that it constitutes or represents such a benefit."

(4) In section 57(3), for "subsections (1)(a) and (2)(a)" substitute "subsection (1)".

(5) In section 57(4), for "is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking" substitute "is drug

trafficking property".

(6) In section 57(6), for "an offence under subsection (2)" substitute "an offence under subsection (1) where the drug trafficking property constitutes or represents another person's benefit from drug trafficking".

(7) For the heading and subsections (1) and (2) of section 58 (concealing or transferring proceeds of drug trafficking), substitute –

**"Assisting another person to retain drug trafficking property."**

58. (1) A person ("P") commits an offence if P enters into or becomes concerned in an arrangement which P knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of drug trafficking property by or on behalf of another person."

(8) In section 58(4) -

(a) in paragraph (a), for "any person's proceeds of drug trafficking" substitute "drug trafficking property", and

(b) for paragraph (b), substitute -

"(b) that the person did not know or suspect that the arrangement facilitated the acquisition, retention, use or control of any property by or on behalf of another person, or".

(9) In section 59 (acquisition, possession or use of proceeds of drug trafficking) -

- (a) for the heading, substitute "Acquisition, possession or use of drug trafficking property.",
- (b) in subsection (1), for ", or in whole or in part directly or indirectly represents, the proceeds of drug trafficking" substitute "drug trafficking property", and
- (c) in subsection (5), for ", or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking" substitute "drug trafficking property".

(10) After section 63 (order to make material available), insert -

**"Offences in relation to orders under section 63.**

**63A.** (1) A person commits an offence if the person fails to comply with a requirement imposed upon that person by or under an order made under section 63 (a "**section 63 order**").

(2) It is a defence for a person charged with an offence under subsection (1) to prove (for the avoidance of doubt, on a balance of probabilities) that the person had a reasonable excuse for the failure to comply with the requirement.

(3) A person guilty of an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the uniform scale, or to both.

(4) A person commits an offence if, in purported compliance with a section 63 order, the person -

- (a) makes a statement, or provides any information or document, which that person knows to be false or misleading in a material particular, or
- (b) recklessly makes a statement, or recklessly provides any information or document, which is false or misleading in a material particular.

(5) A person commits an offence if the person obstructs any person acting under the authority of a section 63 order.

(6) A person guilty of an offence under subsection (4) or (5) is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both."

(11) After section 66 (offence of prejudicing investigation), insert -

**"Offence of destruction etc of documents relevant to a drug trafficking investigation.**

**66A.** (1) Where a person ("P") -

- (a) knows or suspects that an investigation of a

nature described in section 63(1) or 64(1) is being or is likely to be carried out, and

- (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which P knows or suspects are or would be relevant to such an investigation,

P shall be guilty of an offence unless P proves that he or she had no intention of concealing the facts disclosed by the documents from persons carrying out such an investigation.

(2) A person guilty of an offence under subsection (1) shall –

- (a) on conviction on indictment, be liable to imprisonment for a term not exceeding seven years or to a fine or to both, or
- (b) on summary conviction, be liable to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the uniform scale or to both."

(12) After section 68(3), insert -

"(3A) In this Law, "**drug trafficking property**" means property constituting a person's proceeds of drug trafficking, or representing such proceeds (in whole or part and whether directly or indirectly).

(3B) For the purposes of subsection (3A) it is immaterial -

- (a) who carried out the drug trafficking,
- (b) who benefitted from the drug trafficking, and
- (c) whether the drug trafficking occurred before or after the coming into force of this provision."

(13) In section 70 (index of defined expressions), after the entry for "**drug trafficking offence**" insert -

"**drug trafficking property**" (section 68(3A)),".

(14) For the cross-heading immediately preceding section 71 substitute "*Constitution of Court for purposes of Part I of this Law, and exercise of powers*", and after section 71 insert -

**"Powers of Court and His Majesty's Sheriff, etc.**

**71ZA.** (1) This section applies to -

- (a) the powers conferred on the Court by section 26(1) and (4), 27(1), and 28(1),
- (b) the powers conferred on His Majesty's Sheriff and police officers by section 26(6), and

(c) the powers of His Majesty's Sheriff where appointed as, and in the capacity of, a receiver appointed under section 26(4) or 29(2).

(2) Subject to the requirements set out in subsection (3), the powers referred to in subsection (1) -

(a) must be exercised with a view to the value for the time being of realisable property being made available (by the property's realisation) for satisfying any confiscation order that has been or may be made against the defendant,

(b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property,

(c) must be exercised without taking account of any obligation of the defendant or a recipient of a gift caught by this Law if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the defendant, and

(d) may be exercised in respect of a debt owed by the Crown.

(3) The requirements referred to in subsection (2) are that-

- (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a gift caught by this Law to retain or recover the value of any interest held by that person,
- (b) in the case of realisable property held by a recipient of a gift caught by this Law, the powers must be exercised with a view to realising no more than the value for the time being of the gift, and
- (c) in a case where a confiscation order has not been made against the defendant, property must not be sold if the Court so orders under subsection (4).

(4) If on an application by the defendant, or by the recipient of a gift caught by this Law, the Court decides that property cannot be replaced, it may order that it must not be sold.

(5) An order under subsection (4) may be revoked or varied."

**Transitional provision: relevant ongoing proceedings.**

3. For the avoidance of doubt, sections 1 and 2 do not apply in respect of any alleged offence proceedings for which were instituted against the defendant before this Ordinance came into force, and accordingly, in respect of such an alleged offence, the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 and the Drug Trafficking (Bailiwick of Guernsey) Law, 2000 shall have effect as if this

Ordinance had not come into force.

**Extent.**

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

**Citation.**

5. This Ordinance may be cited as the Criminal Justice (Proceeds of Crime and Drug Trafficking – Money Laundering, etc) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023.

**Commencement.**

6. This Ordinance shall come into force on 24<sup>th</sup> July, 2023.