

STATES OF JERSEY

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

**Lodged au Greffe on 29th May 2008
by the Minister for Treasury and Resources**

STATES GREFFE



Jersey

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

REPORT

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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 CJICL provided that the provision of assistance to another jurisdiction to enable the enforcement of an overseas forfeiture order was conditional on that jurisdiction being listed in the Criminal Justice (International Co-operation) (Jersey) Regulations 2001, 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 overseas forfeiture orders arising from criminal proceedings is no longer conditional on countries or territories being designated. The amendments enable overseas forfeiture 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 Criminal Justice (International Co-operation) (Jersey) Regulations 2001 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 Criminal Justice (International Co-operation) (Jersey) Regulations 2001. Those Regulations list countries and territories whose orders for the forfeiture of anything in respect of which a serious offence was committed or which was used or intended for use in the commission of such an offence (“external forfeiture orders”) can be enforced in Jersey and make provision for such enforcement. These Regulations allow for the enforcement of external forfeiture orders made in any country or territory outside Jersey.

Regulation 1 is the interpretation provision.

Regulation 2 describes what constitutes an external forfeiture order and who is a defendant in relation to such an order.

Regulation 3 empowers the Royal Court to make a restraint order, being an order for the seizure and detention by the Viscount of property in respect of which an external forfeiture order has been made or could be made in proceedings in a country or territory outside Jersey. The Court may also make such an order before proceedings for an external forfeiture order are instituted, if it appears to the Court that such proceedings are to be instituted and are likely to result in an external forfeiture order being made.

Regulation 4 protects the Viscount from liability for loss or damage arising from the Viscount’s action pursuant to a restraint order, except where the Viscount acts negligently.

Regulation 5 empowers the Royal Court to register an external forfeiture order which is in force in another country or territory.

Regulation 6 provides that, where an external forfeiture order has been registered, the Royal Court may order the forfeiture of the property specified in the external forfeiture order.

Regulation 7 describes how an order or judgment of a court of a country or territory outside Jersey is to be authenticated for the purposes of proceedings in Jersey under the Regulations.

Regulation 8 describes how evidence of facts relating to proceedings in a country or territory outside Jersey is to be proved for the purposes of proceedings in Jersey under the Regulations.

Regulation 9 describes information that may be admissible in evidence in proceedings in Jersey if contained in a certificate made by the Attorney General.

Regulation 10 requires that the government of a country or territory outside Jersey be represented by the Attorney General in proceedings in Jersey under the Regulations.

Regulation 11 revokes the Criminal Justice (International Co-operation) (Jersey) Regulations 2001.

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



Jersey

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

Arrangement

Regulation

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Jersey

DRAFT CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (JERSEY) REGULATIONS 2001

Made

[date to be inserted]

Coming into force

[date to be inserted]

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

1 Interpretation

In these Regulations, unless the context otherwise requires –

“appropriate authority of a country or territory outside Jersey” means the authority appearing to the Royal Court to be the appropriate authority of the country or territory for the purposes of these Regulations;

“court of a country or territory outside Jersey” includes a court of any state of the country or territory;

“defendant” has the meaning given in Regulation 2(3);

“external forfeiture order” has the meaning given in Regulation 2(1) and (2);

“Law” means the Criminal Justice (International Co-operation) (Jersey) Law 2001^[2];

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

“restraint order” has the meaning given in Regulation 3(1);

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

(2) Proceedings are instituted in a country or territory outside Jersey–

(a) when the defendant has been notified in writing in accordance with the laws of the country or territory that proceedings have begun there against the defendant in respect of a serious offence; or

(b) when an application has been made to a court of the 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.

(3) Proceedings are concluded in a country or territory outside Jersey –

(a) when (disregarding any power of a court of the country or territory to grant leave to appeal out of time) there is no further possibility of an external forfeiture order being made in the

proceedings; or

- (b) on the satisfaction of an external forfeiture order made in the proceedings (whether by recovery of all property liable to be recovered or otherwise).
- (4) 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.

2 External forfeiture orders

- (1) An order made by a court of a country or territory outside Jersey 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 of a country or territory outside Jersey, is referred to in these Regulations as the “defendant”.

3 Restraint orders

- (1) The Royal Court may, in accordance with this Regulation, by an order (referred to in these Regulations as a “restraint order”) authorize the Viscount to seize and 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 paragraph (2) or (3).
- (2) A restraint order may be made where –
 - (a) proceedings have been instituted against the defendant in a country or territory outside Jersey;
 - (b) the proceedings have not been concluded; and
 - (c) it appears to the Royal 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 it appears to the Royal Court –
 - (a) that proceedings are to be instituted against the defendant in a country or territory outside Jersey; and
 - (b) 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 on behalf of the Government of a country or territory outside Jersey;
 - (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 Royal 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 and detained under this Regulation shall be dealt with in accordance with the directions of the Royal Court.

4 Viscount – supplementary provisions

Where the Viscount takes any action under Regulation 3–

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

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

5 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) the Royal Court 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 the person received notice of the proceedings in sufficient time to enable the 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 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.

6 Disposal of forfeited property

- (1) Where an external forfeiture order has been registered in the Royal Court under Regulation 5, 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 directions of the Royal Court.
- (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.

7 Proof of order or judgment of court of a country or territory outside Jersey

- (1) For the purposes 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 the 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 –

(a) by any person in the person's capacity as a judge, magistrate or officer of the court in question;
or

(b) by or on behalf of the appropriate authority of the country or territory.

8 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 the defendant has been notified as specified in Regulation 1(2)(a);

(c) that an external forfeiture order is in force and is not subject to appeal;

(d) that property recoverable in the country or territory outside Jersey 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 country or territory outside Jersey; or

(f) that an order (however described) made or to be made by a court of the country or territory outside Jersey 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 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 the person's capacity as judge, magistrate or officer of the court of the country or territory outside Jersey; or

(b) by or on behalf of the appropriate authority of the country or territory outside Jersey,

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 summarizing 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.

9 Certificate of appropriate authority of country or territory outside Jersey

A certificate made by the Attorney General to the effect that the authority specified in it is, for the purposes of these Regulations, the appropriate authority of a specified country or territory outside Jersey shall be sufficient evidence of that fact.

10 Representation of Government of a country or territory outside Jersey

- (1) In any proceedings pursuant to these Regulations the Government of a country or territory outside Jersey 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 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.

11 Revocation

The Criminal Justice (International Co-operation) (Jersey) Regulations 2001^[3] shall be revoked.

12 Citation

These Regulations may be cited as the Criminal Justice (International Co-operation) (Jersey) Regulations 200 and shall come into force 7 days after they are made.

[1]

chapter 08.300

[2]

chapter 08.300

[3]

R&O.155/2001 (chapter 08.300.50)