



Jersey

PROCEEDS OF CRIME (AMENDMENT No. 5) (JERSEY) LAW 2022

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PROCEEDS OF CRIME (AMENDMENT No. 5) (JERSEY) LAW 2022

A LAW to further amend the [Proceeds of Crime \(Jersey\) Law 1999](#).

<i>Adopted by the States</i>	<i>10th February 2022</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>13th April 2022</i>
<i>Registered by the Royal Court</i>	<i>14th April 2022</i>
<i>Coming into force</i>	<i>21st April 2022</i>

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

1 Amendment of the [Proceeds of Crime \(Jersey\) Law 1999](#)

This Law amends the [Proceeds of Crime \(Jersey\) Law 1999](#).

2 Article 1 (interpretation) amended

In Article 1 –

- (a) in paragraph (1) –
 - (i) in the definition “external confiscation order” –
 - (C) after sub-paragraph (c) there is inserted –
 - “(d) for the purpose of recovering property used or intended to be used in such conduct or in predicate conduct outside Jersey, or property of equivalent value to such property;”,
 - (ii) the following definitions are inserted in alphabetical sequence –
 - ““instrumentalities” means property used in or intended to be used in criminal conduct;
 - “instrumentalities forfeiture order” means an order made under Article 28B (including any order under that Article that is made by virtue of Article 9);
 - “predicate conduct” means the conduct alleged by the Attorney General to be the criminal conduct which makes property criminal property, where the Attorney General is

- alleging an offence under Article 30 or 31 or an attempt or conspiracy to commit such an offence;”;
- (b) in paragraph (4) –
 - (i) in sub-paragraph (b), after “confiscation order” there is inserted “or an instrumentalities forfeiture order”,
 - (ii) for sub-paragraph (c) there is substituted –
“(c) if a confiscation order or an instrumentalities forfeiture order is made against the defendant, when all the orders are satisfied.”;
 - (c) in paragraph (5)(a) and (b), after “confiscation order” there is inserted “or, in the case of Article 9, an instrumentalities forfeiture order”;
 - (d) after paragraph (6) there is inserted –
“(6A) An application under Article 28B(6) is concluded –
 - (a) if the Court decides not to make or vary the instrumentalities forfeiture order, when it makes that decision; or
 - (b) if the Court makes or varies the instrumentalities forfeiture order as a result of the application, when the order is satisfied.”;
 - (e) in paragraph (7), after “confiscation order” there is inserted “or an instrumentalities forfeiture order”.

3 Article 2 (meanings of expressions relating to realisable property) amended

In Article 2 –

- (a) after paragraph (1) there is inserted –
“(1A) Where the Attorney General makes or intends to make an application for an instrumentalities forfeiture order under Article 28B, but only for the purposes of the proceedings as they relate to the instrumentalities forfeiture order, “realisable property” also includes –
 - (a) before any instrumentalities forfeiture order is made, any property suspected to be –
 - (i) property used in or intended to be used in the relevant offence or in predicate conduct that occurred in Jersey, or
 - (ii) property into which such property has been converted (whether in a single, in multiple or in a series of consecutive transactions); or
 - (b) after any instrumentalities forfeiture order has been made, any property that has been found by the Court to be –
 - (i) property used in or intended to be used in the relevant offence or in predicate conduct that occurred in Jersey, or

- (ii) property into which such property has been converted (whether in a single, in multiple or in a series of consecutive transactions).”;
- (b) in paragraph (3), after “For the purposes of Part 2” there is inserted “and subject to Article 28B(5)(b) where it applies”.

4 Part 2 (confiscation orders) amended

In Part 2 in the Part heading, after “Confiscation” there is inserted “and Instrumentalities Forfeiture Orders”.

5 Article 3 (confiscation orders) amended

In Article 3(5)(a)(ii), after “order” there is inserted “(except an instrumentalities forfeiture order under Article 28B)”.

6 Article 4 (amount to be recovered under confiscation order) amended

In Article 4(1), after “shall” there is inserted “, except where Article 28B(5)(b)(i) applies,”.

7 Article 5 (confiscation order relating to a course of relevant criminal conduct) amended

In Article 5(6)(b), after “confiscation order” there is inserted “or instrumentalities forfeiture order”.

8 Article 6 (postponed determinations) amended

In Article 6 –

- (a) in paragraph (1) –
 - (i) after “Where the Court is acting under Article 3” there is inserted “or 28B”,
 - (ii) after sub-paragraph (b) there is inserted –
 - “(c) making any determinations under Article 28B(1), (3), (4), (5) or (9),”;
- (b) in paragraph (3), for “there are exceptional circumstances” there is substituted “it is in the interests of justice to do so”;
- (c) in paragraph (4)(a) “either or both of” is deleted;
- (d) in paragraph (8), after “make a confiscation order under Article 3” there is inserted “or exercise any of the powers in Article 28B”.

9 Article 7 (statements relating to criminal offences) amended

In Article 7 –

- (a) in paragraph (1)(a), after clause (ii) there is inserted –

- “(iii) of making any of the determinations under Article 28B(1), (3), (4), (5) or (9); and”;
- (b) in paragraph (8), after sub-paragraph (b) there is inserted –
 - “(c) making any of the determinations under Article 28B(1), (3), (4), (5) or (9).”;
- (c) in paragraph (9), after sub-paragraph (b) there is inserted –
 - “(c) any allegation that property was used in or intended to be used in an offence or in predicate conduct that occurred in Jersey, or is property into which such property has been converted.”;
- (d) in paragraph (10)(a), after “the confiscation order” there is inserted “or instrumentalities forfeiture order”;
- (e) for paragraph (12) there is substituted –
 - “(12) No acceptance by the defendant under this Article that –
 - (a) the defendant has benefited from an offence;
 - (b) any property was obtained by the defendant as a result of or in connection with an offence; or
 - (c) any property was used in or intended to be used in an offence or in predicate conduct that occurred in Jersey, or is property into which such property has been converted,
 is admissible in evidence in any proceedings for an offence.”.

10 Article 8 (provision of information by defendant) amended

In Article 8(1)(a), after “under Article 3” there is inserted “or 28B”.

11 Article 9 (powers of the Court where defendant has died or absconded) amended

In Article 9 –

- (a) in paragraph (2), after “to make a confiscation order” there is inserted “or an instrumentalities forfeiture order”;
- (b) in paragraph (4), after “to make a confiscation order” there is inserted “or an instrumentalities forfeiture order”;
- (c) in paragraph (6)(b) and (c), after “a confiscation order” there is inserted “or an instrumentalities forfeiture order”.

12 Article 10 (effect of confiscation order on sentencing of absconder) amended

In Article 10 –

- (a) in the Article heading after “confiscation order” there is inserted “or instrumentalities forfeiture order”;
- (b) in paragraph (1) –
 - (i) after “made a confiscation order” there is inserted “or an instrumentalities forfeiture order”,

- (ii) in sub-paragraph (a), for “take account of the order” there is substituted “take account of the orders”;
- (c) for paragraph (2) there is substituted –
 - “(2) Where the Court has made a confiscation order or an instrumentalities forfeiture order by virtue of Article 9, and the defendant subsequently appears before the Court to be sentenced in respect of one or more of the offences concerned, neither Article 3(1) nor 28B(1) apply so far as the defendant’s appearance is in respect of that offence or those offences.”.

13 Article 11 (enforcement of confiscation orders) amended

In Article 11 –

- (a) in the Article heading after “confiscation orders” there is inserted “and instrumentalities forfeiture orders”;
- (b) in paragraph (1), after “under Article 3” there is inserted “or 28B”;
- (c) after paragraph (1) there is inserted –
 - “(1A) If orders are made under both Articles 3 and 28B in the same proceedings, a separate term of imprisonment must be specified in respect of each order.”;
- (d) in paragraph (3)(b) after “the confiscation order” there is inserted “or instrumentalities forfeiture order”;
- (e) after paragraph (5) there is inserted –
 - “(5A) If the defendant is required to serve terms of imprisonment imposed under paragraph (1) in relation to both a confiscation order and an instrumentalities forfeiture order at the same time, the default terms of imprisonment must be served concurrently with each other.”;
- (f) in paragraph (6), after “confiscation orders” in both places where it appears there is inserted “and instrumentalities forfeiture orders”;
- (g) in paragraph (7), after “confiscation order” in both places where it occurs there is inserted “or instrumentalities forfeiture order”.

14 Article 12 (reconsideration of case where Court has not considered a confiscation order) amended

In Article 12(6) –

- (a) “the amount of” is deleted;
- (b) after paragraph (a) there is inserted –
 - “(aa) any order made under Article 28B(5)(b); and”.

15 Article 15 (cases in which *saisies judiciaires* may be made) amended

In Article 15 –

- (a) in paragraph (1)(a), after “confiscation order” there is inserted “or an instrumentalities forfeiture order”;
- (b) in paragraph (1)(b) –

- (i) for “14 and 19” there is substituted “14, 19 and 28B”,
- (ii) in clause (ii) after sub-clause (A) there is inserted –
 - “(AA) in the case of an application under Article 28B, that the Court may make or vary an instrumentalities forfeiture order, or”;
- (c) in paragraph (1A), after sub-paragraph (b), there is inserted –
 - “(c) the Court is satisfied that there is reasonable cause to believe that property was used in or intended to be used in the alleged criminal conduct or in any predicate conduct that occurred in Jersey.”.

16 Article 17 (realisation of property) amended

For Article 17(1)(a) there is substituted –

- “(a) in proceedings that have been instituted for an offence, a confiscation order or an instrumentalities forfeiture order is made or an order is varied under Article 14, 19 or 28B(6);”.

17 Article 18 (interest on sums unpaid under confiscation orders) amended

In Article 18 –

- (a) in the Article heading, after “confiscation orders” there is inserted “or instrumentalities forfeiture orders”;
- (b) in paragraph (1), after “confiscation order” in both places where it occurs there is inserted “or instrumentalities forfeiture order”.

18 Article 19 (increase in realisable property) amended

In Article 19(4), after “on that application” there is inserted “and subject to Article 28B(7)”.

19 Article 20 (application of proceeds of realisation and other sums) amended

In Article 20(1), (2) and (3), after “confiscation order” there is inserted “or instrumentalities forfeiture order”.

20 Article 21 (variation of confiscation order where realisable property is inadequate) amended

In Article 21 –

- (a) in the Article heading, after “confiscation order” there is inserted “or instrumentalities forfeiture order”;
- (b) in paragraph (1), after “confiscation order” there is inserted “or an instrumentalities forfeiture order”.

21 Article 22 (bankruptcy of defendant) amended

In Article 22(2), for “19 and 20” there is substituted “19, 20 and 28B”.

22 Article 24 (Criminal Offences Confiscations Fund) amended

In Article 24 –

- (a) in paragraph (2)(a), after “confiscation order” there is inserted “or instrumentalities forfeiture order”;
- (b) in paragraph (8), after “proceeds of criminal conduct” there is inserted “or instrumentalities or their value”.

23 Article 26 (cancellation of confiscation order, and compensation, where absconder acquitted) amended

In Article 26 –

- (a) in the Article heading after “confiscation order” there is inserted “or instrumentalities forfeiture order”;
- (b) in paragraphs (1), (2) and (6) after “confiscation order” wherever it occurs, there is inserted “or instrumentalities forfeiture order”.

24 Article 27 (cancellation of confiscation order, and compensation, where absconder returns) amended

In Article 27 –

- (a) in the Article heading, after “confiscation order” there is inserted “or instrumentalities forfeiture order”;
- (b) in paragraphs (1), (2), (3) and (7), after “confiscation order” wherever it occurs there is inserted “or instrumentalities forfeiture order”.

25 Article 28 (variation of confiscation order, and compensation, where absconder returns) amended

In Article 28 –

- (a) in the Article heading, after “confiscation order” there is inserted “or instrumentalities forfeiture order”;
- (b) in paragraph (1)(a), after “confiscation order” there is inserted “or instrumentalities forfeiture order”;
- (c) in paragraph (2) –
 - (i) after “confiscation order” in both places where it occurs there is inserted “or instrumentalities forfeiture order”,
 - (ii) after sub-paragraph (b) there is inserted –
“(c) the value of property described under Article 28B(3),”;
- (d) in paragraph (3) –
 - (i) in sub-paragraph (a), after “Article 3(4)” there is inserted “or 28B(3)”,

- (ii) in sub-paragraph (b), after “confiscation order” there is inserted “or instrumentalities forfeiture order”;
- (e) in paragraph (4), after “Article 3(4)” there is inserted “or 28B(3)”,
- (f) in paragraph (5), after “confiscation order” wherever it occurs there is inserted “or instrumentalities forfeiture order”;
- (g) in paragraph (9), after “confiscation order” there is inserted “or instrumentalities forfeiture order”.

26 Article 28A (enforcement of confiscation orders in a country or territory outside Jersey) amended

In Article 28A –

- (a) in the Article heading after “confiscation orders” there is inserted “or instrumentalities forfeiture orders”;
- (b) in paragraph (1)(a) after “confiscation order” there is inserted “or instrumentalities forfeiture order”;
- (c) in paragraph (1)(b) –
 - (i) after “confiscation order” there is inserted “or instrumentalities forfeiture order”,
 - (ii) after the “amount payable” there is inserted “or the value of property forfeited”.

27 Article 28B (instrumentalities forfeiture orders) inserted

After Article 28A there is inserted –

“28B Instrumentalities forfeiture orders

- (1) Where a defendant appears before the Court to be sentenced in respect of an offence specified in Schedule 1, the Attorney General may apply for and the Court may make an instrumentalities forfeiture order.
- (2) This Article applies only to offences committed after it comes into force.
- (3) An instrumentalities forfeiture order is an order for the forfeiture of –
 - (a) property used in or intended to be used in the offence for which the defendant has been convicted;
 - (b) where the offence is one under Article 30 or 31 or an attempt or conspiracy to commit such an offence, property used in or intended to be used in any predicate conduct that occurred in Jersey;
 - (c) property into which property described in sub-paragraph (a) or (b) has been converted (whether in a single, in multiple or in a series of consecutive transactions); or
 - (d) a sum of money of equivalent value to the value of the property described in sub-paragraph (a) or (b) at the time the

offence or conduct, as the case may be, occurred, adjusted to take account of subsequent changes in the value of money, if, or to the extent that, any order of a kind described in subparagraphs (a) to (d) would not be disproportionate.

(4) When considering whether the proposed order under paragraph (3) would be disproportionate, without limiting the factors that the Court may consider, the Court must take into account –

- (a) the defendant's means;
- (b) any gift caught by this Part; and
- (c) any civil proceedings instituted or intended to be instituted against the defendant by a victim of the offence or the defendant's predicate conduct in respect of loss or damage sustained in connection with the offence or conduct.

(5) The Court may proceed under both Article 3 (including by applying Article 5) and this Article in respect of the same offence but, where it is considering doing so, the following rules apply –

- (a) the Court must proceed under this Article before proceeding under Article 3;
- (b) if the Court makes an instrumentalities forfeiture order, it must only proceed under Article 3 (whether by reason of Article 3(1) or Articles 9, 12, 13 or 14) if, or to the extent that –
 - (i) an order under Article 3 would not lead to the same property (or its value) being taken into account in calculating the amount in respect of which the confiscation order made as was taken into account in calculating the value of the property in respect of which the instrumentalities forfeiture order is made, and
 - (ii) the making of a confiscation order in addition to an instrumentalities forfeiture order would not be disproportionate.

(6) Where –

- (a) by reason of paragraph (4)(a), the Court has decided that it will not make an instrumentalities forfeiture order or has decided to reduce the amount of the instrumentalities forfeiture order it would otherwise have made; and
- (b) the Attorney General subsequently becomes aware that the defendant's ability to pay an instrumentalities forfeiture order has increased (whether by means of the discovery of or subsequent acquisition of property),

the Attorney General may apply to the Court for the decision under paragraphs (1) and (3) to be reconsidered.

(7) If the Attorney General makes an application under paragraph (6) at the same time as proceeding under Article 19, the Court

- (a) must first consider the application under paragraph (6); and
- (b) may only make an order under Article 19 if to do so would not be disproportionate.

- (8) Where the Court makes an instrumentalities forfeiture order –
 - (a) it must take account of the order before –
 - (i) imposing any fine on the defendant,
 - (ii) making any order involving any payment by the defendant, or
 - (iii) making any forfeiture order under Article 29 of the [Misuse of Drugs \(Jersey\) Law 1978](#), Article 27 of the [Terrorism \(Jersey\) Law 2002](#) or Part 3 of the [Forfeiture of Assets \(Civil Proceedings\) \(Jersey\) Law 2018](#); and
 - (b) subject to sub-paragraph (a), it must leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant in the proceedings.
- (9) Where the Court makes an instrumentalities forfeiture order (whether with or without a confiscation order) the Court, instead of making an order under the [Criminal Justice \(Compensation Orders\) \(Jersey\) Law 1994](#), may make such orders as it considers appropriate for payment of the value of property due under the instrumentalities forfeiture order and any confiscation order to compensate victims of the offence or the predicate conduct for any loss or damage caused by that offence or conduct.
- (10) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with the offender also in any other way restricts, by reason only of the making of an order under this Article, the Court from dealing with an offender in any way that the Court considers appropriate in respect of an offence described in paragraph (1).
- (11) The standard of proof on any contested issue of fact that arises in the course of considering an application for an instrumentalities forfeiture order is that which is applicable in civil proceedings.”

28 Article 29 (criminal property) amended

In Article 29(1)(a), after “obtained,” there is inserted “in whole or in part.”

29 Article 30 (offences of dealing with criminal property) amended

In Article 30(5), after “proceeds of criminal conduct” there is inserted “or instrumentalities”.

30 Article 31 (concealment etc. of criminal property) amended

In Article 31 –

- (a) in paragraph (4), after “proceeds of criminal conduct” there is inserted “or instrumentalities”;
- (b) in paragraph (5), after “the proceeds of drug trafficking” there is inserted “or instrumentalities of drug trafficking”.

31 Article 32 (protection for disclosures, and defence of intended disclosure) amended

In Article 32 –

- (a) in paragraph (1)(a) after “proceeds of criminal conduct” there is inserted “or property used in or intended to be used in criminal conduct”;
- (b) in paragraph (7)(a) after “proceeds of criminal conduct” there is inserted “or property used in or intended to be used in criminal conduct”.

32 Article 34D (failure in a financial institution to report to designated police officer, designated customs officer or nominated officer) amended

In Article 34D(2), after sub-paragraph (b) there is inserted –

- “ (c) any property has been, is being or is intended to be used in criminal conduct.”.

33 Article 35 (tipping off and interference with material) amended

In Article 35(8) after “proceeds of criminal conduct” there is inserted “or instrumentalities”.

34 Article 40 (investigations relating to proceeds of criminal conduct) amended

In Article 40 –

- (a) in the Article heading, after “criminal conduct” there is inserted “or instrumentalities”;
- (b) for paragraph (1) there is substituted –
 - “(1) A police officer may apply to the Bailiff for an order under paragraph (2) in relation to particular material or material of a particular description for the purposes of an investigation into –
 - (a) whether any person has benefited from any criminal conduct, or whether any property has been, is being or is intended to be used in criminal conduct; or
 - (b) the extent or whereabouts of the proceeds of any criminal conduct or instrumentalities.”;
- (c) in paragraph (4)(a), after “criminal conduct” there is inserted “or has used, is using or intends to use property in criminal conduct”.

35 Article 41 (authority for search) amended

In Article 41 –

- (a) for paragraph (1) there is substituted –

- “(1) A police officer may apply to the Bailiff for a warrant under this Article in relation to specified premises for the purposes of an investigation into –
- (a) whether any person has benefited from any criminal conduct, or whether any property has been, is being or is intended to be used in criminal conduct; or
 - (b) the extent or whereabouts of the proceeds of any criminal conduct or instrumentalities.”;
- (b) in paragraph (3)(a) after “criminal conduct” there is inserted “or has used, is using or intends to use property in criminal conduct”;
- (c) for paragraph (4)(b)(ii) there is substituted –
- “(ii) to the question whether a person has benefited from any criminal conduct or has used, is using or intends to use property in criminal conduct or to any question as to the extent or whereabouts of the proceeds of any criminal conduct or instrumentalities.”.

36 Schedule 1 (offences for which confiscation orders may be made) amended

In Schedule 1 –

- (a) in the Schedule subheading, after “Confiscation Orders” there is inserted “or Instrumentalities Forfeiture Orders”;
- (b) after “25(1),” there is inserted “28B(1)”.

37 Schedule 3 (financial information and monitoring orders) amended

In paragraph 5(2)(b) of Part 2 of Schedule 3, after “confiscation order” there is inserted “or an instrumentalities forfeiture order”.

38 Citation and commencement

This Law may be cited as the Proceeds of Crime (Amendment No. 5) (Jersey) Law 2022 and comes into force 7 days after it is registered.