

# Guernsey's modernised civil forfeiture Law

Update prepared by Christopher Edwards and Iona Mitchell (Guernsey)

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Guernsey has further expanded the scope of its regime for the freezing, seizure and forfeiture of property suspected to be the proceeds of unlawful conduct. [The Forfeiture of Assets in Civil Proceedings \(Bailiwick of Guernsey\) Law, 2023](#) came into force on 26 April 2024.

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## Background

Following a consultation by the Committee for Home Affairs in late 2021 and as part of a project for wider reform of Guernsey's criminal justice framework, Guernsey previously broadened its civil forfeiture regime with effect from 21 December 2022. The amendments included shifting the burden of proof and introducing a summary procedure in 'no consent' cases.

Our Updates, [Changes to the criminal justice framework in Guernsey](#), dated 24 August 2022 and [Changes to the civil forfeiture regime in Guernsey](#), dated 31 October 2022, provided more detail around those amendments.

## The Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023

The 2023 Law now makes further changes, including:

- The type of property liable to be forfeited has been extended from only bank accounts over £1,000 to any form of property with no minimum threshold.
- The basis for forfeiture has been widened to include property that has been used in unlawful conduct or which is suspected of having been so used (known as 'the instrumentality of crime').
- There is no longer need for property to have been seized or frozen before an application for forfeiture can be made.
- The dual criminality test does now not need to be satisfied for conduct outside of the Bailiwick that constitutes or is connected with a gross human rights abuse and would be triable on indictment in the Bailiwick if it occurred here. This is aimed at capturing assets located in the Bailiwick relating to this type of persecution even where the conduct was not criminal in the jurisdiction in which it occurred.
- It has been made clear that the passage of time is not a bar to civil forfeiture proceedings.
- Previously only the Royal Court had jurisdiction in respect of civil forfeiture proceedings, but now assets up to £25,000 may be dealt with by the Magistrates Court.
- The authorities' investigatory powers have been widened. This includes making it clear that investigatory powers can be invoked before assets have been seized or frozen and vehicles, aircraft and ships can be stopped and searched.
- Previously requests for mutual legal assistance to enforce foreign forfeiture orders could only be entertained if from a designated list of jurisdictions. This has been widened to allow compliance with a request from any jurisdiction but subject to certain protections, including a refusal if enforcing the order would be contrary to the interests of justice. This is aimed at situations such as where there is doubt to the bone fides of the request or a belief that it is politically motivated.

For the sake of simplicity, the 2023 Law repeals and replaces the previous civil forfeiture legislation. Ancillary aspects are dealt with by [The Forfeiture of Assets in Civil Proceedings \(Commencement, Amendment and Miscellaneous Provisions\) \(Bailiwick of Guernsey\) Regulations, 2024](#).

[The Forfeiture of Assets in Civil Proceedings Rules, 2024](#) came into force on the same date as the Law and set out the procedural, practical and incidental matters which the Court will follow when dealing with proceedings under the Law.

The Committee has also issued two Codes of Practice:

- [The Code of Practice on Designated Property Searches for Civil Forfeiture](#) (March 2024) which applies in connection with the exercise of search powers in respect of premises, vehicles and persons carried out in the Bailiwick under the 2023 Law, and
- [The Code of Practice on Investigatory Powers for Civil Forfeiture](#) (March 2024) which concerns civil forfeiture, detained property and frozen funds investigations.

The changes are Bailiwick-wide.

## Comment

The 2023 Law represents a broadening rather than a wholesale reform of the regime. One of the key changes is the expansion of the regime beyond simply money. It will be interesting to see to what extent these new powers are taken up given the extra resources required to ascertain and manage other assets (such as real property and investment portfolios) pending realisation of their value.

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