

# STATES OF JERSEY



## **DRAFT TERRORISM (ENFORCEMENT OF EXTERNAL ORDERS) (JERSEY) REGULATIONS 200**

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Lodged au Greffe on 24th June 2003  
by the Home Affairs Committee

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STATES GREFFE





Jersey

## **DRAFT TERRORISM (ENFORCEMENT OF EXTERNAL ORDERS) (JERSEY) REGULATIONS 200**

### **REPORT**

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Paragraph 11 of Schedule 3 to the Terrorism (Jersey) Law 2002 empowers the States to make Regulation enabling the enforcement, in Jersey, of orders made by foreign countries to forfeit terrorist property or to “freeze” or restrain such property, pending a decision as to whether or not the property should be ordered to be forfeited.

These Regulations would enable such orders, made in the countries listed in the Schedule, to be enforced in Jersey, thus enabling Jersey to co-operate with these countries in taking measures against terrorism.

An increase in the number of requests for enforcement of foreign orders as a result of the enactment of the Regulation is expected but the amount by which they will increase is virtually impossible to predict. A substantial increase could have resource implications for the Viscount’s and Law Officers’ Departments, but extra costs incurred by the Viscount’s Department can be recovered as provided for in the Regulations. An increase in the amount of money and other property forfeited may result in a larger income for the confiscated assets fund, which could offset extra costs in manpower or other resources for the Law Officers’ and Viscounts’ Departments.

## Explanatory Note

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These Regulations enable the enforcement within Jersey of orders made and judgments given in designated countries and territories forfeiting terrorist property (“external forfeiture orders”) or restraining any dealings with terrorist property which is subject to forfeiture (“external restraint orders”). These Regulations are concerned only with orders made and judgments given outside the British Islands. Separate provision is made under the Terrorism (Jersey) Law 2002 for enforcement of orders made and judgments given elsewhere in the British Islands.

Similar arrangements are currently made by Regulations under the Prevention of Terrorism (Jersey) Law 1966. Those Regulations will lapse when that Law is repealed upon the coming into force of the Terrorism (Jersey) Law 2002.

*Regulation 1* is the interpretation provision.

*Regulation 2* gives effect to the Schedule. The designated countries and territories are listed in the Schedule, together with the name of the authority (the “appropriate authority”) who may request the Attorney General’s assistance in seeking enforcement of an order or judgment in Jersey.

*Regulations 3 and 4* describe how an order or judgment of a court in a designated country or territory and information regarding proceedings in a designated country or territory are to be proved in evidence.

*Regulation 5* enables the Attorney General to act upon the request of the appropriate authority of a designated country or territory as if the request came from the government.

*Regulation 6* specifies the circumstances in which the Royal Court may register an external forfeiture order. The Court must be satisfied that the order is in force and not subject to appeal. If the person against whom the order is made did not appear in the proceedings, the Court must be satisfied that the person had notice of the proceedings and the opportunity to defend them. The Court must also be of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.

*Regulation 7* specifies the circumstances in which the Royal Court may register an external restraint order. The Court must be satisfied that the order is in force, that forfeiture proceedings are either under way or to be instituted and that a forfeiture order has been or is likely to be made. The Court must also be of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.

*Regulation 8* describes the effect of registration of an external forfeiture order. The Royal Court can require property to which the order applies to be handed over to the Viscount, direct the disposal of property or its vesting in the Viscount. The Court may further order the release of so much of the property as is owned by a person who has not been convicted of a terrorism offence. Otherwise, the property, after deduction of the Viscount’s costs, forms part of the annual income of the States.

*Regulation 9* describes the effect of registration of an external restraint order. An officer of the States of Jersey police may seize property to which the order applies, in order to prevent its removal from Jersey. Any property seized is dealt with in accordance with the directions of the Royal Court. If the external restraint order applies to immovable property, the order has effect as an injunction preventing the disposal or hypothecation of the property. A copy of the order must be filed in the Public Registry.

*Regulation 10* provides that the Royal Court has the same powers of enforcement for an external order as it has in respect of an order made by it.

*Regulation 11* is the citation and commencement provision.

The *Schedule* lists the designated countries and territories and their appropriate authorities (if any).





Jersey

# **DRAFT TERRORISM (ENFORCEMENT OF EXTERNAL ORDERS) (JERSEY) REGULATIONS 200**

## **Arrangement**

### **Regulation**

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<u>1</u>	<u>Interpretation</u>
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<u>5</u>	<u>Representation of government of a designated country</u>
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<u>7</u>	<u>Registration of external restraint orders</u>
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### **SCHEDULE**

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#### **DESIGNATED COUNTRIES AND TERRITORIES**





Jersey

# DRAFT TERRORISM (ENFORCEMENT OF EXTERNAL ORDERS) (JERSEY) REGULATIONS 200

*Made*

*[date to be inserted]*

*Coming into force*

*[date to be inserted]*

**THE STATES**, in pursuance of paragraph 11 of Schedule 3 to the Terrorism (Jersey) Law 2002, <sup>[1]</sup> have made the following Regulations –

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## 1 Interpretation

(1) In these Regulations –

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

“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 to these Regulations; or
- (b) where no authority is so specified, the authority appearing to the court to be the appropriate authority for the purposes of these Regulations;

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

“principal Law” means the Terrorism (Jersey) Law 2002, <sup>[2]</sup> as it may be amended from time to time.

(2) The following provisions of this Regulation have effect for the interpretation of these Regulations.

(3) Proceedings are instituted in a designated country when –

- (a) 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 Schedule to these Regulations has been taken there in respect of the commission of an alleged offence; or
- (b) an application has been made to a court of 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 those times.

(4) Proceedings are concluded in a designated country –

- (a) 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
- (b) 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.

(5) 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.

- (6) A reference in these Regulations to a Regulation by number only and without further identification or to the Schedule without further identification is a reference to the Regulation of that number contained in these Regulations or to the Schedule to these Regulations.
- (7) A reference in a Regulation to a paragraph by number only and without further identification is a reference to the paragraph of that number contained in the Regulation in which the reference occurs.

## **2 Designation of countries and territories**

Each of the countries and territories specified in column 1 of the table in the Schedule to these Regulations is hereby designated for the purposes of paragraph 11 of Schedule 3 to the principal Law.<sup>[3]</sup>

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

- (1) For the purpose of these Regulations –
  - (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 that person's 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 paragraph (1)(b) if it purports to be certified by any person in that person's 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.

## **4 Evidence in relation to proceedings and orders in a designated country**

- (1) The following provisions of this Regulation have effect for the purposes of these Regulations.
- (2) 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.
- (3) 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.
- (4) A document is duly authenticated for the purposes of paragraph (3) if it purports to be certified by any person in that person's 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.

## **5 Representation of government of a designated country**

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 in proceedings pursuant to these Regulations.

## **6 Registration of external forfeiture orders**

- (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 the person received notice of the proceedings in sufficient time to enable that person 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 judgement; and
  - (b) an application for a new trial or a stay of execution.

## **7 Registration of external restraint orders**

- (1) On an application made by or on behalf of the government of a designated country, the Royal Court may, subject to paragraph (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 Island would not be contrary to the interests of justice.
- (2) An external restraint order may only be registered where –
  - (a) proceedings have been instituted against a person in a designated country, the proceedings have not been concluded, and 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) proceedings are to be instituted against a person in a designated country and there are reasonable grounds for thinking that an external forfeiture order may be made in those proceedings.

## **8 Implementation of registered external forfeiture orders**

- (1) If an external forfeiture order is registered in the Royal Court under Regulation 6(1), the Royal Court shall have, in relation to that order, the same powers as it has under paragraph 1(1) of Schedule 3 to the principal Law<sup>[4]</sup> in relation to a forfeiture order (and paragraph 2 of that Schedule applies accordingly).
- (2) After making any payment required by virtue of paragraph 1(1)(d) or 2(2) of Schedule 3 to the principal Law,<sup>[5]</sup> the balance of any sums received by the Viscount by virtue of an order made under paragraph (1) shall be paid by the Viscount to the Treasurer of the States and shall form part of the

annual income of the States.

## **9 Provisions applicable where external restraint order has been registered**

Paragraphs 6 and 7 of Schedule 3 to the principal Law<sup>[6]</sup> shall apply to an external restraint order registered in the Royal Court under Regulation 7(1) as they apply to a restraint order.

## **10 Enforcement of registered external orders**

- (1) Without prejudice to the foregoing provisions, if an external order is registered in the Royal Court under Regulation 6 or 7 –
  - (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 the order had originally been made in the Royal Court.
- (2) The Royal Court may, additionally, for the purpose of –
  - (a) assisting the achievement in the Island of the purposes of an external order; or
  - (b) assisting the Viscount to sell or otherwise dispose of property,  
make such orders or do otherwise as seems to it appropriate.

## **11 Citation and commencement**

These Regulations may be cited as the Terrorism (Enforcement of External Orders) (Jersey) Regulations 200- and shall come into force on 1st September 2003.

## SCHEDULE

(Regulations 1 and 2)

### DESIGNATED COUNTRIES AND TERRITORIES

(1)	(2)	(3)
<i>Designated country</i>	<i>Appropriate authority</i>	<i>Point at which proceedings are instituted</i>
Austria		
Belgium		
Canada	The Minister of Justice or officials designated by that Minister	
Denmark		
Finland		
France		
Germany		When a person is notified that he or she is accused of an offence and will be brought before a court.
Greece		
India	The Ministry of Home Affairs	<ul style="list-style-type: none"> <li>(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;</li> <li>(b) when any allegation is made orally or in writing to a court of law that a person has committed an offence;</li> <li>(c) when a person is charged with an offence; or</li> <li>(d) when any investigation or inquiry into the commission of any offence is directed by a court of law.</li> </ul>
Ireland	The Department of Justice, Equality and Law Reform	
Italy	The Ministry of Justice	<ul style="list-style-type: none"> <li>(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</li> <li>(b) when a proposal for the application of a preventive measure (<i>misura di prevenzione</i>) is laid before a court.</li> </ul>
Japan		
Luxembourg		
The Netherlands	Afdeling Internationale Rechtshulp	<ul style="list-style-type: none"> <li>(a) when a pre-trial financial investigation has been initiated;</li> <li>(b) when a provisional measure has been ordered by an investigating magistrate;</li> <li>(c) when a public prosecutor has</li> </ul>

		requested a pre-trial criminal investigation by an investigating magistrate to be instituted; (d) when a public prosecutor has laid an indictment.
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.
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.
The 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.

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[1] *Recueil des Lois, Volume 2002, page 726.*

[2] *Recueil des Lois, Volume 2002, page 645.*

[3] *Recueil des Lois, Volume 2002, page 726.*

[4] *Recueil des Lois, Volume 2002, page 716.*

[5] *Recueil des Lois, Volume 2002, pages 716 and 717.*

[6] *Recueil des Lois, Volume 2002, page 721.*