

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

**THE FORFEITURE OF MONEY, ETC. IN CIVIL PROCEEDINGS (BAILIWICK OF GUERNSEY)
(AMENDMENT) ORDINANCE, 2022**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Ordinance, 2022", and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance amends the Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 ("the Law"). Section 1 of the Ordinance sets out the amendments to the Law. The effect of the amendments is as follows:

- a summary forfeiture procedure is introduced for what are commonly described as "no consent" cases. These are cases where the law enforcement authorities have refused to consent to a transaction involving particular property. The summary forfeiture procedure will enable the court to make an order for the forfeiture of assets in a Bailiwick bank account where a relevant consent request has been made and refused at least a year previously. Such an order may only be made on the application of HM Procureur, on the basis that he or she has reasonable grounds to believe that the property is linked to criminality, and provided that the owner of the property has not satisfied the court to the contrary.
- the burden of proof in standard civil forfeiture applications is reversed, so that where the court has previously frozen assets that are suspected to be linked to criminality and HM Procureur then applies for a forfeiture order, the court must make a forfeiture order unless satisfied on the balance of probabilities that the assets are not linked to criminality.
- the Committee for Home Affairs has the power to make regulations (after consultation with other authorities) to introduce a procedure under which a forfeiture order can be reconsidered if new evidence comes to light.
- the authorities are not liable for costs or damages in respect of a civil forfeiture application (this is without prejudice to an award of damages under the Human Rights (Bailiwick of Guernsey) Law, 2000).

- an existing power under the Law for the court to award compensation under the Law has been revised to specify that it applies to loss as a result of an act or omission made in bad faith.

Section 2 of the Ordinance contains a transitional provision. This makes it clear that where assets are already the subject of refusal of consent when the relevant amendment comes into force, the time that has passed since that refusal may be taken into account in calculating the 12 month period for the purposes of a summary forfeiture application. Section 2 also makes clear that the amendments to the forfeiture provisions at section 13 of the Law apply to money detained or frozen under the Law before the commencement of the Ordinance, except where an application for forfeiture has been made in respect of that money before the commencement.

Sections 3, 4 and 5 deal respectively with extent, citation and commencement.

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

THE STATES, in pursuance of their Resolution of ** September, 2022^a, 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^b, 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, 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

^a Article ** of Billet d'État No. ** of 2022.

^b 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^c, 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

^c 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 subsections (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^d 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^e 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

^d Ordres en Conseil Vol. XXXIX, p. 137. This enactment has been amended.

^e 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 (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.