

GUERNSEY STATUTORY INSTRUMENT

2024 No. 17

**The Forfeiture of Assets in Civil Proceedings
(Commencement, Amendment and Miscellaneous
Provisions) (Bailiwick of Guernsey) Regulations, 2024**

<i>Made</i>	<i>4th March, 2024</i>
<i>Coming into operation</i>	<i>26th April, 2024</i>
<i>Laid before the States</i>	<i>, 2024</i>

THE COMMITTEE FOR HOME AFFAIRS, in exercise of the powers conferred upon it by sections 88(9), 136(12)(b), 147(2) and 148(2) of the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023^a, and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Amendments to section 136 of the Law of 2023.

1. Section 136 of the Law is amended as follows.
2. In subsection (1) of that section, after "Law", insert –

^a Order in Council No. VI of 2023.

", unless -

- (a) the context requires otherwise,
- (b) rules of Court provide otherwise, or
- (c) a court orders otherwise in a particular case."

3. For subsection (4) of that section, substitute the following subsection –

"(4) If a person ("B") who is to give a document to, or serve a document on, another person ("C") cannot, after reasonable enquiry, give or serve the document in accordance with the other provisions of this section -

- (a) where the document is to be given or served in connection with any court or judicial proceedings, B may give the document to, or serve the document on, C by applying to the relevant court for directions as to the manner in which the document may be given or served, and
- (b) in any other case, B may give the document to, or serve the document on, C by publishing it on two occasions in La Gazette Officielle with at least five business days in between each publication; and a document so given or served is to be regarded as having been given or served on the second occasion on which the notice is so published."

4. For subsection (7) of that section, substitute the following subsections -

"(7) If a person who is to give or serve a document has reason to believe that the person ("C") to whom the document is to be given or (as the case may be) on whom the document is to be served lacks capacity within the meaning of the Capacity (Bailiwick of Guernsey) Law, 2020 in relation to that document, that document must be given to or served on C, and must also be given to or served on -

(a) where C is resident in the Bailiwick -

(i) the donee of a lasting power of attorney that relates to C, or

(ii) the guardian appointed for C by a court in the Bailiwick,

(b) where C is resident in England and Wales -

(i) the attorney under an enduring power of attorney that relates to C,

(ii) the donee of a lasting power of attorney that relates to C, or

(iii) the deputy appointed in relation to C by the Court of Protection,

(c) where C is resident in Northern Ireland -

- (i) the attorney under an enduring power of attorney that relates to C, or
 - (ii) the controller appointed in relation to C by the Office of Care and Protection,
- (d) where C is resident in Scotland -
- (i) the continuing attorney under a continuing power of attorney that relates to C,
 - (ii) the welfare attorney under a welfare power of attorney that relates to C,
 - (iii) the person authorised under an intervention order in respect of C,
 - (iv) the person authorised under a guardianship order in respect of C, or
 - (v) the person authorised under a withdrawal certificate in respect of the funds of C, and
- (e) where C is resident in the Bailiwick of Jersey -
- (i) the donee of a lasting power of attorney that relates to C, or

- (ii) the guardian appointed for C under the Mental Health (Jersey) Law 2016.

(7A) If C is not a person who lacks capacity within the meaning of subsection (7) but is under 16 years of age, the document must be given to or served on -

- (a) at least one person who has legal responsibility for C, and
- (b) if C is 12 years of age or older, C.

(7B) In subsection (7A)(a), having legal responsibility for C -

- (a) means having the legal responsibility –
 - (i) to act as C's legal representative, or
 - (ii) to safeguard, preserve and otherwise deal with C's property,
- (b) includes having parental responsibility for C–
 - (i) if C is resident in Guernsey or Alderney, under the Children (Guernsey and Alderney) Law, 2008,
 - (ii) if C is resident in Sark, under the Children (Sark) Law, 2016,

- (iii) if C is resident in England and Wales, under the Children Act 1989,
 - (iv) if C is resident in Northern Ireland, under the Children (Northern Ireland) Order 1995,
 - (v) if C is resident in Scotland, under the Children (Scotland) Act 1995, and
 - (vi) if C is resident in the Bailiwick of Jersey, under the Children (Jersey) Law, 2002, and
- (c) if C is resident in the Bailiwick of Guernsey or Bailiwick of Jersey, includes being a tuteur for C.

(7C) In subsection (7) –

- (a) the reference to the Capacity (Bailiwick of Guernsey) Law, 2020 has effect whether or not the relevant provisions of that Law have come into force, and
- (b) a reference to a power of attorney of any kind, where the power of attorney must be registered in order to have effect, means a registered power of attorney of that kind."

5. Immediately after subsection (9) of that section, insert the following subsection -

"(9A) If a document is given or served by transmission to an electronic address -

(a) the document is to be treated as having been given or served on the day on which it is transmitted, if the electronic communication containing it is transmitted before 4.30pm, and

(b) otherwise, the notice is to be treated as having been given or served the following day."

6. In subsection (12) of that section, repeal paragraph (a).

Other amendments to the Law of 2023.

7. The Law is further amended as follows.

8. In section 144(1) of the Law, in paragraph (c) of the definition of "**police officer**", for the numbering of that paragraph, "(c)", substitute "(b)".

9. In Schedule 4 to the Law -

(a) immediately after paragraph 1, insert the following paragraphs -

"Cash, bank accounts, etc. detained or frozen under former Law.

1A. (1) The following are to be dealt with in all respects as if the former Law were still in force and this Law had not been enacted -

- (a) any cash seized by a police officer under section 6 of the former Law,
- (b) any cash detained under section 7(1) of the former Law and any interest accruing on it,
- (c) any funds or account frozen under section 10 of the former Law, and any interest accruing in respect of frozen funds.

(2) The following have effect as if the former Law were still in force and this Law had not been enacted -

- (a) an order of the Bailiff under section 7(2) of the former Law to further detain cash,
- (b) an order of the Bailiff under section 10(1) of the former Law prohibiting funds or part of funds being transferred or withdrawn, or otherwise paid out of, a bank account,
- (c) an order of the Bailiff under section 10(3) of the former Law extending the period for which funds are frozen under section 10(1) of the former Law,
- (d) a forfeiture order made by the Royal Court under section 12B(1) or (3) of the former Law,

(e) a forfeiture order made by the Royal Court under section 13 of the former Law in respect of money detained or frozen under the former Law,

(f) a summary forfeiture notice served under section 12A(1) of the former Law.

(3) The following are to be dealt with and (unless determined before commencement) determined as if the former Law were still in force and this Law had not been enacted -

(a) an application under the former Law for an order of any kind specified in subparagraph (2)(a) to (e) of this paragraph,

(b) an application under section 16(1) of the former Law for the release of money or any part of money detained under the former Law.

(4) In this paragraph, "cash" has the meaning given to it by section 3 of the former Law.

Investigations and other orders, etc. under former Law.

1B. (1) Where any cash, money, funds or account is or was seized, detained or frozen, and subject to a civil forfeiture investigation, under the former Law -

(a) the civil forfeiture investigation has effect and is to be dealt with in all respects under the

former Law as if the former Law were still in force and this Law had not been enacted, and

- (b) for the avoidance of doubt, an application may be made under the former Law for an investigation order in respect of the civil forfeiture investigation as if the former Law were still in force and this Law had not been enacted.

(2) The following have effect as if the former Law were still in force and this Law had not been enacted -

- (a) an investigation order made under the former Law,
- (b) an overseas forfeiture order registered in the records of the Royal Court under section 49 of the former Law.

(3) The following are to be dealt with and (unless determined before commencement) determined as if the former Law were still in force and this Law had not been enacted -

- (a) an application under the former Law for an investigation order,
- (b) an application under the former Law for registration of an overseas forfeiture order in

the records of the Royal Court under section 49 of the former Law.

- (4) In this paragraph, "**investigation order**" means –
- (a) a production order under section 20(1) of the former Law,
 - (b) an order to grant entry under section 22(2) of the former Law,
 - (c) a customer information order under section 28(1) of the former Law,
 - (d) an account monitoring order under section 35(1) of the former Law, or
 - (e) a disclosure order under section 41(1) of the former Law.

Relationship with the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016.

1C. Nothing in paragraph 1A or 1B limits the effect of section 18 of the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016.", and

- (b) repeal paragraphs 2 to 12.

10. In Schedule 5 to the Law, after paragraph 6, insert the following paragraph -

"Companies (Guernsey) Law, 2008.

7. (1) The Companies (Guernsey) Law, 2008 is amended as follows.

(2) In section 504A(2) of that Law, for paragraph (c), substitute the following paragraph -

"(c) the conduct of any relevant investigation within the meaning of section 75(d) of the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023, or any proceedings under that Law or under corresponding legislation in force in a country outside the Bailiwick,".

Application of PPACE provisions to search and seizure warrants.

11. (1) The Schedule to these Regulations applies provisions of PPACE in relation to a search and seizure warrant issued under section 85 of the Law subject to the modifications set out in that schedule for this purpose.

(2) If there is any conflict between those provisions of PPACE (as modified) and provisions of the Law, the latter provisions are to prevail.

Interpretation.

12. In these Regulations –

"**FOAL warrant**" means a search and seizure warrant sought or (as the case may be) issued under section 85 of the Law for the purposes of a civil forfeiture investigation, detained property investigation or frozen funds investigation,

"**the Law**" means the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023, and

"**PPACE**" means the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^b.

Extent.

13. These Regulations have effect in the Bailiwick of Guernsey.

Citation.

14. These Regulations may be cited as the Forfeiture of Assets in Civil Proceedings (Commencement, Amendment and Miscellaneous Provisions) (Bailiwick of Guernsey) Regulations, 2024.

Commencement of these Regulations and the Law of 2023.

15. The Law and these Regulations shall come into force on 26th April, 2024.

Dated this 4th day of March, 2024



ROBERT PROW

President of the Committee for Home Affairs

For and on behalf of the Committee

^b Ordres en Conseil Vol. XLIII(2), p. 617); this enactment has been amended.

SCHEDULE

Regulation 11

PROVISIONS OF PPACE APPLYING TO SEARCH AND SEIZURE WARRANTS
ISSUED UNDER SECTION 85 OF THE FORFEITURE OF ASSETS IN CIVIL
PROCEEDINGS (BAILIWICK OF GUERNSEY) LAW, 2023 SUBJECT TO
MODIFICATIONS

Application of section 10 of PPACE.

1. (1) Subject to the following modifications, section 10 (search warrants – safeguards) of PPACE applies to a FOAL warrant.

(2) For subsection (1), substitute –

"(1) This section and section 11 below have effect in relation to the issue to a police officer of a search and seizure warrant under section 85 of the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023; and an entry on or search of premises under such a warrant is unlawful unless the warrant complies with this section and is executed in accordance with section 11."

(3) In subsection (2) -

(a) in paragraph (b), for "enactment", substitute "statutory power", and

(b) in paragraph (d), for "articles or persons", substitute "material".

(4) In subsection (3), omit "and supported by information in writing".

(5) In subsection (6) -

(a) in paragraph (a), for "enactment", substitute "statutory power", and

(b) in paragraph (b), for "articles or persons", substitute "material".

Application of section 11 of PPACE.

2. (1) Subject to the following modifications, section 11 (execution of warrants) of PPACE applies to a FOAL warrant.

(2) Omit subsections (1) and (3).

(3) For subsection (2), substitute the following subsection –

"(2) A search and seizure warrant issued under section 85 of the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023 may authorise persons to accompany any police officer who is executing it."

(4) For subsections (9) and (10), substitute the following subsections -

"(9) In the case of a warrant which is issued because the Bailiff is satisfied that the requirement in section 85(5)(a) of the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023 is satisfied

(production order made and not complied with), the officer executing a warrant shall make an endorsement on it stating -

- (a) whether the material sought was found, and
- (b) whether any material was seized, other than material which was sought.

(10) A warrant which -

- (a) has been executed, or
- (b) has not been executed upon the expiry of the period of one month (or any longer period specified in the warrant for its execution),

must be returned to His Majesty's Greffier."

(5) In subsection (11), for "the person named in paragraphs (a) to (c)", substitute "His Majesty's Greffier".

Application of section 16 of PPACE.

3. (1) Subject to the following modifications, section 16 (access and copying) of PPACE applies to powers of seizure under a FOAL warrant.

(2) In subsection (1), for the words from the beginning to "commencement of this Law", substitute "A police officer who seizes anything under a search and seizure warrant issued under section 85 of the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023 for the purposes of a civil

forfeiture investigation, detained property investigation or frozen funds investigation".

(3) In subsection (8) –

(a) in paragraph (b), omit "other than the offence for the purposes of investigating which the thing was seized", and

(b) in paragraph (c), immediately after "proceedings", insert "(including proceedings relating to the making of a confiscation order under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 or Drug Trafficking (Bailiwick of Guernsey) Law, 2000), or any proceedings under Part II, III or IV of the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023,".

Application of section 17 of PPACE.

4. (1) Subject to the following modifications, section 17 (retention) of PPACE applies to powers of seizure under a FOAL warrant issued for the purposes of a civil forfeiture investigation, detained property investigation or frozen funds investigation.

(2) For subsection (1), substitute the following subsection -

"(1) Subject to subsection (4), anything which has been seized or taken away by a police officer under a search and seizure warrant issued under section 85 of the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023 for the purposes of a civil forfeiture

investigation, detained property investigation or frozen funds investigation may be retained by the officer so long as is necessary in all the circumstances."

- (3) In subsection (2)(a) -
- (a) for "a criminal investigation", substitute "an investigation of the kind mentioned in subsection (1)",
 - (b) at the end of subparagraph (i), delete "or",
 - (c) at the end of subparagraph (ii), delete "and", and
 - (d) immediately after subparagraph (ii), insert the following subparagraphs -
 - "(iii) for use as evidence in proceedings relating to the making of a confiscation order under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 or the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
 - (iv) for use as evidence in any proceedings under Part II, III or IV of the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023, or
 - (v) for forensic examination in connection with a civil forfeiture investigation,

detained property investigation or
frozen funds investigation, and".

- (4) Delete subsection (3).
- (5) In subsection (4), for "either", substitute "any".

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023 ("**the Law**") and apply certain provisions of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 in relation to search and seizure warrants sought or issued under section 85 of the Law.

These Regulations also bring the Law into force, and themselves come into force, on 26th April, 2024.