



Jersey

**PROCEEDS OF CRIME (ENFORCEMENT OF  
CONFISCATION AND  
INSTRUMENTALITIES FORFEITURE  
ORDERS) (JERSEY) REGULATIONS 2008**

**Official Consolidated Version**

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Jersey

# PROCEEDS OF CRIME (ENFORCEMENT OF CONFISCATION AND INSTRUMENTALITIES FORFEITURE ORDERS) (JERSEY) REGULATIONS 2008

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Jersey

## **PROCEEDS OF CRIME (ENFORCEMENT OF CONFISCATION AND INSTRUMENTALITIES FORFEITURE ORDERS) (JERSEY) REGULATIONS 2008**

**THE STATES**, in pursuance of Articles 28A and 38 of the [Proceeds of Crime \(Jersey\) Law 1999](#), have made the following Regulations –

Commencement [[see endnotes](#)]

### *Interpretation*

#### **1 Interpretation**

In these Regulations, unless the context otherwise requires –

“appropriate authority” means, when used in relation to a country or territory outside Jersey, the authority appearing to the Royal Court to be the appropriate authority of that country or territory for the purposes of these Regulations;

“court”, when used to refer to a court of a country or territory outside Jersey, includes a court of any state or territory within that country or territory;

“Law” means the [Proceeds of Crime \(Jersey\) Law 1999](#) and, in Regulations 3, 4, 6 and 8(2), that Law as modified by these Regulations.

- (2) In these Regulations, a reference to an order of a court of a country or territory outside Jersey includes a reference to a judgment of a court.

### *Enforcement in Jersey of external confiscation orders*

#### **2 Application of the Law in relation to countries and territories outside Jersey**

(1) The Law shall apply to –

- (a) external confiscation orders; and
- (b) the enforcement of proceedings that have been or are to be instituted in a country or territory outside Jersey and may result in an external confiscation order being made there,

with the modifications specified in the Schedule.<sup>1</sup>

(2) <sup>2</sup>

### **3 Proof of orders of a court in a country or territory outside Jersey**

- (1) For the purposes of these Regulations and the Law –
  - (a) an order made by a court in 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 taken without further proof to have been duly sealed or (as the case may be) to have been signed by that person; and
  - (b) a duly authenticated document, purporting to be a copy of any order made by a court in a country or territory outside Jersey, shall be taken without further proof to be a true copy.
- (2) A document is duly authenticated for the purpose 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 outside Jersey.

### **4 Evidence of proceedings and orders in a country or territory outside Jersey**

- (1) For the purposes of these Regulations and the Law, a certificate purporting to be issued by or on behalf of the appropriate authority of a country or territory outside Jersey and stating –
  - (a) that proceedings have been instituted and have not been concluded there, or that proceedings are to be instituted there;
  - (b) that the defendant has been notified, in accordance with the laws of the country or territory, that proceedings have begun there against the person in respect of an offence;
  - (c) that an external confiscation order is in force there and is not subject to appeal;
  - (d) that all or a certain amount of the sum payable under an external confiscation order remains unpaid in that country or territory, or that other property recoverable under an external confiscation order remains unrecovered there;
  - (e) that any person has been notified of any proceedings in accordance with the law of that country or territory;
  - (f) that an order (however described) made or to be made by a court of that country or territory has the purpose or (as the case may be) will have the purpose of recovering property obtained as a result of or in connection with criminal conduct or the value of property so obtained; or
  - (g) that an order (however described) made or to be made by a court of that country or territory has the purpose or (as the case may be) will have the

purpose of depriving a person of a pecuniary advantage obtained as a result of or in connection with criminal conduct,

- (h) that an order (however described) made or to be made by a court of that country or territory has the purpose of, or will have the purpose of –
  - (i) recovering property used or intended to be used in criminal conduct or predicate conduct; or
  - (ii) recovering property equal to the value of the property referred to in clause (i),

shall, in any proceedings in the Royal Court, be admissible as evidence of the facts so stated.<sup>3</sup>

- (2) In any such proceedings in the Royal Court, a statement contained in a duly authenticated document that purports –

- (a) to have been received in evidence;
- (b) to be a copy of a document so received; or
- (c) to set out or summarize evidence given in proceedings in a court in a country or territory outside Jersey,

shall be admissible as evidence of any fact contained in that statement.

- (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 a judge, magistrate or officer of the court in the country or territory outside Jersey; or
- (b) by or on behalf of the appropriate authority of that country or territory,

as having been received in evidence or as being a copy of a document so received, or (as the case may be) as being the original document containing or summarizing the evidence or as being a true copy of that document.

- (4) Nothing in this Regulation shall prejudice the admission of any evidence, whether contained in any document or in any other form, that is admissible apart from this Regulation.

## **5 Evidence as to appropriate authority of a country or territory outside Jersey**

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

## **6 Representation of overseas governments in Royal Court**

- (1) In any proceedings in the Royal Court under the Law, the government of a country or territory outside Jersey shall be represented by the Attorney General.
- (2) In any such proceedings in the Royal Court 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, constitute the authority of the government of that country or territory for the Attorney General to act on the government's behalf.

*Enforcement outside Jersey of confiscation order made in Jersey*

**7 Satisfaction of confiscation orders or instrumentalities forfeiture orders in a country or territory outside Jersey<sup>4</sup>**

- (1) Where –
- (a) a confiscation order has been made under Article 3 of the Law or an instrumentalities forfeiture order has been made under Article 28B of the Law;
  - (b) a request has been sent by the Attorney General to the appropriate authority of a country or territory outside Jersey for assistance in enforcing that order; and
  - (c) in execution of that request, property is recovered in that country or territory, the amount payable under the confiscation order or the value of property forfeited under the instrumentalities forfeiture order shall be treated as reduced by the value of the property so recovered.<sup>5</sup>
- (2) For the purposes of this Regulation, and without prejudice to the admissibility of any evidence otherwise than under this paragraph, a certificate purporting to be issued by or on behalf of the appropriate authority of a country or territory outside Jersey and stating –
- (a) that property has been recovered there in execution of a request by the Attorney General;
  - (b) the value of the property so recovered; and
  - (c) the date on which it was recovered,
- shall, in any proceedings under the Law in the Royal Court, be admissible as evidence of the facts so stated.

*Miscellaneous and closing*

**8 Conversion of currency**

- (1) Where the value of property recovered in the circumstances described in Regulation 7(1) is expressed in a currency other than that of Jersey, the extent to which the amount payable under the confiscation order or instrumentalities forfeiture order is to be reduced under that paragraph shall be calculated on the basis of the exchange rate prevailing on the date on which the property was recovered in the country or territory outside Jersey concerned.<sup>6</sup>
- (2) Where an amount of money payable or remaining to be paid under an external confiscation order registered in the Royal Court under Article 39(1) of the Law is expressed in a currency other than that of Jersey, the amount shall for the purposes of any action taken under the Law in relation to that order be converted into the currency of Jersey on the basis of the exchange rate prevailing on the date of registration of the order.
- (3) For the purposes of this Regulation, a written certificate –

- (a) purporting to be signed by a person acting in the person's capacity as an officer of any bank in Jersey; and
  - (b) stating the exchange rate prevailing on a specified date,
- shall be admissible as evidence of the facts so stated.

## **9 Citation**

These Regulations may be cited as the Proceeds of Crime (Enforcement of Confiscation and Instrumentalities Forfeiture Orders) (Jersey) Regulations 2008.<sup>7</sup>

## SCHEDULE<sup>8</sup>

(Regulation 2(1))

### MODIFICATION OF THE PROCEEDS OF CRIME (JERSEY) LAW 1999

#### 1 Article 1 amended

(1) In Article 1(1) –

- (a) the following definitions shall be omitted –
  - “Commission” and “Financial Services Commission”;
  - “competent authority”;
  - “criminal investigation”;
  - “designated customs officer”;
  - “designated police officer”;
  - “drug trafficking”;
  - “exported”;
  - “financial services business”;
  - “investigation”;
  - “modifications”;
  - “money laundering”;
  - “proceeds of criminal conduct”;
- (b) for the definition “criminal conduct” there shall be substituted the following definition –
  - “ ‘criminal conduct’ means conduct corresponding to an offence specified in Schedule 1;”;
- (c) for the definition “defendant” there shall be substituted the following definition –
  - “ ‘defendant’ means a person against whom –
    - (a) an external confiscation order has been made; or
    - (b) proceedings have been or are to be instituted in a court in a country or territory outside Jersey, which may result in an external confiscation order being made;”;
- (d) after the definition “defendant” there shall be inserted the following definition –
  - “ ‘Enforcement Regulations’ means the Proceeds of Crime (Enforcement of Confiscation and Instrumentalities Forfeiture Orders) (Jersey) Regulations 2008;”;

- (e) in sub-paragraph (a) of the definition “external confiscation order”, for the words “conduct corresponding to an offence specified in Schedule 1” there shall be substituted the words “criminal conduct”;
  - (f) for the definitions “gift caught by Part 2” and “gift caught by this Part” there shall be substituted the following definition –
    - “ ‘gift caught by this Law’ has the meaning given in Article 2(9);”;
  - (g) for the definition “predicate conduct” there is substituted the following definition –
    - “ “predicate conduct” means, where the overseas conduct corresponds to an offence under Article 30 or 31, or an attempt or conspiracy to commit such an offence, the conduct that was alleged to give the property its criminal character;”.
- (2) In Article 1(2) –
- (a) in sub-paragraph (a) –
    - (i) the words “with the commission of an offence or” shall be deleted, and
    - (ii) after the words “and in some other connection” there shall be inserted the words “(whether received before or after the commencement of the Enforcement Regulations)”;
  - (b) in sub-paragraph (b) –
    - (i) the words “with the commission of an offence or”, and
    - (ii) the words “the commission of that offence”, shall be deleted.
- (3) For paragraphs (2A) to (9) of Article 1 there shall be substituted the following paragraphs –
- “(3) For the purposes of this Law, proceedings for an offence are instituted in a country or territory outside Jersey when –
    - (a) the defendant has been notified in writing in accordance with the laws of that country or territory that proceedings have begun there against the defendant in respect of an offence; or
    - (b) an application has been made to a court in that country or territory for an external confiscation order against the defendant,whichever is the earliest.
  - (4) For the purposes of this Law, proceedings for an offence are concluded –
    - (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an external confiscation order being made in the proceedings; or
    - (b) on satisfaction of an external confiscation order made in the proceedings, whether by the recovery of all property liable to be recovered or the payment of any amount due.

- (5) For the purposes of this Law, an external confiscation order is satisfied when no property remains liable to be recovered, or no amount is due, under that order.
- (6) For the purposes of this Law, an external confiscation 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 Article 2 amended

In Article 2 –

- (a) for paragraphs (1), (1A) and (2) there shall be substituted the following paragraphs –

“(1) In this Law, ‘realisable property’ means –

- (a) in relation to an external confiscation order in respect of specified property, the property that is specified in the order;
- (b) in any other case –
  - (i) any property held by the defendant,
  - (ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law, and
  - (iii) any property to which the defendant is beneficially entitled.

(2) However, property is not realisable property if –

- (a) a confiscation order or an instrumentalities forfeiture order;
- (b) an order under Article 9 of the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008;
- (c) an order under Article 29 of the [Misuse of Drugs \(Jersey\) Law 1978](#); or
- (d) an order under Article 27 of the [Terrorism \(Jersey\) Law 2002](#),  
is in force in respect of the property.”;

- (b) paragraphs (3) and (11) shall be omitted;
- (c) in paragraphs (4), (5), (7) and (10), for the words “Part 2” wherever they appear, there shall be substituted the words “this Law”;
- (d) for paragraphs (9) and (9A) there is substituted –

“(9) A gift (including a gift made before the commencement of the Enforcement Regulations) is caught by this Law if –

- (a) it was made by the defendant at any time after the conduct to which the external confiscation order relates; and
- (b) the Court considers it appropriate in all the circumstances to take the gift into account.

(9A) A gift (including a gift made before the commencement of the Enforcement Regulations) made by the defendant into a trust is caught by this Law if –

- (a) it was made within the period of 5 years preceding the conduct to which the external confiscation order relates;

- (b) the Court considers it appropriate in all the circumstances to take the gift into a trust into account; and
- (c) at any point after the reference date any of the following apply –
  - (i) the defendant is a beneficiary (including a discretionary beneficiary) of the trust,
  - (ii) the trustees of the trust have the power to add the defendant as a beneficiary of the trust, or
  - (iii) written documents of any kind exist which anticipate the defendant benefitting from the trust property at some future time.”;
- (e) paragraph (9B) is deleted;
- (f) for paragraph (9C) there is substituted –

“(9C) In paragraph (9A) “reference date” means the date that is 5 years before the date of the conduct to which the external confiscation order relates.”.

### 3 Part 2 amended

- (1) For the heading to Part 2 there shall be substituted the following heading –

“EXTERNAL CONFISCATION ORDERS”.

- (2) Articles 3 to 14, 18, 19, 21, and 25 to 28B shall be omitted.
- (3) For Article 15 there shall be substituted the following Article –

#### “15 Cases in which *saisies judiciaires* may be made

- (1) The powers conferred on the Court by Article 16 are exercisable where –
  - (a) proceedings have been instituted in a country or territory outside Jersey and have not been concluded, and –
    - (i) an external confiscation order has been made in the proceedings, or
    - (ii) it appears to the Court that there are reasonable grounds for believing that such an order will be made in the proceedings;
  - or
  - (b) it appears to the Court that proceedings are to be instituted against the defendant in a country or territory outside Jersey, and that there are reasonable grounds for believing that an external confiscation order will be made in those proceedings.
- (2) Where the Court has made an order under Article 16 by virtue of paragraph (1)(b), the Court shall discharge the Order if proceedings have not been instituted within such time as the Court considers reasonable.”.
- (4) In Article 16 –

- (a) in paragraph (1), after the words “an application made by or on behalf of the Attorney General” there shall be inserted the words “on behalf of the government of a country or territory outside Jersey”;
- (b) in paragraph (6), for sub-paragraphs (b) and (c) there shall be substituted the following sub-paragraph –
  - “(b) shall be discharged when the proceedings in which it was made are concluded.”.
- (5) In Article 17, for paragraph (1) there shall be substituted the following paragraph –
  - “(1) Where –
    - (a) an external confiscation order has been registered under Article 39; and
    - (b) the Court has made a *saisie judiciaire*,  
the Court may, on an application made by or on behalf of the Attorney General, empower the Viscount to realise, in such manner as it may direct, any realisable property vested in the Viscount or in the Viscount’s possession pursuant to a *saisie judiciaire* under Article 16.”.
- (6) In Article 20, for the words “confiscation order or instrumentalities forfeiture order” wherever they appear, there shall be substituted the words “external confiscation order”.
- (7) In Article 22, in paragraph (2) for “, 18, 19, 20 and 28B” there is substituted “and 20”.
- (8) In Article 24 –
  - (a) in sub-paragraph (2)(a), for the words “confiscation order or instrumentalities forfeiture order” there shall be substituted the words “an external confiscation order”;
  - (b) for paragraph (8) there shall be substituted the following paragraph –
    - “(8) In this Article –  
‘asset sharing agreement’ means any agreement or arrangement made by or on behalf of Jersey with a country or territory outside Jersey for the sharing of the proceeds of criminal conduct or instrumentalities or property of equal value to the instrumentalities that, as a result of mutual assistance, have been confiscated or forfeited either in Jersey or elsewhere;  
‘criminal conduct’ has the meaning given by Article 1(1) of this Law, disregarding any modification to that definition made by the Enforcement Regulations.”.

#### **4 Part 3 omitted**

Part 3 shall be omitted.

#### **5 Part 4 amended**

- (1) For the heading to Part 4 there shall be substituted the following heading –

“REGISTRATION OF EXTERNAL CONFISCATION ORDERS”.

- (2) Article 38 shall be omitted.

**6 Part 5 amended**

- (1) Articles 40 to 43 shall be omitted.

- (2) For the text of Article 44 there shall be substituted the following –

“The power of the Superior Number of the Royal Court to make Rules of Court under the [Royal Court \(Jersey\) Law 1948](#) includes a power to make Rules for the purposes of this Law.”.

- (3) For the text of Article 45 there shall be substituted the following –

“This Law may be cited as the [Proceeds of Crime \(Jersey\) Law 1999](#), as modified by the Proceeds of Crime (Enforcement of Confiscation and Instrumentalities Forfeiture Orders) (Jersey) Regulations 2008.”.

**7 Schedules amended**

- (1) In Schedule 1 –

- (a) for the sub-heading in brackets there shall be substituted the following sub-heading –

“(Article 1(1))”;

- (b) for the sub-heading “**OFFENCES FOR WHICH CONFISCATION ORDERS MAY BE MADE**” there shall be substituted the following subheading –

“**OFFENCES RELEVANT TO CRIMINAL CONDUCT**”.

- (2) Schedules 2 and 3 shall be omitted.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement
Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008	<a href="#">R&amp;O.77/2008</a>	23 July 2008
Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014	<a href="#">L.7/2014</a>	4 August 2014 ( <a href="#">R&amp;O.102/2014</a> )
International Co-operation (Protection from Liability) (Jersey) Law 2018	<a href="#">L.29/2018</a>	18 June 2019 ( <a href="#">R&amp;O.48/2019</a> )
Proceeds of Crime (Miscellaneous Amendments No. 2) (Jersey) Regulations 2021	<a href="#">R&amp;O.84/2021</a>	8 October 2021
Proceeds of Crime (Enforcement of Confiscation Orders) (Amendment) (Jersey) Regulations 2022	<a href="#">R&amp;O.18/2022</a>	21 April 2022

### Table of Renumbered Provisions

Original	Current
9	Spent, omitted
10	9

### Table of Endnote References

<sup>1</sup> Regulation 2(1)	<i>amended by L.7/2014</i>
<sup>2</sup> Regulation 2(2)	<i>substituted by L.7/2014, omitted, spent</i>
<sup>3</sup> Regulation 4(1)	<i>amended by R&amp;O.18/2022</i>
<sup>4</sup> Regulation 7	<i>heading amended by R&amp;O.18/2022</i>
<sup>5</sup> Regulation 7(1)	<i>amended by R&amp;O.18/2022</i>
<sup>6</sup> Regulation 8(1)	<i>amended by R&amp;O.18/2022</i>
<sup>7</sup> Regulation 9	<i>short title amended by R&amp;O.18/2022</i>
<sup>8</sup> Schedule	<i>former Schedules 1 &amp; 2 substituted by L.7/2014, amended by L.29/2018, R&amp;O.84/2021, R&amp;O.18/2022</i>