

**DRAFT CRIMINAL JUSTICE (INTERNATIONAL
CO-OPERATION) (JERSEY) REGULATIONS 200-**

**Lodged au Greffe on 16th October 2001
by the Finance and Economics Committee**



STATES OF JERSEY

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Report

Together with the Appointed Day Act for the Criminal Justice (International Co-operation) (Jersey) Law 2001 (“CJICJL”) it is necessary to enact Regulations pursuant to Article 7 of CJICJL - and to come into force at the same time as CJICJL - to designate countries or territories (and their appropriate authorities) whose forfeiture orders will be able to be enforced in the Island. Such Regulations effectively replace the Drug Offences (International Co-operation) (Enforcement of Overseas Forfeiture Orders) (Jersey) Regulations 1997, which fall away with the enactment of CJICJL. The orders able to be enforced are those for the forfeiture and destruction, or the forfeiture or other disposal, of anything in respect of which an offence, that would constitute a serious offence if the conduct constituting the offence had occurred in the Island, has been committed or that was used or intended for use in connection with the commission of such an offence.

Together, the new Law and Regulations will continue the existing regime of reciprocal cross border co-operation, but over a much greater range of criminal conduct. The Island will thus be able to play its full part internationally in combating crime.

These draft Regulations have no implications for the financial or manpower resources of the States.

Explanatory Note

The purpose of these Regulations is to provide for the enforcement in the Island of an order that -

- (a) is made by a court in a country or territory outside the Island designated by the Regulations; and
- (b) is for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which an offence that would constitute a serious offence if the conduct constituting the offence had occurred in the Island has been committed or that was used or intended for use in connection with the commission of such an offence.

Criminal Justice (International Co-operation) (Jersey) Law 2001

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (JERSEY) REGULATIONS 200-

(*Promulgated on the* *day of* 200-)

STATES OF JERSEY

The day of 200-

THE STATES, in pursuance of Article 7 of the Criminal Justice (International Co-operation) (Jersey) Law 2001 ^[1] (hereinafter referred to as “the Law”), have made the following Regulations -

Interpretation

1.-(1) In these Regulations, unless the context otherwise requires

“appropriate authority of a designated country” means -

- (a) the authority specified opposite that country in Schedule 2; or
- (b) where no authority is so specified, the authority appearing to the Royal Court to be the appropriate authority for the purposes of these Regulations;

“court of a designated country” includes a court of any state or territory of a designated country;

“designated country or territory” means a country or territory designated under Regulation 2;

“property” means all property whether movable or immovable, vested or contingent and whether situated in the Island or elsewhere;

“serious offence”, in respect of an offence committed in a designated country or territory, means an offence that would constitute a serious offence if the conduct constituting the offence had occurred in the Island.

(2) A reference in these Regulations to a Regulation or Schedule by number only is a reference to the Regulation or Schedule of that number contained in these Regulations.

(3) A reference in a Regulation to a paragraph or sub-paragraph by number or letter only is a reference to the paragraph or sub-paragraph of that number or letter in the Regulation in which the reference occurs.

(4) A reference in these Regulations to an enactment is a reference to that enactment as amended from time to time.

(5) Proceedings are instituted in a designated country -

- (a) when under the law of the designated country one of the steps specified in relation to that country in the right-hand column of the Schedule 1 has been taken in respect of the alleged serious offence; or
- (b) where no steps have been specified in relation thereto as mentioned in sub-paragraph (a) the defendant has been notified in writing in accordance with the laws of the designated country that the competent authorities of that country have begun proceedings against him in respect of a serious offence; or
- (c) when an application has been made to a court in a designated country for an external forfeiture 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 these times.

(6) Proceedings are concluded in a designated country -

(a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a forfeiture order being made in the proceedings;

(b) on the satisfaction of a forfeiture order made in the proceedings (whether by recovery of all property liable to be recovered or otherwise).

(7) An 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.

Designation of countries and territories

2. Each of the countries and territories specified in Schedule 2 is hereby designated for the purposes of Article 7 of the Law.^[2]

External forfeiture orders

3.-(1) An order made by a court in a designated country for the forfeiture and destruction or forfeiture and other disposal, of anything in respect of which a serious offence has been committed or which was used or intended for use in connection with the commission of such an offence is referred to in these Regulations as an “external forfeiture order”.

(2) In paragraph (1) the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

(3) A person against whom an external forfeiture order has been made, or a person against whom proceedings which may result in an external forfeiture order being made have been, or are to be, instituted in a court in a designated country, is referred to as “the defendant”.

Restraint orders

4.-(1) The Royal Court may in accordance with this Regulation, by an order (referred to in these Regulations as “restraint order”) authorize the Viscount to seize or detain any property in respect of which an external forfeiture order has been made or in respect of which such an order could be made in the proceedings referred to in paragraphs (2) and (3).

(2) A restraint order may be made where -

(a) proceedings have been instituted against the defendant in a designated country;

(b) the proceedings have not been concluded; and

(c) it appears to the Court that there are reasonable grounds for believing that an external forfeiture order may be made in the proceedings.

(3) A restraint order may also be made where -

(a) it appears to the Court that proceedings are to be instituted against the defendant in a designated country; and

(b) it appears to the Court that there are reasonable grounds for believing that an external forfeiture order may be made in the proceedings.

(4) Where the Royal Court has made an order under paragraph (3), it shall discharge the order if the proposed proceedings are not instituted within such time as the Court considers reasonable.

(5) A restraint order -

(a) may be made only on an application by or on behalf of the Government of a designated country;

(b) may be made on an *ex parte* application to the Bailiff in Chambers; and

- (c) shall provide for service on, or the provision of notice to, persons affected by the order in such manner as the Court may direct.
- (6) A restraint order -
 - (a) may be discharged or varied in relation to any property; and
 - (b) shall be discharged when the proceedings in relation to which the order was made are concluded.
- (7) An application for the discharge or variation of a restraint order may be made by any person affected by it.
- (8) Property seized or detained under this Regulation shall be dealt with in accordance with the directions of the Royal Court.

Viscount - supplementary provisions

- 5. Where the Viscount takes any action under Regulation 4-
 - (a) in relation to property which is not liable to recovery under an external forfeiture order, being action which he would be entitled to take if it were such property;
 - (b) believing and having reasonable grounds for believing that he is entitled to take that action in relation to that property,

he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

Registration of external forfeiture orders

6.-(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, 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 Island would not be contrary to the interests of justice.

(2) In paragraph (1) "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.

(3) The Royal Court shall cancel the registration of an external forfeiture order if it appears to the Court that the order has been satisfied by the forfeiture of the property liable to be recovered under the external forfeiture order or by any other means.

Disposal of forfeited property

7.-(1) Where an external forfeiture order has been registered in the Royal Court under Regulation 6, the Court may, on the application of the Attorney General, order the forfeiture of the property specified in the external forfeiture order.

(2) Property forfeited under paragraph (1) shall be disposed of in accordance with the Court's directions.

(3) The Royal Court shall not in respect of any property exercise the powers conferred by paragraphs (1) and (2) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.

Proof of orders and judgment of court in a designated country

8.-(1) For the purposes of these Regulations

- (a) any order made or judgment given by a court in 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 in 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 in a designated country is duly authenticated for the purposes of sub-paragraph (b) of paragraph (1) 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

9.-(1) For the purposes of these Regulations, 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) in a case to which Regulation 1(5)(b) applies, that the defendant has been notified as specified in that sub-paragraph;
- (c) that an external forfeiture order is in force and is not subject to appeal;
- (d) that property recoverable in the designated country under an external forfeiture order remains unrecovered there;
- (e) that any person has been notified of any proceedings in accordance with the law of the designated country; or
- (f) that an order (however described) made or to be made by a court of the designated country is for the forfeiture and destruction or the forfeiture and other disposal of anything in respect of which a serious offence has been committed or which was used or intended for use in connection with the commission of such an offence,

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 summarize evidence given in proceedings in a court in a designated country, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of paragraph (2) if it purports to be certified by any person in his capacity as judge, magistrate or officer of the court in the 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.

(4) Nothing in this Regulation shall prejudice the admission of any evidence, whether contained in any document or otherwise, which is admissible apart from this Regulation.

Certificate of appropriate authority

10. Where in relation to any designated country no authority is specified in Schedule 2, a certificate made by the Attorney General to the effect that the authority specified therein is the appropriate authority for the purposes of these Regulations shall be sufficient evidence of that fact.

Representation of Government of a designated country

11.-(1) In any proceedings pursuant to these Regulations the Government of a designated country shall be represented by the Attorney General.

(2) In any such proceedings a request for assistance sent to the Attorney General 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 the Attorney General to act on its behalf.

Citation and commencement

These Regulations may be cited as the Criminal Justice (International Co-operation) (Jersey) Regulations 2001 and shall come into force on the sixth day of November 2001.

SCHEDULE 1

(Regulation 1(5))

INSTITUTION OF PROCEEDINGS

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
Anguilla	(a) when a summons or warrant is issued in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant; (c) when a bill of indictment is preferred.
Argentina	when a judge has ordered that a person be detained for the purpose of testifying in connection with the commission of an offence.
Antigua and Barbuda	when a person has been charged with a scheduled offence.
Australia	when an information or a complaint has been laid before a justice of the peace or a magistrate, or a person has been charged with an offence, or an indictment or a presentment has been preferred.
The Bahamas	(a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence after having been taken into custody without a warrant; (c) when a bill of indictment is preferred.
Bahrain	when a bill of indictment is lodged in court against any person for an offence.
Barbados	(a) when an information has been laid before a magistrate; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred.
Bermuda	when an information is laid charging a person with an offence.
Bolivia	when a warrant is issued by a competent judge or an order to institute proceedings, containing the preventive annotation of property liable to registration or the bank deposit of the monies, assets and property of the accused.
British Virgin Islands	(a) when a summons or warrant is issued in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a

warrant;

(c) when an indictment is preferred.

The Cayman Islands

(a) when a charge has been signed under subsection 13(3) or (4) of the Criminal Procedure Code in respect of the offence; or

(b) when a person is charged with the offence after being arrested without a warrant under subsection (5) of that section.

Chile

when an application for a decision from the competent judicial authority is made.

Colombia

when a preliminary investigation or a formal process has begun and, in either case, a Resolution has been issued for a freezing or seizure order.

Ecuador

when a writ is issued by a judge initiating criminal proceedings.

Germany

when a person is notified that he is accused of an offence and will be brought before a court.

Gibraltar

when a person is charged with an offence, whether by the laying of an information or otherwise.

Grenada

(a) when an information is laid before a justice of the peace;

(b) when a person is charged with an offence;

(c) when a bill of indictment is preferred.

Guernsey

when a person is charged with an offence.

Guyana

when a charge has been laid against a person for an offence.

Hong Kong

(a) when a magistrate issues a warrant or summons;

(b) when a person is charged with an offence;

(c) when an indictment is preferred.

India

(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;

(b) when any allegation is made orally or in writing to a court of law that a person has committed an offence;

(c) when a person is charged with an offence;

(d) when any investigation or inquiry into the commission of any offence is directed by a court of law.

Isle of Man

(a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in relation to the offence is made to him;

(b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him;

(c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody;

(d) where an information is preferred by the Attorney General in a case where there have been no committal proceedings, when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917.

Italy

(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;

(b) when a proposal for the application of a preventative measure (*“misura di prevenzione”*) is laid before a court.

Malaysia

when a person is charged with an offence.

Montserrat	<ul style="list-style-type: none"> (a) when a judge issues a summons or warrant in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant.
Netherlands	<ul style="list-style-type: none"> (a) when a pre-trial financial investigation has been initiated; (b) when the provisional measure has been ordered by an investigating magistrate; (c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted; (d) when a public prosecutor has laid an indictment.
Panama	when a person has been charged with an offence.
Paraguay	when a judge orders the restraint of property and a preventative detention order is made.
Romania	<ul style="list-style-type: none"> (a) when the start of a penal pursuit is ordered; (b) when penal proceedings start in respect of an offender.
Saudi Arabia	when an information has been laid before a judicial authority.
South Africa	<ul style="list-style-type: none"> (a) when a summons is issued in respect of an offence; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred.
Spain	when by virtue of a judicial resolution it is decided to proceed against a person for an offence.
Sweden	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.
Switzerland	when proceedings for an offence are brought before an examining magistrate.
Thailand	when a court or the Asset Examination Committee issues a restraint order.
Ukraine	when a criminal case is brought.
United Kingdom -	

England and Wales	<ul style="list-style-type: none"> (a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 in respect of the offence; (b) when a person is charged with the offence after being taken into custody without a warrant; (c) when a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section.
Scotland	<ul style="list-style-type: none"> (a) when a warrant of apprehension to arrest and commit a suspect is granted; (b) when a person is charged with an offence after having been arrested without a warrant.
Northern Ireland	<ul style="list-style-type: none"> (a) when a summons or warrant is issued under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 in respect of that offence; (b) when a person is charged with an offence after being taken into custody without a warrant; (c) when an indictment is presented under section 2(2)(c), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969.
United Mexican States	<ul style="list-style-type: none"> (a) when criminal proceedings are instituted by a judicial authority; (b) when the Ministerio Publico has established that there is probable cause to suspect that a person has committed an offence.
United States of America	when an indictment, information or complaint has been filed against a person in respect of an offence.
Uruguay	when criminal proceedings are instituted by a judicial authority.

SCHEDULE 2

(Regulations 1(1), 2 and 10)

<i>Designated country</i>	<i>Appropriate authority</i>
Afghanistan	
Algeria	
Anguilla	The Attorney General of Anguilla
Antigua and Barbuda	The Attorney General
Argentina	The Ministry of Foreign Affairs
Armenia	
Australia	The Attorney General's Department
Austria	
Azerbaijan	
The Bahamas	The Attorney General of the Bahamas
Bahrain	The Ministry of the Interior
Bangladesh	
Barbados	The Attorney General
Belarus	
Belgium	
Belize	
Benin	
Bermuda	The Attorney General of Bermuda
Bhutan	
Bolivia	Secretaria Nacional de Defensa Social del Ministerio de Gobierno
Bosnia and Herzegovina	
Botswana	
Brazil	
British Virgin Islands	The Attorney General of the British Virgin Islands
Brunei	
Bulgaria	

Burkina Faso	
Burma	
Burundi	
Cameroon	
Canada	The Minister of Justice or officials designated by that Minister
Cape Verde	
The Cayman Islands	The Attorney General of the Cayman Islands
Chad	
Chile	Ministerio del Interior
China	
Colombia	The Fiscalía General de la Nación and the Ministerio de Justicia del Derecho
Cuba	
The Czech Republic	
Costa Rica	
Croatia	
Cyprus	
Denmark	
Dominica	
Dominican Republic	
Ecuador	
Egypt	
El Salvador	
Ethiopia	
Fiji	
Finland	
France	
Gambia	
Germany	
Ghana	
Gibraltar	The Attorney General of Gibraltar

Greece	
Grenada	The Ministry of External Affairs
Guatemala	
Guernsey	Her Majesty's Attorney General for the Bailiwick of Guernsey
Guinea	
Guinea-Bissau	
Guyana	The Permanent Secretary, Minister of Home Affairs
Haiti	
Honduras	
Hong Kong	The Attorney General of Hong Kong
Hungary	
India	The Ministry of Home Affairs
Iran	
Ireland	
Isle of Man	Her Majesty's Attorney General for the Isle of Man
Italy	The Ministry of Justice
Ivory Coast	
Jamaica	
Japan	
Jordan	
Kazakhstan	
Kenya	
Kyrgyzstan	
Latvia	
Lesotho	
Lithuania	
Luxembourg	
Macedonia, the former Yugoslav Republic of	
Madagascar	

Malaysia	The Inspector General of Police, Malaysia
Malawi	
Mali	
Malta	
Mauritania	
Moldova	
Monaco	
Morocco	
Montserrat	The Attorney General of Montserrat
Nepal	
Netherlands	Afdeling Internationale Rechtshulp
Nicaragua	
Niger	
Nigeria	The Attorney General of the Federation of the Republic of Nigeria
Norway	
Oman	
Pakistan	
Panama	The Ministry of Government and Justice
Paraguay	
Peru	
Poland	
Portugal	
Qatar	
Romania	The Ministry of the Interior and the Ministry of Justice
The Russian Federation	
Saint Kitts and Nevis	
Saint Lucia	
Saint Vincent and the Grenadines	
Sao Tome and Principe	

Saudi Arabia	The Ministry of the Interior
Senegal	
Seychelles	
Sierra Leone	
Slovakia	
Slovenia	
South Africa	The Department of Foreign Affairs
Spain	The Ministerio de Justicia Madrid
Sri Lanka	
Sudan	The Ministry for Foreign Affairs
Suriname	
Swaziland	
Sweden	
Switzerland	Office fédéral de la police
Syria	
Tajikistan	
Thailand	The Attorney General or a person designated by him
Togo	
Tonga	
Trinidad and Tobago	
Tunisia	
Turkey	
Turkmenistan	
Turks and Caicos Islands	
Uganda	
Ukraine	The Office of the General Prosecutor and the Ministry of Justice
United Arab Emirates	
United Kingdom -	
England and Wales	The Home Office

Scotland	The Lord Advocate
Northern Ireland	The Home Office
United Mexican States	The Office of the Attorney General
United Republic of Tanzania	
United States of America	The Attorney General of the United States of America
Uruguay	The Ministry of Education and Culture
Uzbekistan	
Venezuela	
Yemen	

Yugoslavia, The Federal
Republic of

Zambia

Zimbabwe

[1] Recueil des Lois, Volume 2001, page 167.

[2] Recueil des Lois, Volume 2001, page 167.