

STATES OF JERSEY



Jersey

DRAFT PROCEEDS OF CRIME (AMENDMENT OF LAW) (No. 2) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 17th May 2021
by the Minister for External Relations and Financial Services
Earliest date for debate: 29th June 2021**

STATES GREFFE

REPORT

The Proceeds of Crime (Amendment of Law) (No. 2) (Jersey) Regulations 202- (the “draft Regulations”) amend the definition of criminal conduct of Article 1(1) in the [Proceeds of Crime \(Jersey\) Law 1999](#) (the “1999 Law”). The States make these Regulations under Article 1(9) of the Proceeds of Crime (Jersey) Law 1999.

The draft Regulations amend the definition of criminal conduct in the 1999 Law to provide that the production, supply, use, export or import of cannabis or any of its derivatives is no longer considered criminal conduct provided that:

- (a) it is lawful where and when it occurs; and
- (b) it occurs in a jurisdiction outside of Jersey that the Minister for External Relations and Financial Services may specify by order.

For the purposes of the second limb of this test, if this legislation is adopted by the States Assembly, the Minister intends to make the Proceeds of Crime (Cannabis Exemption – List of Jurisdictions) (Jersey) Order 202-. The list of countries in that Order is based on the outcomes of mutual evaluation reports carried out by the Financial Action Task Force (FATF) and their FATF style regional bodies (such as MONEYVAL) against the FATF Standards which are the international standards concerning money laundering, terrorist financing and financing of proliferation. The policy intention of this Order is to ensure Jersey only deals in proceeds where the origin of those proceeds is in a country which applies suitably equivalent money laundering controls to Jersey. In view of this second requirement, financial services businesses will need to check when dealing with proceeds of cannabis production in Jersey that the jurisdiction in which the cultivation took place is on the Minister’s list.

The draft Regulations are focussed on the position outside of Jersey because it is not necessary to clarify the status of the proceeds of the production and supply of cannabis or cannabis derivatives within Jersey. In Jersey those activities are undertaken lawfully pursuant to licences under the [Misuse of Drugs \(Jersey\) Law 1978](#) and other legislation relating to the supply of medicines. It is already sufficiently clear that proceeds generated from appropriately licenced production and supply of cannabis and cannabis derivatives within Jersey are not generated from criminal conduct and thus cannot constitute proceeds of crime under the 1999 Law.

The challenge for Jersey and other jurisdictions is that several countries have legalised the production and use of cannabis and cannabis derivatives, for medicinal purposes, but also for recreational purposes. Under the 1999 Law, in general, even where an activity is lawful where it occurs, if the same conduct would be a criminal offence in Jersey punishable with 12 months imprisonment or more, then it will be treated as criminal conduct and proceeds derived from it will be treated as proceeds of crime. While looking at conduct through the lens of Jersey offences is often a simple and appropriate approach. In relation to cannabis investments, rapid recent developments in licensing and attitudes have made this much more challenging. Arguably, it is not clear at present how the proceeds of cannabis production for purposes that would not be licenced in Jersey should be treated. This is also a challenge for other neighbouring jurisdictions and different approaches are being taken to addressing it.

Due to the global nature of the financial services industry, local financial services businesses (FSBs) can now be exposed to proceeds generated outside of Jersey which have a nexus to lawful cannabis production in places like Canada and the United States. This nexus can either be directly by processing proceeds from the production, supply,

or sale of cannabis or indirectly by processing monies related to investments in cannabis companies or investment funds investing in such companies. The Cannabis industry has evolved to be global in nature meaning that a single company may use products grown in multiple locations worldwide – and therefore be in receipt of proceeds which originate from more than one location.

Under the current provisions of the 1999 Law, any proceeds generated from the production, supply, use, export or import of cannabis or any of its derivatives outside of Jersey have the potential to be considered criminal property in Jersey and it may not always be clear when an asset is acquired that this is a risk. Where a local FSB considers that an investment may contain proceeds of cannabis production, this may lead it to file a Suspicious Activity Report (SAR) with the States of Jersey Police regarding these proceeds and to ask for permission to divest. Failure to submit such a SAR can constitute a criminal offence. As the legal position is unclear it may not be possible for the Joint Financial Crime Unit of the States of Jersey Police to give the respective FSB any directions. Therefore, a situation has arisen where the FSB might find itself unable to process the proceeds anymore or even to divest which might cause the proceeds to get “stuck” in Jersey, creating operational and legal issues for local FSBs. This is undesirable both for the FSB and more generally for the operation of the SAR system in Jersey. The draft Regulations are proposed in order to clarify which investments should not be treated as proceeds of crime by local FSBs. It is intended to remedy this situation, reflecting international developments with regard to the legislative treatment of cannabis and cannabis derivatives.

The draft Regulations require that in order for it to be clear that proceeds are not proceeds of criminal conduct, they must be generated from conduct which was lawful *where and when* it occurred. So, for example, proceeds of lawful, licenced cannabis production taking place in Canada would fall within the provision, even if the production took place before the draft Regulations come into force. However, proceeds which are generated from conduct which was not lawful where and when it occurred do not benefit from the exemption of criminal conduct and remain proceeds of crime under the law. In view of this requirement, FSBs will need to check when dealing with proceeds of cannabis production in Jersey that the conduct was lawful where and when it occurred.

Financial and manpower implications

There are no financial and manpower implications for the States arising from the adoption of these draft Regulations.

EXPLANATORY NOTE

These Regulations amend the definition of “criminal conduct” in Article 1(1) of the Proceeds of Crime (Jersey) Law 1999 to exclude the production, supply, use, export or import of cannabis and any of its derivatives that is lawful where and when it occurs and occurs in a jurisdiction outside Jersey that the Minister for External Relations and Financial Services may by Order specify (*Regulation 1*).

Regulation 2 gives the name by which these Regulations may be cited. *Regulation 2* also provides for these Regulations to come into force 7 days after they are made.



Jersey

DRAFT PROCEEDS OF CRIME (AMENDMENT OF LAW) (No. 2) (JERSEY) REGULATIONS 202-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES make these Regulations under Article 1(9) of the Proceeds of Crime (Jersey) Law 1999¹ –

1 Article 1(1) (Interpretation) of the Proceeds of Crime (Jersey) Law 1999 amended

- (1) This Regulation amends Article 1(1) of the Proceeds of Crime (Jersey) Law 1999².
- (2) The following definitions are inserted in the correct alphabetical sequence –
 - “cannabis” means any plant of the genus *Cannabis* and any part of such plant;
 - “production” has the same meaning as is given to that expression by Article 1(1) of the Misuse of Drugs (Jersey) Law 1978³;
 - “supply” is construed in accordance with the meaning given to “supplying” by Article 1(1) of the Misuse of Drugs (Jersey) Law 1978⁴;
- (3) In the definition “criminal conduct” –
 - (a) in paragraph (b) for the semi-colon there is substituted a comma; and
 - (b) after paragraph (b) there is inserted –
 - “but does not include the production, supply, use, export or import of cannabis or any of its derivatives that –
 - (i) is lawful where and when it occurs, and
 - (ii) occurs in a jurisdiction outside Jersey that the Minister for External Relations and Financial Services may by Order specify;”.

2 Citation and commencement

These Regulations may be cited as the Proceeds of Crime (Amendment of Law) (No. 2) (Jersey) Regulations 202- and come into force 7 days after they are made.

ENDNOTES

Table of Endnote References

<u>1</u>	<i>chapter 08.780</i>
<u>2</u>	<i>chapter 08.780</i>
<u>3</u>	<i>chapter 08.680</i>
<u>4</u>	<i>chapter 08.680</i>