

ORDINANCE  
OF THE STATES OF DELIBERATION

ENTITLED

**The Terrorism and Crime (Enforcement of External  
Orders) Bailiwick of Guernsey) Ordinance, 2007 \***

*[CONSOLIDATED TEXT]*

**NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* No. XVI of 2007 (Recueil d'Ordonnances Tome XXXII, p. 119); as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (Ordres en Conseil Vol. XLII, p. 427).

# ORDINANCE OF THE STATES OF DELIBERATION

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## **The Terrorism and Crime (Enforcement of External Orders) Bailiwick of Guernsey) Ordinance, 2007**

### ARRANGEMENT OF SECTIONS

1. Designation of countries and territories.
2. Proof of orders and judgment of court of a designated country.
3. Evidence in relation to proceedings and orders in a designated country.
4. Representation of government of a designated country.
5. Registration of external forfeiture orders.
6. Registration of external restraint orders.
7. Implementation of registered external forfeiture orders.
8. Statutory provisions applicable where external restraint order is registered.
9. Cancellation or variation of registration of external orders.
10. Appeal in respect of external orders.
11. Enforcement of registered external orders.
12. Interpretation.
13. Citation.
14. Commencement.

(Made on the 24th May, 2007.)

## **The Terrorism and Crime (Enforcement of External Orders) Bailiwick of Guernsey) Ordinance, 2007**

**THE STATES LEGISLATION SELECT COMMITTEE**, in pursuance of the Resolutions of the States of the 1<sup>st</sup> day of November, 2001<sup>a</sup> and the 24<sup>th</sup> day of April, 2002<sup>b</sup>, and in exercise of the powers conferred upon the States by sections 18(8) and 82 of and paragraph 10 of Schedule 2 to the Terrorism and Crime (Bailiwick of Guernsey) Law 2002<sup>c</sup>, and all other powers enabling the States in that behalf, and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>d</sup>, hereby orders: –

### **Designation of countries and territories.**

1. Each of the countries and territories specified in column 1 of the table in the Schedule is hereby designated for the purposes of paragraph 10 of Schedule 2 to the 2002 Law.

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#### **NOTE**

*In accordance with the provisions of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, section 18, Schedule 2, paragraph 10A, with effect on and from the 28th July, 2010, any country or territory which was not already designated as at that date under paragraph 10 of that Schedule (including any country or territory which comes into existence after that date) is designated for the purposes of this Ordinance.*

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### **Proof of orders and judgment of court of a designated country.**

2. (1) For the purposes of this Ordinance –

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<sup>a</sup> Article XXI of Billet d'État No. XXI of 2001.

<sup>b</sup> Article II of Billet d'État No. VI of 2002.

<sup>c</sup> Order in Council No. XVI of 2002, as amended by Order in Council No. XIII of 2006.

<sup>d</sup> Ordres en Conseil Vol. XIII, p. 288; there are amendments not material to this Ordinance.

- (a) any order made or judgment given by a court of a designated country purporting to bear the seal of that court, or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person, and
- (b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court of a designated country shall be deemed without further proof to be a true copy.

(2) A document purporting to be a copy of any order made or judgment given by a court of a designated country is duly authenticated for the purposes of subsection (1)(b) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by, or on behalf of, the appropriate authority of the designated country.

**Evidence in relation to proceedings and orders in a designated country.**

3. (1) A certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating –

- (a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, there,
- (b) that an external order is in force and is not subject to appeal,
- (c) that property recoverable in the designated country under an external order remains unrecovered there,
- (d) that any person has been notified of any proceedings in accordance with the law of the designated country, or

- (e) that an order (however described) made by a court of a designated country is an external order, or that an order, if made by a court of a designated country, would be an external order,

shall be admissible as evidence of the facts so stated.

(2) A statement contained in a document, duly authenticated, which purports to have been received in evidence, or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court of a designated country, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of subsection (2) if it purports to be certified by any person in his capacity as judge, magistrate or officer of the court of a designated country, or by or on behalf of the appropriate authority of the designated country, to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document containing or summarising the evidence or a true copy of that document.

**Representation of government of a designated country.**

4. A request for assistance sent to Her Majesty's Procureur by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for Her Majesty's Procureur to act on its behalf in proceedings pursuant to this Ordinance.

**Registration of external forfeiture orders.**

5. (1) On an application made by or on behalf of the government of a designated country, the Royal Court may register an external forfeiture order made there if –

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal,
- (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings in which the relevant order was made, that he received

notice of the proceedings in sufficient time to enable him to defend them, and

- (c) it is of the opinion that enforcing the order in the Bailiwick would not be contrary to the interests of justice.

(2) In subsection (1) above, "**appeal**" includes –

- (a) any proceedings by way of discharging or setting aside a judgment, and
- (b) an application for a new trial or a stay of execution.

**Registration of external restraint orders.**

6. (1) On an application made by or on behalf of the government of a designated country, the Royal Court may, subject to subsection (2) register an external restraint order made there if –

- (a) it is satisfied that at the time of registration the order is in force, and
- (b) it is of the opinion that enforcing the order in the Bailiwick would not be contrary to the interests of justice.

(2) An external restraint order may only be registered –

- (a) where –
  - (i) proceedings have been instituted against a person in a designated country,
  - (ii) the proceedings have not been concluded, and

(iii) either an external forfeiture order has been made in the proceedings, or it appears to the Royal Court that there are reasonable grounds for thinking that such an order may be made in those proceedings, or

(b) where –

(i) a criminal investigation has been started in a designated country, and

(ii) there are reasonable grounds for thinking that an external forfeiture order may be made in proceedings for the offence.

(3) Where an application is made for the registration of an external restraint order under subsection (1), that application may be made ex parte.

(4) Upon registration of an external restraint order under this section, the Royal Court shall by order provide that notice shall be given to persons affected by that order.

**Implementation of registered external forfeiture orders.**

7. (1) If an external forfeiture order is registered in the Royal Court under section 6(1), the Royal Court shall have, in relation to that order, the same powers as a court has under paragraph 1(1) of Schedule 2 to the 2002 Law (implementation of forfeiture orders) in relation to a forfeiture order made by it (and paragraphs 1(4), (5) and 2 of that Schedule apply accordingly).

(2) After making any payment required by virtue of paragraph 1(1)(d) or 2 of Schedule 2 to the 2002 Law, the balance of any sums received by Her Majesty's Sheriff by virtue of an order made under subsection (1) shall, subject to subsection (3), be credited to the General Revenues of the States of Guernsey.

(3) The balance of any sums received by virtue of an order under subsection (1) shall not be so credited if that balance is to be paid elsewhere (for

example, into any seized asset fund) pursuant to a direction of the [Policy & Resources Committee].

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**NOTES**

*In section 7, the words in square brackets in subsection (3) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 15(a), with effect from 1st May, 2016.*

*The functions, rights and liabilities of the Treasury and Resources Department and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 15(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.*

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**Statutory provisions applicable where external restraint order is registered.**

8. Paragraphs 5 and 6 of Schedule 2 to the 2002 Law shall apply to an external restraint order registered in the Royal Court under section 6(1) as they apply to a restraint order.

**Cancellation or variation of registration of external orders.**

9. (1) On an application by or on behalf of any person affected by the registration of an external order, the Royal Court may cancel or vary the registration of –

- (a) an external forfeiture order if it is satisfied that –
  - (i) effect has been given to it in respect of all or part of the property to which the order applies at the time of application, or
  - (ii) it would be in the interests of justice to do so, and
- (b) an external restraint order if it is satisfied that –

- (i) it has been discharged or varied by the court by which it was made, or
- (ii) it would be in the interests of justice to do so.

(2) Where the Royal Court cancels or varies the registration of an external order under subsection (1), it may do so subject to such terms and conditions as the Court thinks fit.

(3) Any application under subsection (1) –

- (a) may be made in chambers, and
- (b) may not be made until notice of that application has been given to the appropriate representative of the designated country which applied for the registration of the external order.

**Appeal in respect of external orders.**

**10.** (1) Any party to proceedings for the registration of an external order who is aggrieved by a decision in respect of the registration may appeal on a point of law to the Court of Appeal, but if the external order was registered on an *ex parte* application, a party may only appeal after the *inter partes* hearing has taken place.

(2) For the avoidance of doubt an appeal under this section is an appeal in a civil matter for the purposes of Part II of the Court of Appeal (Guernsey) Law, 1961<sup>e</sup> and the provisions of that Law and any rules under it apply accordingly.

**Enforcement of registered external orders.**

**11.** (1) Without prejudice to the foregoing provisions, if an external order is registered in the Royal Court under sections 5 or 6 –

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<sup>e</sup> Ordres en Conseil Vol. XVIII, p. 315.

- (a) the Royal Court shall have, in relation to its enforcement, the same power,
- (b) proceedings for or with respect to its enforcement may be taken, and
- (c) proceedings for or with respect to any contravention of such an order (whether before or after such registration) may be taken,

as if that order had originally been made by the Royal Court.

- (2) The Royal Court may, additionally, for the purpose of –
  - (a) assisting the achievement in the Bailiwick of the purposes of an external order, or
  - (b) assisting Her Majesty's Sheriff or any receiver or other person directed by any such order to sell or otherwise dispose of property,

make such orders or do otherwise as seems to it appropriate.

**Interpretation.**

- 12.** (1) In this Ordinance, unless the context requires otherwise –

**"the 2002 Law"** means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002<sup>f</sup>,

**"appropriate authority of a designated country"** means –

- (a) the authority of a designated country specified opposite that country in column 2 of the table in the Schedule, or

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<sup>f</sup> Order in Council No. XVI of 2002.

- (b) where no authority is so specified, the authority appearing to the Royal Court to be the appropriate authority for the purpose of this Ordinance,

**"appropriate representative"** means –

- (a) where a request for assistance has been sent to Her Majesty's Procureur pursuant to section 4, Her Majesty's Procureur, or
- (b) in any other case, the person appearing to the Royal Court to be the person with the authority to act on behalf of the government of a designated country in proceedings pursuant to this Ordinance,

**"Bailiff"** includes the Deputy Bailiff and a Lieutenant-Bailiff,

**"Bailiwick"** means the Bailiwick of Guernsey,

**"court of a designated country"** includes a court of any state or territory of a designated country,

**"designated country"** means a country or territory designated under section 1,

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

**"external order"** means an order –

- (a) which is made in a country or territory designated by this Ordinance, and
- (b) which makes relevant provision,

**"Her Majesty's Procureur"** includes Her Majesty's Comptroller,

**"Her Majesty's Sheriff"** means, in relation to –

- (a) Alderney, the Greffier, and
- (b) Sark, the Prévôt,

**"relevant provision"** means –

- (a) provision for the forfeiture of terrorist property ("**an external forfeiture order**"), or
- (b) provision prohibiting dealing with property which is subject to an external forfeiture order or in respect of which such an order could be made in proceedings which have been or are to be instituted in the designated country or territory ("**an external restraint order**"),

**"the Royal Court"** has the meaning given in paragraph 11 of Schedule 2 to the 2002 Law, and

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

(2) For the purposes of this Ordinance –

- (a) proceedings are "**instituted**" in a designated country when –
  - (i) under the law of the designated country concerned, one of the steps specified in relation to that country in column 3 of the table in the

*Consolidated text*

Schedule has been taken there in respect of the commission of an alleged offence, or

- (ii) an application has been made to a court of a designated country for an external order,

and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times,

- (b) proceedings are "**concluded**" in a designated country –

- (i) when an external forfeiture order has been made in those proceedings and effect has been given to it in respect of all the money or other property to which it applies, or

- (ii) when (disregarding any power of a court in a designated country to grant leave to appeal out of time) there is no further possibility of an external forfeiture order being made in the proceedings, and

- (c) an external order is "**subject to appeal**" until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

(3) The provisions of the Interpretation (Guernsey) Law 1948<sup>g</sup> shall apply to the interpretation of this Ordinance throughout the Bailiwick of Guernsey.

(4) Any reference in this Ordinance to an enactment is a

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<sup>g</sup> Ordres en Conseil Vol. XIII, p. 355.

reference thereto or from time to time amended, replaced, re-enacted, extended or applied.

**Citation.**

**13.** This Ordinance may be cited as the Terrorism and Crime (Enforcement of External Orders) (Bailiwick of Guernsey) Ordinance, 2007.

**Commencement.**

**14.** This Ordinance shall come into force on the 24<sup>th</sup> May, 2007.

SCHEDULE Sections 1 & 12  
DESIGNATED COUNTRIES AND TERRITORIES

(1)	(2)	(3)
DESIGNATED COUNTRY	APPROPRIATE AUTHORITY	POINT AT WHICH PROCEEDINGS ARE INSTITUTED
Austria		
Belgium		
Canada	The Minister of Justice or officials designated by that Minister	(a) when a person is charged with an offence, or  (b) when any investigation or inquiry into the commission of any offence is directed by a court of law.
Denmark		

*Consolidated text*

Finland		
France		
Germany		When a person is notified that he is accused of an offence and will be brought before a court.
Greece		
India	The Ministry of Home Affairs	<p>(a) when information relating to commission of any crime is received by any law enforcement agency empowered to investigate such crime under the law for the time being in force and laid before a court of law,</p> <p>(b) when any allegation is made orally or in writing to a court of law that a person has committed an offence,</p> <p>(c) when a person is charged with an offence, or</p> <p>(d) when any investigation or inquiry into the commission of</p>

*Consolidated text*

		any offence is directed by a court of law.
Ireland	The Department of Justice, Equality and Law Reform	
Italy	The Ministry of Justice	<p>(a) when a person is notified, in accordance with article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in progress, or</p> <p>(b) when a proposal for the application of a preventive measure (<i>misura di prevenzione</i>) is laid before a court.</p>
Japan		
Luxembourg		
The Netherlands	Afdeling Internationale Rechtshulp	<p>(a) when a pre-trial financial investigation has been initiated,</p> <p>(b) when a provisional measure has been ordered by an investigating magistrate,</p>

*Consolidated text*

		<p>(c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted, or</p> <p>(d) when a public prosecutor has laid an indictment.</p>
Portugal	The Ministry of Justice	
Spain	El Ministerio de Justicia, Madrid	When by virtue of a judicial resolution it is decided to proceed against a person for an offence.

*Consolidated text*

Sweden	The Ministry of Foreign Affairs	When a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion.
United States of America	The Attorney General of the United States of America	When an indictment, information or complaint has been filed against a person in respect of an offence.