

PROJET DE LOI

ENTITLED

The Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 *

[CONSOLIDATED TEXT]

NOTE

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* No. XXII of 2007; as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207).

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THE STATES, in pursuance of their Resolution of the 27th April, 2006^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I POLICE PROPERTY

Power to make orders in respect of property in possession of police.

1. (1) Where any property comes into the possession of the police in connection with their investigation of a suspected offence, the Magistrate's Court may, on application by a police officer or by a claimant of the property –

- (a) make an order for the delivery of the property to the person appearing to the court to be the owner thereof, or
- (b) if the owner cannot be ascertained, make such order in respect of the property as the court thinks fit.

(2) An order under this section does not affect the right of any person to take, within 6 months from the date of the order, legal proceedings against

^a Article XI of Billet d'État No. VIII of 2006.

any person in possession of property delivered by virtue of the order for the recovery of the property, but on the expiration of those 6 months the right shall cease.

NOTE

The following Case has referred to this Law:

Martin Philip Wright v Law Officers of the Crown (2011)
(Unreported, Court of Appeal, 12th July) (Guernsey Judgment No. 23/2011).

Regulations with respect to unclaimed property in possession of police.

2. (1) The States [Committee for Home Affairs] ("the [Committee]") may make regulations for the disposal of property which comes into the possession of the police under the circumstances mentioned in this Part in cases where the owner of the property has not been ascertained and no order of a competent court has been made in respect thereof.

(2) The regulations may authorise the sale of any such property, and the application of the proceeds of any such sale, and the application of any money of which the owner cannot be ascertained, to all or any of the following purposes –

- (a) the expenses of executing the regulations,
- (b) the payment of reasonable compensation to any person by whom the property has been delivered into the possession of the police, or
- (c) such other purposes as the [Committee] may consider expedient.

(3) The regulations may also provide that where, in the case of property other than money –

- (a) the property has remained in the possession of the police for a year,
- (b) the police would under the regulations have power to sell the property,
- (c) in the opinion of the [Committee], the property can be used for police purposes, and
- (d) the [Committee] determines, in such manner as may be prescribed by the regulations, that the property is to be retained by the [Committee],

the [Committee] is to become the owner of the property on the making of the determination or at such later time as the regulations may specify.

(4) Where the property is a perishable article or its custody involves unreasonable expense or inconvenience it may be sold at any time, but the proceeds of sale shall not be disposed of until they have remained in the possession of the police for a year.

In any other case the property shall not be sold until it has remained in the possession of the police for a year.

- (5) The regulations may also provide for –
 - (a) the investment of money,
 - (b) the audit of accounts, and

(c) the publication of determinations falling within subsection (3)(d).

(6) The regulations apply whether the property to which they relate comes into the possession of the police before or after the making of the regulations.

(7) Regulations under this section shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve to annul the regulations, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

The provisions of section 7(2)(b) and (c) and (3) apply to regulations under this section as they apply to an Ordinance under this Law.

NOTES

In section 2, the words, first "Committee for Home Affairs" and, second "Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 2, Schedule 1, paragraph 6(a) and section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.

The following Regulations have been made under section 2:

Police (Property) Regulations, 2010.

PART II FORFEITURE

Powers to deprive offender of property used, etc, for purposes of crime.

3. (1) Where a person is convicted of an offence and the court by or before which he is convicted is satisfied that any property which has been lawfully seized from him, or which was in his possession or under his control at the time when

he was apprehended for the offence or when a summons in respect of it was issued –

- (a) has been used for the purpose of committing, or facilitating the commission of, any offence, or
- (b) was intended by him to be used for that purpose,

the court may, subject to subsection (5), make an order under this section in respect of that property.

(2) Where a person is convicted of an offence and the offence, or an offence which the court takes into consideration in determining his sentence, consists of unlawful possession of property which –

- (a) has been lawfully seized from him, or
- (b) was in his possession or under his control at the time when he was apprehended for the offence of which he has been convicted or when a summons in respect of that offence was issued,

the court may, subject to subsection (5), make an order under this section in respect of that property.

(3) An order under this section operates to deprive the offender of his rights, if any, in the property to which it relates, and the property shall, if not already in their possession, be taken into the possession of the police.

(4) Any power conferred on a court by subsection (1) or (2) may be exercised –

- (a) whether or not the court also deals with the offender in any other way in respect of the offence of which he is convicted, and
- (b) without regard to any restrictions on forfeiture in any enactment in force before this Law came into force.

(5) In considering whether to make an order under this section in respect of any property, the court shall have regard –

- (a) to the value of the property, and
- (b) to the likely financial and other effects on the offender of making the order, taken together with any other order that the court contemplates making.

(6) Where a person commits an offence to which this subsection applies by –

- (a) driving, attempting to drive, or being in charge of a vehicle,
- (b) failing to comply with a requirement made under section 3 or 3A of the Road Traffic (Drink Driving) (Guernsey) Law 1989^b (failure to provide specimen for analysis or laboratory test or to give permission for such a test), or section 3 of the Road Traffic (Driving under the Influence of Drink or Drugs) (Alderney) Law,

^b Ordres en Conseil Vol. XXXI, p. 512.

1987^c (failure to provide specimen for analysis or laboratory test) in the course of an investigation into whether the offender had committed an offence while driving, attempting to drive or being in charge of a vehicle, or

- (c) failing, as the driver of a vehicle, to comply with Article XII(2) or (3) of the Ordonnance relative au Trafic Véhiculaire en cette Île, 1929^d or section 8 of the Alderney Road Traffic and Public Highways Ordinance, 1966^e (duty to stop and give information or report accident),

the vehicle shall be regarded for the purposes of subsection (1) and section 4(1)(b) as used for the purpose of committing the offence and for the purpose of committing any offence of aiding, abetting, counselling or procuring the commission of the offence.

- (7) Subsection (6) applies to –

- (a) a road traffic offence which is punishable with imprisonment, and
- (b) an offence of manslaughter.

- (8) For the purposes of subsection (1) "**facilitating**" the commission of an offence includes taking any steps after it has been committed for

^c Ordres en Conseil Vol. XXX, p. 203.

^d Recueil d'Ordonnances Tome VIII, pp. 184 and 194; Article XII(2) and (3) were substituted by Tome XVI, p.187.

^e Alderney Ordinance No. III of 1966; section 8 was substituted by the Alderney Road Traffic and Public Highways Ordinance, 1981 (No. V).

the purpose of –

- (a) disposing of any property to which it relates, or
- (b) avoiding apprehension or detection.

NOTES

The following Case has referred to section 3:

Martin Philip Wright v Law Officers of the Crown (2011)
(Unreported, Court of Appeal, 12th July) (Guernsey Judgment No. 23/2011).

The Ordonnance relative au Trafic Véhiculaire en cette Île, 1929 has since been repealed by the Road Traffic (Guernsey) Ordinance, 2019, section 16, with effect from 29th March, 2019.

Property which is in possession of police by virtue of section 3.

4. (1) Part I applies with the following modifications to property which is in the possession of the police by virtue of section 3 –

- (a) no application shall be made under section 1(1) by any claimant of the property after the end of six months from the date on which the order in respect of the property was made under section 3, and
- (b) no such application shall succeed unless the claimant satisfies the court –
 - (i) that he had not consented to the offender having possession of the property, or
 - (ii) where an order is made under section 3(1), that

he did not know, and had no reason to suspect, that the property was likely to be used for the purpose mentioned in that section.

(2) In relation to property which is in the possession of the police by virtue of section 3, the power to make regulations under section 2 shall, subject to subsection (3), include power to make regulations for disposal (including disposal by vesting in the [Committee]) in cases where no application by a claimant of the property has been made within the period specified in subsection (1)(a) or no such application has succeeded.

(3) The regulations may not provide for the vesting in the [Committee] of property in relation to which an order has been made under section 5.

(4) Nothing in section 2(3)(a) or (4) limits the power to make regulations under that section by virtue of subsection (2).

NOTES

In section 4, the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.

The following Regulations have been made under section 4:

Police (Property) Regulations, 2010.

Application of proceeds of forfeited property.

5. (1) Where a court makes an order under section 3 in a case where

(a) the offender has been convicted of an offence which

has resulted in a person suffering personal injury, loss or damage, or

- (b) any such offence is taken into consideration by the court in determining sentence.

the court may also make an order that any proceeds which arise from the disposal of the property and which do not exceed a sum specified by the court shall be paid to that person.

(2) The court may make an order under this section only if it is satisfied that but for the inadequacy of the offender's means it would have made a compensation order under which the offender would have been required to pay compensation of an amount not less than the specified amount.

(3) An order under this section has no effect –

- (a) before the end of the period specified in section 4(1)(a),
or
- (b) if a successful application under section 1(1) has been made.

PART III INTERPRETATION, ETC.

Interpretation.

6. (1) In this Law, unless the context requires otherwise –

"Customs and Excise division" means the Chief Officer of Customs and Excise appointed by the States [Policy & Resources Committee] and

includes any customs officer,

"customs officer" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^f,

"[Committee]" means the States [Committee for Home Affairs],

"Magistrate's Court" means –

- (a) in Guernsey, the Magistrate's Court established by section 1 of the Magistrate's Court (Guernsey) Law, 1954^g,
- (b) in Alderney, the Court of Alderney, and
- (c) in Sark, the Court of the Seneschal,

"police" means the salaried police force of the Island of Guernsey, the Customs and Excise division and also –

- (a) in relation to Alderney, any police force which may be established by the States of Alderney, and
- (b) in relation to Sark, the Constable and the Vingtenier,

"police officer" means a member of the salaried police force of the Island of Guernsey, a customs officer and also –

^f Ordres en Conseil Vol. XXIII, p. 573 and No. XIII of 1991.

^g Ordres en Conseil Vol. XVI, p. 103.

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed pursuant to section 47 of the Government of Alderney Law, 2004^h, and
- (c) in relation to Sark, the Constable and the Vingtenier,

"States" means the States of Guernsey.

(2) The Interpretation (Guernsey) Law, 1948ⁱ applies to the interpretation of this Law throughout the Bailiwick.

(3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

NOTES

In section 6,

the words in square brackets in the definition of the expression "Customs and Excise division" were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016;

^h Order in Council No. III of 2005.

ⁱ Ordres en Conseil Vol. XIII, p. 355.

the words in the first and second pairs of square brackets in the definition of the expression "Committee" were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 7 and section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

The Magistrate's Court (Guernsey) Law, 1954 has since been repealed by the Magistrate's Court (Guernsey) Law, 2008, section 46(b), with effect from 1st September, 2009, subject to the savings and transitional provisions in section 47 of the 2008 Law.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Power to amend Law by Ordinance.

7. (1) The States may by Ordinance amend this Law.
- (2) An Ordinance under this Law –
 - (a) may, for the avoidance of doubt –

- (i) create new offences, and
 - (ii) repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law,
 - (b) may be amended or repealed by a subsequent Ordinance hereunder, and
 - (c) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient.
- (3) Any power conferred by this Law to make an Ordinance may be exercised –
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
 - (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

Citation and commencement.

8. (1) This Law may be cited as the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006.

(2) This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions.

NOTE

The Law was brought into force on 12th March, 2008 by the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 (Commencement) Ordinance, 2008, section 1.
