

STATES OF JERSEY



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

**Lodged au Greffe on 2nd June 2008
by the Minister for Home Affairs**

STATES GREFFE



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

REPORT

-
1. In October and November of this year the Island's framework to counter money laundering and terrorist financing is to be the subject of a review by the International Monetary Fund. Jersey will be assessed against the international standards set by the Financial Action Task Force on Money Laundering ("FATF"). In order to implement a number of criteria set out in the 40 Recommendations and 9 Special Recommendations of the FATF, against which Jersey will be assessed, a number of amendments were proposed and passed by the States of Jersey last year in respect of the Proceeds of Crime (Jersey) Law 1999, ("POCL") the Drug Trafficking Offences (Jersey) Law 1988 ("DTOL"), the Terrorism (Jersey) Law 2002 ("TL") and the Criminal Justice (International Co-operation) (Jersey) Law 2001 ("CJICL"). These amendments are now in force.
 2. One of the amendments passed in respect of each of the laws referred to above sought to implement Recommendation 38, which requires countries to have appropriate laws and procedures in place to provide an effective and timely response to mutual legal assistance. Mutual legal assistance is the formal way in which countries request and provide assistance in obtaining evidence located in one country to assist in criminal investigations or proceedings in another country.
 3. Prior to the amendment of the POCL, DTOL, TL and CJICL the provision of assistance to another jurisdiction to enable the enforcement of an external confiscation order under the POCL and DTOL, or an external restraint or forfeiture order under the TL, or the enforcement of an overseas forfeiture order under the CJICL was dependant on that jurisdiction being listed as a designated country or territory to whom assistance could be given. There was concern that Jersey would be criticised for not providing "*effective*" mutual legal assistance because the list of designated countries had not been kept up to date in recent years. Instead of updating the list of countries and territories (contained in Regulations issued under the various Laws), the better solution was considered to be that the list of countries and territories should be abandoned and that assistance should be offered on a case by case basis. This was the approach adopted in the amendments to the various Laws, which are now in force.
 4. Prior to amendment, the TL provided that the provision of assistance to another jurisdiction to enable the enforcement of an external restraint or forfeiture order was conditional on that jurisdiction being listed in the Terrorism (Enforcement of External Orders) (Jersey) Regulations 2003, as a designated country or territory to whom assistance can be given. As a result of amendments to the primary legislation the enforcement in Jersey of external restraint and forfeiture orders is no longer conditional on countries or territories being designated. The amendments enable external forfeiture or restraint orders from any jurisdiction to be capable of registration by the Royal Court.
 5. Whilst the enforcement in Jersey of overseas forfeiture orders under the CJICL is no longer conditional on countries or territories being designated, the designated countries and territories remain listed in the Regulations made under the CJICL. Instead of amending the existing Regulations, it has been decided, in the interests of clarity, that the current Regulations should be repealed and replaced.
 6. These draft Regulations would replace the current Terrorism (Enforcement of External Orders) (Jersey) Regulations 2003 with provisions which are substantially the same as those contained in the current Regulations except that: (i) the references to designated countries and territories are removed; and (ii) references to any provisions which have been repealed or amended as a result of the changes to the primary legislation have been altered.

Financial/Manpower Implications

These Regulations have no financial or manpower resource implications for the States.

Explanatory Note

These Regulations would replace the Terrorism (Enforcement of External Orders) (Jersey) Regulations 2003. Those Regulations listed countries and territories whose orders for the forfeiture of terrorist property or restraining dealing with such property could be enforced in Jersey and made provision for such enforcement. These Regulations allow for the enforcement of such orders made in any country or territory outside Jersey.

Regulation 1 provides for the interpretation of certain expressions.

Regulation 2 describes the time when proceedings in another country or territory are to be taken to be instituted or concluded, for the purpose of the Regulations.

Regulation 3 describes how an order or judgment of a court of another country or territory is to be authenticated for the purposes of enforcement proceedings in Jersey.

Regulation 4 describes how evidence of facts relating to proceedings in another country or territory is to be proved for the purposes of enforcement proceedings in Jersey.

Regulation 5 enables the Attorney General to act on behalf of the government of another country or territory in proceedings under the Regulations on the authority of a request for assistance from the appropriate authority of the country or territory.

Regulation 6 describes the circumstances in which the Royal Court may, on an application made on behalf of the government of another country or territory, register an order made in that country or territory for the forfeiture of terrorist property.

Regulation 7 describes the circumstances in which the Royal Court may, on an application made on behalf of the government of another country or territory, register an order made in that country or territory restraining dealings with terrorist property.

Regulation 8 describes the powers available to the Royal Court once an order is registered under Regulation 6. The Court can order that property be handed over to the Viscount; sold, and the proceeds given to the Viscount; in the case of immovable property, vested in and realized by the Viscount; or such other order as the court thinks fit.

Regulation 9 describes the powers available once an order is registered under Regulation 7. An officer of the States of Jersey Police Force can seize the property for the purpose of preventing its removal from Jersey. Once seized, the Court may direct how the property is to be dealt with. An order which relates to immovable property has effect as an injunction preventing its disposal or hypothecation.

Regulation 10 confers on the Royal Court the same powers, in relation to an order registered under Regulation 6 or 7, as it would have in relation to a forfeiture or restraint order made by the Royal Court itself.

Regulation 11 revokes the existing Regulations.

Regulation 12 provides for the citation and commencement of these draft Regulations.



Jersey

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

Arrangement

Regulation

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Time when proceedings are instituted and concluded</u>
<u>3</u>	<u>Proof of orders and judgments of court of a country or territory outside Jersey</u>
<u>4</u>	<u>Evidence in relation to proceedings and orders in a country or territory outside Jersey</u>
<u>5</u>	<u>Representation of government of a country or territory outside Jersey</u>
<u>6</u>	<u>Registration of external forfeiture orders</u>
<u>7</u>	<u>Registration of external restraint orders</u>
<u>8</u>	<u>Implementation of registered external forfeiture orders</u>
<u>9</u>	<u>Provisions applicable where external restraint order has been registered</u>
<u>10</u>	<u>Enforcement of registered external orders</u>
<u>11</u>	<u>Revocation</u>
<u>12</u>	<u>Citation and commencement</u>



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^[1], have made the following Regulations –

1 Interpretation

(1) In these Regulations –

“external forfeiture order” has the same meaning as in paragraph 11(3)(a) of Schedule 3 to the Law;

“external order” has the same meaning as in paragraph 11(2) of Schedule 3 to the Law;

“external restraint order” has the same meaning as in paragraph 11(3)(b) of Schedule 3 to the Law;

“Law” means the Terrorism (Jersey) Law 2002^[2].

(2) In these Regulations, any reference to the appropriate authority of a country or territory outside Jersey is a reference to the authority appearing to the Royal Court to be the appropriate authority of that country or territory for the purposes of these Regulations.

2 Time when proceedings are instituted and concluded

(1) For the purposes of these Regulations, proceedings are instituted in a country or territory outside Jersey –

(a) when, in accordance with the laws of the country or territory, its appropriate authority has begun criminal proceedings in which an external forfeiture order could be made; or

(b) when an application has been made to a court of that country or territory 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 earlier of these times.

(2) For the purposes of these Regulations, proceedings are concluded in a country or territory outside Jersey –

(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 of the country or territory outside Jersey to grant leave to appeal out of time) there is no further possibility of an external forfeiture order being made in the proceedings.

(3) For the purposes of these Regulations, 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 Proof of orders and judgments of court of a country or territory outside Jersey

- (1) For the purpose of these Regulations –
 - (a) any order made or judgment given by a court of a country or territory outside Jersey 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 country or territory outside Jersey 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 country or territory outside Jersey 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 that country or territory.

4 Evidence in relation to proceedings and orders in a country or territory outside Jersey

- (1) For the purposes of these Regulations, a certificate purporting to be issued by or on behalf of the appropriate authority of a country or territory outside Jersey stating –
 - (a) that proceedings have been instituted there and have not been concluded, or that proceedings are to be instituted there;
 - (b) that an external order is in force there and is not subject to appeal;
 - (c) that property recoverable in that country or territory under an external order remains unrecovered there;
 - (d) that any person has been notified of any proceedings in accordance with the law of that country or territory; or
 - (e) that an order (however described) made by a court of that country or territory is an external order, or that an order, if made by a court of that country or territory, would be an external order,

shall be admissible as evidence of the facts so stated.

- (2) For the purposes of these Regulations, 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 country or territory outside Jersey, 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–
 - (a) by any person in that person's capacity as judge, magistrate or officer of the court of the country or territory concerned; or
 - (b) by or on behalf of the appropriate authority of that country or territory,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.

5 Representation of government of a country or territory outside Jersey

A request for assistance sent to the Attorney General by the appropriate authority of a country or territory

outside Jersey shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country or territory for the Attorney General to act on the government's behalf in proceedings pursuant to these Regulations.

6 Registration of external forfeiture orders

- (1) On an application made on behalf of the government of a country or territory outside Jersey, 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 Jersey 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 on behalf of the government of a country or territory outside Jersey, 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 Jersey 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 country or territory outside Jersey, 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 country or territory outside Jersey 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 Law 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 Law the balance of any sums received by the Viscount by virtue of an order made under paragraph (1) shall be credited to the consolidated fund.

9 Provisions applicable where external restraint order has been registered

Paragraphs 6 and 7 of Schedule 3 to the Law 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 Jersey 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 Revocation

The Terrorism (Enforcement of External Orders) (Jersey) Regulations 2003^[3] shall be revoked.

12 Citation and commencement

These Regulations may be cited as the Terrorism (Enforcement of External Orders) (Jersey) Regulations 200- and shall come into force 7 days after they are made.

-
- [1] *chapter 17.860*
- [2] *chapter 17.860*
- [3] *R&O.59/2003 (chapter 17.860.60)*