

STATES OF JERSEY



Jersey

DRAFT COURT OF APPEAL (AMENDMENT No. 9) (JERSEY) LAW 202-

**Lodged au Greffe on 23rd December 2021
by the Minister for External Relations and Financial Services
Earliest date for debate: 8th February 2022**

STATES GREFFE



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European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for External Relations and Financial Services has made the following statement –

In the view of the Minister for External Relations and Financial Services, the provisions of the Draft Court of Appeal (Amendment No. 9) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Minister for External Relations and Financial Services

Dated: 21st December 2021

REPORT

This Report applies to the following draft Propositions as taken together; they represent a package of amendments (“the amendments”) that look to achieve a single policy position –

- (i) Draft Proceeds of Crime (Amendment No. 5) (Jersey) Law 202-;
- (ii) Draft Proceeds of Crime (Enforcement of Confiscation Orders) (Amendment) (Jersey) Regulations 202-;
- (iii) Draft Court of Appeal (Amendment No. 9) (Jersey) Law 202-.

These draft Amendments are concerned with what are known in the International Conventions to which Jersey is a party as the ‘instrumentalities of crime’. This is more commonly referred to as property used in or intended to be used in criminal offences.

The amendments are being proposed to be achieved through four different pieces of legislation: the Draft Proceeds of Crime (Amendment No. 5) (Jersey) Law 202-, the Draft Proceeds of Crime (Enforcement of Confiscation Orders) (Amendment) (Jersey) Regulations 202-, and the Draft Court of Appeal (Amendment No. 9) (Jersey) Law 202-. Consequential amendments will also be made to the relevant Rules of Court.

Taken together, the draft Amendments have three purposes:

- (a) to provide for a new post-conviction order permitting the Royal Court to order the forfeiture of the instrumentalities of crime or (if they are no longer available) the value of those instrumentalities;
- (b) to provide for Jersey to co-operate with other jurisdictions in the enforcement of post-conviction instrumentalities forfeiture orders;
- (c) to make necessary amendments to Article 29 of the [Proceeds of Crime \(Jersey\) Law 1999](#) to allow the regime to function effectively.

The need for Jersey to enact legislation to provide for post-conviction instrumentalities forfeiture orders arises from the requirements of the international standards concerning the prevention of money laundering and terrorist financing, set by the Financial Action Task Force (the “FATF”).

The Methodology to the FATF Recommendations states for c.4.1 the following:

“c.4.1 Countries should have measures, including legislative measures, that enable the confiscation of the following, whether held by criminal defendants or by third parties:

- (a) *property laundered;*
- (b) *proceeds of (including income or other benefits derived from such proceeds), or instrumentalities used or intended for use in, ML or predicate offences;*
- (c) *property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisations; or*
- (d) *property of corresponding value.”*

These draft Amendments provide for legislative provisions in Jersey to cover the instrumentalities and their equivalent in (b) and (d) of this part of the FATF Methodology.

Previously, Jersey has relied on the [Criminal Justice \(Forfeiture Orders\) \(Jersey\) Law 2001](#) (the “2001 Law”) to cover these provisions of the international conventions, however, the proposed amendments adopt a more modern approach designed to bring the Island fully in line with Recommendation 4.

The 2001 Law is primarily concerned with forfeiting property found on defendants when they are arrested (the most common order is for the forfeiture of drugs, paraphernalia and mobile telephones found on those arrested for drugs offences). It is designed to provide a simple and straightforward process and applications under that Law are rarely contested, and this Law will remain on the statute book for cases which are not complex. The 2001 Law does not contain the freezing or ancillary powers that are needed in complex cases.

The proposed amendments will allow a regime to be put in place which can be used in relation to bank accounts, which is the major area of concern related to Jersey money laundering prosecutions (which are the primary focus of FATF Recommendation 4).

In relation to the proposed new orders and the inter-relation with any existing orders, the Proceeds of Crime (Jersey) Law 1999 provides the Royal Court with wide ranging powers of confiscation in relation to benefits that convicted defendants have obtained from their crimes.

Jersey has based the design of this legislation on legislative provisions from the nations of the United Kingdom and there is extensive and detailed case law. Importantly, these orders are made against defendants personally requiring them to pay a sum of money of an equivalent value to their benefit, but up to the amount that they can pay.

The forfeiture of instrumentalities of crime is a different process. It is primarily concerned with making orders for the forfeiture of specific property (whether it is held by the defendant or someone else) which was used in or intended to be used in the relevant crime. The process is directed to the property rather than to the defendant. The FATF Recommendation requires jurisdictions to provide a fall-back provision. This provision permits the forfeiture of a specific sum of money from the defendant equivalent to the instrumentality (again based on ability to pay).

Because confiscation on the current UK model as enacted in Jersey is a different process to instrumentalities forfeiture it has been necessary to draft a new provision. The use of separate orders is the approach that is followed in other jurisdictions which provide for both proceeds and instrumentalities forfeiture (for example, New Zealand).

The amendments therefore propose revisions to a number of the ‘machinery’ provisions of the Proceeds of Crime (Jersey) Law 1999 and associated statutes dealing with confiscation orders so that they can also be used where the Attorney General wishes to apply for an instrumentalities forfeiture order. These ‘machinery’ provisions provide for things like investigatory powers, freezing, default sentences, enforcement and revisiting orders (used when further information comes to light).

Financial and manpower implications

There are no additional resource implications for the States arising as a result of this draft Law.

Human Rights statement

No human rights notes are included in this proposition as the Law Officers’ Department have confirmed that the Draft Law raises no issues of compliance with the European Convention on Human Rights.

EXPLANATORY NOTE

This Law amends the Court of Appeal (Jersey) Law 1961 to make provision for instrumentalities forfeiture orders.

Article 1 states that this Law amends the Court of Appeal (Jersey) Law 1961 (the “principal Law”).

Article 2 amends Article 45D of the principal Law, which provides for appeals by the Attorney General in respect of a confiscation order, to include references to an instrumentalities forfeiture order. Article 45D would now apply to instrumentalities forfeiture orders in the same way that it applies to confiscation orders.

Article 3 amends Article 45E of the principal Law, which provides for the Court of Appeal’s power on an appeal by the Attorney General, to insert references to an instrumentalities forfeiture order and to Article 28B of the Proceeds of Crime (Jersey) Law 1999. Article 45E would now apply to instrumentalities forfeiture orders in the same way that it applies to confiscation orders.

Article 4 amends Article 45F, which deals with matters to be taken into account on appeal in respect of confiscation order, to insert references to an instrumentalities forfeiture order and to Article 28B of the Proceeds of Crime (Jersey) Law 1999. Article 45F would now apply to instrumentalities forfeiture orders in the same way that it applies to confiscation orders.

Article 5 provides that this Law may be cited as the Court of Appeal (Amendment No. 9) (Jersey) Law 202- and comes into force 7 days after it is registered.



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A LAW to amend further the [Court of Appeal \(Jersey\) Law 1961](#).

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 [Court of Appeal \(Jersey\) Law 1961](#) amended

This Law amends the [Court of Appeal \(Jersey\) Law 1961](#).

2 Article 45D (appeal by Attorney General in respect of confiscation order) amended

In Article 45D –

- (a) in the Article heading, after “confiscation order” there is inserted “or instrumentalities forfeiture order”;
- (b) after “a confiscation order”, where it occurs in paragraphs (1), (2) and (3), there is inserted “or an instrumentalities forfeiture order”.

3 Article 45E (court’s power on appeal by Attorney General) amended

In Article 45E –

- (a) in paragraph (1), after “the confiscation order” there is inserted “or instrumentalities forfeiture order”;
- (b) in paragraph (2) –
 - (i) in sub-paragraph (a), for “paragraphs (3) to (8) (inclusive) of Article 3” there is substituted “Article 3(3) to (8) (inclusive) or 28B”;

- (ii) in sub-paragraph (b), after “Article 3” there is inserted “or 28B”.

4 Article 45F (matters to be taken into account on appeal in respect of confiscation order) amended

In Article 45F –

- (a) in the Article heading, after “confiscation order” there is inserted “or instrumentalities forfeiture order”;
- (b) in paragraph (1), after “a confiscation order”, where it occurs in sub-paragraphs (a) and (b), there is inserted “or an instrumentalities forfeiture order”;
- (c) in paragraph (3)(b), after “Article 4” there is inserted “or 28B(4)”;
- (d) in paragraph (7)(a), for “paragraphs (3) to (8) (inclusive) of Article 3” there is substituted “Article 3(3) to (8) (inclusive) or 28B”.

5 Citation and commencement

This Law may be cited as the Court of Appeal (Amendment No. 9) (Jersey) Law 202- and comes into force 7 days after it is registered.