



VIRGIN ISLANDS

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT

Revised Edition

showing the law as at 1 January 2020

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014.

This edition contains a consolidation of the following laws—

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT

Act 8 of 1993 .. in force 22 October 1993

Amended by Acts: 3 of 2000 .. in force 24 February 2000

5 of 2004 .. in force 1 April 2004

Amended by S.I. 22/2010 .. in force 29 April 2010

Amended by Act: 13 of 2017 .. in force 10 June 2017

Page

3

SEE STATUTORY INSTRUMENTS BOOKLET



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CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title

PART I

CRIMINAL PROCEEDINGS AND INVESTIGATIONS

Mutual service of process

2. Service of overseas process in the Virgin Islands
3. Service of Virgin Islands process overseas

Mutual provision of evidence

4. Overseas evidence for use in Virgin Islands
5. Virgin Islands evidence for use overseas
- 5A. Transfer of Virgin Islands prisoner to give evidence or assist investigation overseas
- 5B. Transfer of overseas prisoner to give evidence or assist investigation in the Virgin Islands
6. Power of the Attorney General to give certain directions
7. Transfer of overseas prisoner to give evidence or assist investigation in the Virgin Islands

Additional co-operation powers

8. Power of the Director of Public Prosecutions to give certain directions
9. Enforcement of overseas forfeiture orders

Supplementary

10. Rules of court

PART II

THE VIENNA CONVENTION

Substances useful for manufacture of controlled drugs

11. Manufacture and supply of scheduled substances
12. Regulations about scheduled substances

Proceeds of drug trafficking

13. Concealing or transferring proceeds of drug trafficking

14. Interest on sums unpaid under confiscation orders
15. Increase in realisable property

Offences at sea

16. Offences on Virgin Islands ships
17. Ships used for illicit traffic
18. Destroying evidence
19. Enforcement powers
20. Enforcement powers in territorial waters of Convention State
21. Jurisdiction and prosecutions

Supplementary

22. Extradition
23. Interpretation of Part II

PART III

GENERAL

24. Expenses and receipts
 25. Certain provisions of Repatriation of Prisoners Act to apply for transfer of prisoners
- SCHEDULE 1: Virgin Islands Evidence for use Overseas: Proceedings of Court
- SCHEDULE 2: Substances Useful for Manufacturing Controlled Drugs
- SCHEDULE 3: Enforcement Powers in Respect of Ships

**CRIMINAL JUSTICE
(INTERNATIONAL CO-OPERATION) ACT**

(Acts 8 of 1993, 3 of 2000, 5 of 2004, S.I. 22/2010 and Act 13 of 2017)

AN ACT TO ENABLE THE VIRGIN ISLANDS TO CO-OPERATE WITH OTHER COUNTRIES IN CRIMINAL PROCEEDINGS AND INVESTIGATIONS; AND TO ENABLE THE VIRGIN ISLANDS TO JOIN WITH OTHER COUNTRIES IN IMPLEMENTING THE VIENNA CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES.

Commencement

[22 October 1993]

Short title

1. This Act may be cited as the Criminal Justice (International Co-operation) Act.

PART I

CRIMINAL PROCEEDINGS AND INVESTIGATIONS

Mutual service of process

Service of overseas process in the Virgin Islands

2. (1) This section has effect where the Director of Public Prosecutions receives from the government of, or other authority in, a country or territory outside the Virgin islands—

- (a) a summons or other process requiring a person to appear as defendant or attend as a witness in criminal proceedings in that country or territory; or
- (b) a document issued by a court exercising criminal jurisdiction in that country or territory and recording a decision of the court made in the exercise of that jurisdiction,

together with a request for it to be served on a person in the Virgin Islands.

(2) The Director of Public Prosecutions may cause the process or document referred to in subsection (1) to be served by post or, if the request is for personal service, direct the Commissioner of Police to cause it to be personally served on the person.

(3) Service by virtue of this section of any such process as is mentioned in subsection (1)(a) shall not impose any obligation under the law of the Virgin Islands to comply with it.

(4) Any such process served by virtue of this section shall be accompanied by a notice—

- (a) stating the effect of subsection (3);
- (b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of his or her failing to comply with the process under the law of the country or territory where it was issued; and
- (c) indicating that under that law he or she may not, as a witness, be accorded the same rights and privileges as would be accorded to him or her in criminal proceedings in the Virgin Islands.

(5) Where the Commissioner of Police is directed under this section to cause any process or document to be served, he or she shall after it has been served, forthwith inform in writing the Director of Public Prosecutions when and how it was served and, if possible, furnish him or her with a receipt signed by the person on whom it was served; and if the Commissioner of Police has been unable to cause the process or document to be served, he or she shall forthwith inform the Director of Public Prosecutions of that fact and of the reason.

Service of Virgin Islands process overseas

3. (1) Process of the following descriptions, that is to say—

- (a) a summons requiring a person charged with an offence to appear before a court in the Virgin Islands; and
- (b) a summons or order requiring a person to attend before a court in the Virgin Islands for the purpose of giving evidence in criminal proceedings,

may be issued or made notwithstanding that the person in question is outside the Virgin Islands and may be served outside the Virgin Islands in accordance with arrangements made by the Director of Public Prosecutions.

(2) Service of any process outside the Virgin Islands by virtue of this section shall not impose any obligation under the law of any part of the Virgin Islands to comply with it and accordingly, failure to do so shall not constitute contempt of any court, or be a ground for issuing a warrant to secure the attendance of the person in question, or for imposing any penalty.

(3) Subsection (2) is without prejudice to the service of any process (with usual consequences for non-compliance) on the person in question if subsequently effected in the Virgin Islands.

Mutual provision of evidence

Overseas evidence for use in the Virgin Islands

4. (1) Where on an application made in accordance with subsection (2) it appears to a Judge—

- (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed; and
- (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated,

he or she may issue a letter (“a letter of request”) requesting assistance in obtaining outside the Virgin Islands such evidence as is specified in the letter for use in the proceedings or investigation.

(2) An application under subsection (1) may be made by the Director of Public Prosecutions after consultation with the Attorney General or, if proceedings have been instituted, by the person charged in those proceedings.

(3) The Director of Public Prosecutions after consultation with the Attorney General may issue a letter or request if—

- (a) he or she is satisfied as to the matters mentioned in subsection (1)(a); and
- (b) the offence in question is being investigated or the authority has instituted proceedings in respect of it.

(4) Subject to subsection (5), a letter of request shall be sent to the Governor for transmission either—

- (a) to a court or tribunal specified in the letter and exercising jurisdiction in the place where the evidence is to be obtained; or
- (b) to any authority recognised by the government of the country or territory in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.

(5) In cases of urgency, a letter of request may be sent direct to such a court or tribunal as is mentioned in subsection (4)(a).

(6) In this section “evidence” includes documents and other articles.

(7) Evidence obtained by virtue of a letter of request shall not without the consent of an authority, as is mentioned in subsection (4)(b), be used for any purpose other than that specified in the letter; and when any document or other article obtained pursuant to a letter of request is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to that authority unless the authority indicates that the document or article need not be returned.

Virgin Islands evidence for use overseas

5. (1) This section has effect where the Governor receives—

- (a) from a court or tribunal exercising criminal jurisdiction in a country or territory outside the Virgin Islands or a prosecuting authority in such a country or territory; or

- (b) from any other authority in such a country or territory which appears to him or her to have the function of making requests of the kind to which this section applies,

a request for assistance in obtaining evidence in the Virgin Islands in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in that country or territory.

(2) If the Governor, after consultation with the Director of Public Prosecutions and the Attorney General, is satisfied—

- (a) that an offence under the law of the country or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed; and
- (b) that proceedings in respect of that offence have been instituted in that country or territory or that an investigation into that offence is being carried on there,

he or she may, after consultation with the High Court Judge, by a notice in writing, nominate a court in the Virgin Islands to receive such of the evidence to which the request relates as may appear to the court to be appropriate for the purpose of giving effect to the request.

(3) Where it appears to the Governor that the request relates to a fiscal offence in respect of which proceedings have not yet been instituted, the Governor shall not exercise his or her powers under subsection (2) unless—

- (a) the request is from a country or territory which is a member of the Commonwealth or is made pursuant to a treaty to which the United Kingdom is a party, and such treaty has been made applicable to the Virgin Islands; *(Amended by Act 5 of 2004)*
- (b) the Governor is satisfied that the conduct constituting the offence would constitute an offence of the same or a similar nature if it had occurred in the Virgin Islands; or *(Amended by Act 5 of 2004)*
- (c) there is in force, in relation to the Virgin Islands and the country or territory in question, a treaty that provides that the rendering of assistance for the purposes of criminal proceedings or investigations—
 - (i) by the Virgin Islands to that country or territory shall not be subject to the condition that the conduct constituting an offence in that country or territory shall constitute an offence if it had occurred in any part of the Virgin Islands; and
 - (ii) by that country or territory to the Virgin Islands shall not be subject to the condition that the conduct constituting an offence in the Virgin Islands shall constitute an offence if it had occurred in any part of that country or territory.

(Inserted by Act 5 of 2004)

(4) For the purpose of satisfying himself or herself as to the matters mentioned in subsections (2)(a) and (b), the Governor shall regard as conclusive a certificate issued by such authority in the country or territory in question as appears to him or her to be appropriate.

(5) In this section “evidence” includes documents and other articles.

(6) Schedule 1 to this Act shall have effect with respect to the proceedings before a nominated court in pursuance of a notice under subsection (2).

Transfer of Virgin Islands prisoner to give evidence or assist investigation overseas

5A.(1) The Governor may, if he thinks fit, issue a warrant providing for any person (“a prisoner”) serving a sentence in a prison or other institution to be transferred to a country or territory outside the Virgin Islands for the purpose—

- (a) giving evidence in criminal proceedings there; or
- (b) being identified in, or otherwise by his or her presence assisting, such proceedings or the investigation of an offence.

(2) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being transferred as mentioned in subsection (1) and that consent may be given either—

- (a) by the prisoner himself, or
- (b) in circumstances in which it appears to the Governor inappropriate, by reason of the prisoner's physical or mental condition or his youth, for him to act for himself, by a person appearing to the Governor to be an appropriate person to act on his behalf,

but a consent once given shall not be capable of being withdrawn after the issue of the warrant.

(3) The effect of a warrant under this section shall be to authorise—

- (a) the taking of the prisoner to a place in the Virgin Islands and his delivery at a place of departure from the Virgin Islands into the custody of a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred; and
- (b) the bringing of the prisoner back to the Virgin Islands and his transfer in custody to the place where he is liable to be detained under the sentence to which he is subject.

(4) Where a warrant has been issued in respect of a prisoner under this section he shall be deemed to be in legal custody at any time when, being in the Virgin Islands or on board a ship, aircraft or other vessel, he is being taken under the warrant to or from any place or being kept in custody under the warrant.

(5) A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges of a member of the Police Force, whether he is in or outside the Virgin Islands.

(6) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a member of the Police Force, a customs officer or an immigration officer and taken to any place to which he may be taken under the warrant issued under this section.

(7) This section applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying a fine as it applies to a

prisoner and the reference in subsection (3)(b) to a sentence shall be construed accordingly.

(Inserted by Act 5 of 2004)

Transfer of overseas prisoner to give evidence or assist investigation in the Virgin Islands

5B. (1) This section has effect where—

- (a) a witness order has been made or a witness summons or citation issued in criminal proceedings in the Virgin Islands in respect of a person (“a prisoner”) who is detained in a country or territory outside the Virgin Islands by virtue of a sentence or order of a court or tribunal exercising criminal jurisdiction in that country or territory; or
- (b) it appears to the Governor that it is desirable for a prisoner to be identified in, or otherwise by his presence to assist, such proceedings or the investigation in the Virgin Islands of an offence.

(2) If the Governor is satisfied that the appropriate authority in the country or territory where the prisoner is detained will make arrangements for him to come to the Virgin Islands to give evidence pursuant to the witness order, witness summons or citation or, as the case may be, for the purpose mentioned in subsection (1)(b), he may issue a warrant under this section.

(3) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being brought to the Virgin Islands to give evidence or, as the case may be, for the purpose mentioned in subsection (1)(b), and that consent may be given either—

- (a) by the prisoner himself, or
- (b) in circumstances in which it appears to the appropriate authority in the country or territory where the prisoner is detained, that it would be inappropriate, by reason of the prisoner’s physical or mental condition or his youth, for him to act for himself, by a person appearing to that appropriate authority to be an appropriate person to act on his behalf,

but a consent once given shall not be capable of being withdrawn after the issue of the warrant.

(4) The effect of the warrant shall be to authorise—

- (a) the bringing of the prisoner to the Virgin Islands;
- (b) the taking of the prisoner to, and his detention in custody at, such place or places in the Virgin Islands as are specified in the warrant; and
- (c) the returning of the prisoner to the country or territory from which he has come.

(5) Subsections (4) to (7) of section 5B shall have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.

(6) A person shall not be subject to the Immigration and Passport Ordinance in respect of his entry into or presence in the Virgin Islands in pursuance of a warrant under this section, but if the warrant ceases to have effect while he is still in the Virgin Islands, he shall—

- (a) be treated for the purposes of that Ordinance as if he has then illegally entered the Virgin Islands; and
- (b) be detained and returned to the country or territory from which he has come.

(7) This section applies to a person detained in a country or territory outside the Virgin Islands in consequence of having been transferred there—

- (a) from the Virgin Islands under the Repatriation of Prisoners Act; or
- (b) under any similar provision or arrangement from any other country or territory,

as it applies to a person detained as mentioned in subsection (1).

(Inserted by Act 5 of 2004)

Power of the Attorney General to give certain directions

6. (1) Subject to subsection (2), this section has effect where the Attorney General receives, either directly or through the Governor, a request for assistance in conducting an investigation and obtaining statements and other relevant evidence for the purposes of criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in a country or territory outside the Virgin Islands, from—

- (a) a court or tribunal exercising criminal jurisdiction in a country or territory outside the Virgin Islands or a prosecuting authority in such a country or territory; or
- (b) any other authority in that country or territory which appears to him to have the function of making such requests.

(2) The Attorney General shall not exercise his powers under this section unless he is satisfied that—

- (a) an offence under the law of the country or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed;
- (b) criminal proceedings in respect of that offence have been instituted in the country or territory in question or that an investigation into that offence is being carried on there; and
- (c) either—
 - (i) the conduct constituting the offence which is the subject of the proceedings or investigation would constitute an offence if it had occurred in any part of the Virgin Islands; or
 - (ii) there is in force, in relation to the Virgin Islands and the country or territory in question, a treaty that provides that the rendering of assistance for the purposes of criminal proceedings or investigations—

(A) by the Virgin Islands to that country or territory shall not be subject to the condition that the conduct constituting an offence in that country or territory shall constitute an offence if it had occurred in any part of the Virgin Islands; and

(B) by that country or territory to the Virgin Islands shall not be subject to the condition that the conduct constituting an offence in the Virgin Islands shall constitute an offence if it had occurred in any part of that country or territory.

(3) The Attorney General may direct, in writing, a police officer (“an Investigating Officer”) to do any of the following for the purpose of giving effect to a request—

- (a) to conduct an investigation;
- (b) to interrogate and take statements from such persons as may appear to the Attorney General to be appropriate;
- (c) to make copies of such documents, to take such extracts or samples and to receive such other evidence as may appear to the Attorney General or the Investigating Officer to be appropriate.

(4) A person shall, at any time when he is being interrogated by an Investigating Officer, have the right to be advised, at his own expense, by a legal practitioner of his choice.

(5) An Investigating Officer shall not have the power to compel—

- (a) a person to answer any question;
- (b) a person who is not under arrest to attend at or remain in any place for the purpose of being interrogated; or
- (c) a person to produce any document or thing,

and he shall not, unless authorised by a warrant under subsection (8), have power to enter and search premises or to seize or take documents or other things without the consent of the owner or occupier of the premises.

(6) A statement made to an Investigating Officer in the course of the exercise of his functions under this section may only be used in evidence against the person making the statement—

- (a) on a prosecution for an offence under subsection (13); or
- (b) on a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it.

(7) Where there are reasonable grounds for suspecting that there is on premises in the Virgin Islands evidence relating to an offence referred to in subsection (2), the Attorney General may, in writing, direct a police officer to apply to a Judge or a Magistrate for a warrant authorising the police officer to enter and search those premises and to seize any such evidence found there, other than items subject to legal privilege.

(8) If, on an application made by a police officer pursuant to subsection (7), a Judge or Magistrate is satisfied—

- (a) as to the matters referred to in subsection (2); and

- (b) that there are reasonable grounds for suspecting that there is on premises in the Virgin Islands evidence relating to an offence referred to in subsection (2),

he may issue a warrant authorising the police officer to enter and search those premises and to seize any such evidence found there, other than items subject to legal privilege.

(9) The power to search conferred by subsection (8) is only a power to search to the extent that it is reasonably required for the purpose of discovering such evidence as is there mentioned.

(10) Any evidence obtained by an Investigating Officer or a police officer by virtue of this section shall be furnished by him to the Attorney General for transmission to the court, tribunal or authority which requested it.

(11) If in order to comply with the request, it is necessary for any evidence obtained by an Investigating Officer or a police officer to be accompanied by any certificate, affidavit or other verifying document, he shall also furnish for transmission such document of that nature as may be specified by the Attorney General.

(12) Where any evidence consists of a document, the original or a copy of the document shall be transmitted, and where it consists of any other article, the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

(13) A person who—

- (a) makes to an Investigating Officer a statement which he knows to be false or misleading in a material particular; or
(b) recklessly makes to an Investigating Officer a statement which is false or misleading in a material particular,

commits an offence.

(14) A person who commits an offence under subsection (13) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both; or
(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one thousand dollars, or both.

(15) Where any person—

- (a) knows or suspects that an investigation by an Investigating Officer is being or is likely to be carried out, and
(b) falsifies conceals, destroys or other-wise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which he knows or suspects are or would be relevant to such an investigation,

he commits an offence unless he proves that he had no intention of concealing the facts disclosed by the documents from an Investigating Officer.

(16) A person who commits an offence under subsection (15) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine not exceeding ten thousand dollars, or both; or
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one thousand dollars, or both.

(17) The Attorney General may by Order direct that any powers which by virtue of this section are exercisable by a police officer, other than an Investigating Officer, shall also be exercisable—

- (a) by or by any person acting under the direction of, the Comptroller of Customs; or
- (b) by a person of any other description specified in the Order.

(18) An Order under subsection (17) shall be subject to negative resolution of the Legislative Council.

(19) In this section—

“documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“evidence” includes documents and other articles; and

“items subject to legal privilege” means—

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client,
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, and
- (c) items enclosed with or referred to in such communications and made—
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them, but does not include items held with the intention of furthering a criminal purpose.

(Substituted by Act 5 of 2004)

Transfer of overseas prisoner to give evidence or assist investigation in the Virgin Islands

7. (1) This section has effect where—

- (a) a witness order has been made or a witness summons or citation issued in criminal proceedings in the Virgin Islands in respect of a person (“a prisoner”) who is detained in a country or territory outside the Virgin Islands by virtue of a sentence or order of a court or tribunal exercising criminal jurisdiction in that country or territory; or
- (b) it appears to the Governor that it is desirable for a prisoner to be identified in, or otherwise by his or her presence to assist, such proceedings or the investigation in the Virgin Islands of an offence.

(2) If the Governor is satisfied that the appropriate authority in the country or territory where the prisoner is detained will make arrangements for him or her to come to the Virgin Islands to give evidence pursuant to the witness order, witness summons or citation or, as the case may be, for the purpose mentioned in subsection (1)(b), he or she may issue a warrant under this section.

(3) No warrant shall be issued under this section in respect of a prisoner unless he or she has consented to being brought to the Virgin Islands to give evidence or, as the case may be, for the purpose mentioned in subsection (1)(b), and that consent may be given either—

- (a) by the prisoner himself or herself; or
- (b) in circumstances in which it appears to the appropriate authority in the country or territory where the prisoner is detained, that it could be inappropriate, by reason of the prisoner’s physical or mental condition or youth, for the prisoner to act for himself or herself, by a person appearing to that appropriate authority to be an appropriate person to act on the prisoner’s behalf,

but a consent once given shall not be capable of being withdrawn after the issue of the warrant.

(4) The effect of the warrant shall be to authorise—

- (a) the bringing of the prisoner to the Virgin Islands;
- (b) the taking of the prisoner to, and his or her detention in custody at, such place or places in the Virgin Islands as are specified in the warrant; and
- (c) the returning of the prisoner to the country or territory from which he or she has come.

(5) Subsections (4) to (7) shall have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.

(6) A person shall not be subject to the Immigration and Passport Act in respect of his or her entry into or presence in the Virgin Islands in pursuance of a warrant under this section, but if the warrant ceases to have effect while he or she is still in the Virgin Islands, he or she shall—

- (a) be treated for the purpose of that Act as if he or she has then illegally entered the Virgin Islands; and
- (b) be detained and returned to the country or territory from which he or she has come.

(7) This section applies to a person detained in a country or territory outside the Virgin Islands in consequence of having been transferred there—

- (a) from the Virgin Islands under the Repatriation of Prisoners Act; or
- (b) under any similar provision or arrangement from any other country or territory,

as it applies to a person detained as mentioned in subsection (1).

(Inserted by Act 5 of 2004)

Additional co-operation powers

Power of the Director of Public Prosecutions to give certain directions

8. (1) Subject to subsection (2) this section has effect where the Director of Public Prosecutions receives, either directly or through the Governor, a request for assistance in conducting an investigation and obtaining statements and other relevant evidence for the purpose of criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in a country or territory outside the Virgin Islands, from—

- (a) a court or tribunal exercising criminal jurisdiction in a country or territory outside the Virgin Islands or a prosecuting authority in such a country or territory; or
- (b) any other authority in that country or territory which appears to him or her to have the function of making such requests.

(2) The Director of Public Prosecutions shall not exercise his or her powers under this section unless he or she is satisfied that—

- (a) an offence under the law of the country or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed;
- (b) criminal proceedings in respect of that offence have been instituted in the country or territory in question or that an investigation into that offence is being carried on there.

(Amended by Act 13 of 2017)

(3) The Director of Public Prosecutions may direct, in writing, a police officer (“an Investigating Officer”) to do any of the following for the purpose of giving effect to a request—

- (a) to conduct an investigation;
- (b) to interrogate and take statements from as many such persons as may appear to the Director of Public Prosecutions to be appropriate;

(c) to make copies of such documents, to take such extracts or samples and to receive such other evidence as may appear to the Director of Public Prosecutions or the Investigating Officer to be appropriate.

(4) A person shall, at any time when he or she is being interrogated by an Investigating Officer, have the right to be advised, at his or her own expense, by a legal practitioner of his or her choice.

(5) An Investigating Officer shall not have the power to compel—

(a) a person to answer any question;

(b) a person who is not under arrest to attend at or remain in any place for the purpose of being interrogated; or

(c) a person to produce any document or thing,

and he or she shall not, unless authorised by a warrant under subsection (8), have power to enter and search premises or to seize or take documents or other things without the consent of the owner or occupier of the premises.

(6) A statement made to an Investigating Officer in the course of the exercise of his or her functions under this section may only be used in evidence against the person making the statement—

(a) on a prosecution for an offence under subsection (13); or

(b) on a prosecution for some other offence where in giving evidence he or she makes a statement inconsistent with it.

(7) Where there are reasonable grounds for suspecting that there is on premises in the Virgin Islands evidence relating to an offence referred to in subsection (2), the Director of Public Prosecutions may, in writing, direct a police officer to apply to a Judge or a Magistrate for a warrant authorising the police officer to enter and search those premises and to seize any such evidence found there, other than items subject to legal privilege.

(8) If, on an application made by a police officer pursuant to subsection (7), a Judge or Magistrate is satisfied—

(a) as to the matters referred to in subsection (2); and

(b) that there are reasonable grounds for suspecting that there is on premises in the Virgin Islands evidence relating to an offence referred to in subsection (2),

he or she may issue a warrant authorising the police officer to enter and search those premises and to seize any such evidence found there, other than items subject to legal privilege.

(9) The power to search conferred by subsection (8) is only a power to search to the extent that it is reasonably required for the purpose of discovering such evidence as is there mentioned.

(10) Any evidence obtained by an Investigating Officer or a police officer by virtue of this section shall be furnished by him or her to the Director of Public Prosecutions for transmission to the court, tribunal or authority which requested it.

(11) If in order to comply with the request, it is necessary for any evidence obtained by an Investigating Officer or a police officer to be accompanied by a certificate, affidavit or other verifying document, he or she shall also furnish for transmission such document of that nature as may be specified by the Director of Public Prosecutions.

(12) Where any evidence consists of a document, the original or a copy of the document shall be transmitted, and where it consists of any other article, the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

(13) A person who—

- (a) makes to an Investigating Officer a statement which he or she knows to be false or misleading in a material particular; or
- (b) recklessly makes to an Investigating Officer a statement which is false or misleading in a material particular,

commits an offence.

(14) A person who commits an offence under subsection (13) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$2,000, or both; or
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$1,000, or both.

(15) Where a person—

- (a) knows or suspects that an investigation by an Investigating Officer is being or is likely to be carried out; and
- (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which he or she knows or suspects are, or would be relevant to such an investigation,

he or she commits an offence unless he or she proves that he or she had no intention of concealing the facts disclosed by the documents from an Investigating Officer.

(16) A person who commits an offence under subsection (15) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine not exceeding \$10,000, or both; or
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$1,000, or both.

(17) The Attorney General may after consultation with the Director of Public Prosecutions by Order direct that any powers which by virtue of this section are exercisable by a police officer, other than an Investigating Officer, shall also be exercisable—

- (a) by, or by any person acting under the direction of, the Comptroller of Customs; or
- (b) by a person of any other description specified in the Order.

(18) An Order under subsection (17) shall be subject to negative resolution of the House of Assembly.

(19) In this section—

“documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“evidence” includes documents and other articles; and

“items subject to legal privilege” means—

- (a) communications between a professional legal adviser and his or her client or any person representing his or her client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his or her client or any person representing his or her client or between such an adviser or his or her client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made—
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them, but does not include items held with the intention of furthering a criminal purpose.

(Substituted by Act 5 of 2004)

Enforcement of overseas forfeiture orders

9. (1) The Cabinet may, by statutory instrument published in the *Gazette*, provide for the enforcement in the Virgin Islands of any order which—

- (a) is made by a court in a country or territory outside the Virgin Islands;
- (b) is for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which an offence to which this section applies has been committed and which was used in connection with the commission of such an offence.

(Substituted by Act 13 of 2017)

(2) Without prejudice to the generality of subsection (1), a statutory instrument under this section may provide for the registration by a court in the Virgin Islands of any order as a condition of its enforcement and prescribe requirements to be satisfied before an order can be registered.

(3) A statutory instrument under this section may include such supplementary and incidental provisions as appear to be necessary or expedient, and may apply for the purposes of the order, with such modifications as appear

to the Cabinet to be appropriate, any provisions relating to confiscation or forfeiture orders under any other enactment.

(4) A statutory instrument under this section may make different provision for different cases.

(5) No statutory instrument shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Assembly.

(6) This section applies to any offence which corresponds to or is similar to an offence under the Drugs (Prevention of Misuse) Act, or a drug trafficking offence as defined in section 2(1) of the Drug Trafficking Offences Act.

Supplementary

Rules of court

10. (1) Provision may be made by rules of court for any purpose for which it appears to the authority having power to make the rules that it is necessary or expedient that provision should be made in connection with any of the provisions of this Part of this Act.

(2) Rules made for the purposes of Schedule 1 to this Act may, in particular, make provision with respect to the persons entitled to appear or take part in the proceedings to which that Schedule applies for excluding the public from any such proceedings.

(3) A statutory instrument under section 9 may authorise the making of rules of court for any purpose specified in the order.

(4) This section is without prejudice to the generality of any existing powers to make rules.

PART II

THE VIENNA CONVENTION

Substances useful for manufacture of controlled drugs

Manufacture and supply of scheduled substances

11. (1) It is an offence for a person—

- (a) to manufacture a scheduled substance; or
- (b) to supply a substance to another person,

knowing or suspecting that the substance is to be used in or for the unlawful production of a controlled drug.

(2) A person guilty of an offence under subsection (1) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000 or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine not exceeding \$50,000 or both.

(3) In this section “a controlled drug” has the same meaning as in the Drugs (Prevention of Misuse) Act, and “unlawful production of a controlled drug” means the production of such a drug which is unlawful by virtue of section 6(1)(a) of that Act.

(4) In this section and elsewhere in this Part of this Act “a scheduled substance” means a substance for the time being specified in Schedule 2 to this Act.

(5) The Cabinet may by order amend that Schedule (whether by addition, deletion or transfer from one Table to the other) but—

- (a) no such order shall add any substance unless—
 - (i) it appears to the Cabinet to be frequently used in, or for the unlawful production of a controlled drug; or
 - (ii) it has been added to the Annex to the Vienna Convention under article 12 of that Convention; and
- (b) no such order shall be made unless a draft of it has been laid before and approved by a resolution of the House of Assembly.

Regulations about scheduled substances

12. (1) The Cabinet may, by regulations, make provision—

- (a) imposing requirements as to the documentation of transactions involving scheduled substances;
- (b) requiring the keeping of records and the furnishing of information with respect to such substances;
- (c) for the inspection of records kept pursuant to the regulations;
- (d) for the labelling of consignments of scheduled substances.

(2) Regulations made by virtue of subsection (1)(b) may, in particular, require—

- (a) the notification of the proposed exportation of substances specified in Table I in Schedule 2 to this Act to such countries as may be specified in the regulations; and
- (b) the production, in such circumstances as may be so specified, or evidence that the required notification has been given,

and for the purposes of section 39 of the Customs Management and Duties Act, (offences relating to exportation of prohibited or restricted goods) any such substance shall be deemed to be exported contrary to a restriction for the time being in force with respect to it under this Act if it is exported without the requisite notification having been given. *(Amended by Act 13 of 2017)*

(3) Regulations under this section may make different provision in relation to the substances specified in Table I and Table II in Schedule 2 to this Act respectively and in relation to different cases or circumstances.

(4) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Assembly.

(5) Any person who fails to comply with any requirement imposed by the regulations or, in purported compliance with any such requirement, furnishes information which he or she knows to be false in a material particular, or recklessly furnishes information which is false in a material particular, is guilty of an offence and liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000 or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine not exceeding \$50,000 or both.

(6) No information obtained pursuant to the regulations shall be disclosed except for the purposes of criminal proceedings or of proceedings under the provisions of the Drug Trafficking Offences Act, relating to the confiscation of the proceeds of drug trafficking.

Proceeds of drug trafficking

Concealing or transferring proceeds of drug trafficking

13. (1) A person is guilty of an offence if he or she—

- (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents his or her proceeds of drug trafficking;
- (b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of avoiding prosecution for a drug trafficking offence or the making or enforcement in his or her case of a confiscation order.

(2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he or she—

- (a) conceals or disguises the property; or
- (b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or the making or enforcement of a confiscation order.

(3) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he or she acquires that property for no, or for inadequate, consideration.

(4) In subsections (1)(a) and (2)(a) the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(5) For the purposes of subsection (3) consideration given for any property is inadequate if its value is significantly less than the value of that property, and there shall not be treated as consideration the provision for any

person of services or goods which are of assistance to him or her in drug trafficking.

- (6) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000 or both;
 - (b) on conviction on indictment to imprisonment for a term not exceeding 14 years or a fine not exceeding \$50,000 or both.

Interest on sums unpaid under confiscation orders

14. (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of the order or at a time specified under such order), that person shall be liable to pay interest on that sum for the period for which it remains unpaid and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him or her under the confiscation order.

(2) The High Court may, on the application of the prosecutor, increase the term of imprisonment or detention fixed in respect of the confiscation order under section 5 of the Drug Trafficking Offences Act.

(3) The rate of interest under subsection (1) shall be that for the time being applying to a civil judgment debt under section 7 of the Judgments Act.

Increase in realisable property

15. (1) This section has effect where, by virtue of section 10(3) of the Drug Trafficking Offences Act (insufficient realisable property), the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his or her proceeds of drug trafficking.

(2) If, on an application made either by the prosecutor or by a receiver appointed under the Drug Trafficking Offences Act to increase the amount in relation to the realisable property of the person in question, the High Court is satisfied that the amount that might be realised is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased), the court may—

- (a) substitute for that amount such amount (not exceeding the amount assessed as the value referred to in subsection (1)) as appears to the court to be appropriate, having regard to the amount now shown to be realisable; and
- (b) increase the term of imprisonment or detention fixed in respect of the confiscation order under section 16 of the said Act (imprisonment in default of payment) if the effect of the substitution is to increase the maximum period applicable in relation to the order under subsection (2) of that section.

*Offences at sea***Offences on Virgin Islands ships**

16. Anything which would constitute a drug trafficking offence if done on land in any part of the Virgin Islands shall constitute that offence if done on a Virgin Islands ship.

Ships used for illicit traffic

17. (1) This section applies to a Virgin Islands ship, a ship registered in a State, British Dependent Territory or Colony other than the Virgin Islands which is a party to the Vienna Convention (a "Convention State") and a ship not registered in any country or territory.

(2) A person is guilty of an offence if on a ship to which this section applies, wherever it may be, if he or she—

- (a) has a controlled drug in his or her possession; or
- (b) is in any way knowingly concerned in the carrying or concealing of a controlled drug on the ship,

knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to section 5(1) of the Drugs (Prevention of Misuse) Act, or the law of any State, British Dependent Territory or Colony other than the Virgin Islands.

(3) A certificate purporting to be issued by or on behalf of the government of any State, British Dependent Territory or Colony to the effect that the importation or exportation of a controlled drug is prohibited by law of that State, British Dependent Territory or Colony shall be evidence of the matters stated.

(4) A person guilty of an offence under this section is liable—

- (a) in a case where the controlled drug is a Class A drug—
 - (i) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000 or both;
 - (ii) on conviction on indictment, to imprisonment for life or a fine not exceeding \$50,000 or both;
- (b) in a case where the controlled drug is a Class B drug—
 - (i) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000 or both;
 - (ii) on conviction on indictment, to imprisonment for 14 years or a fine not exceeding \$50,000 or both;
- (c) in a case where the controlled drug is a Class C drug—
 - (i) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000 or both;
 - (ii) on conviction on indictment, to imprisonment for 5 years or a fine not exceeding \$50,000 or both.

(5) In this section “a controlled drug” and the references to controlled drugs of a specified class have the same meaning as in the Drugs (Prevention of Misuse) Act; and an offence under this section shall be included in the offences to which section 4 of that Act applies.

Destroying evidence

18. (1) A person—

- (a) who wilfully sinks a ship or discards any article that is on board that ship and which ship or article may be the subject of an offence; or
- (b) who, knowing that any book, document or thing, of any kind whatsoever on board a ship is or may be required in evidence in any judicial proceeding, wilfully removes or destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence,

commits an offence and is liable on conviction—

- (i) in respect of paragraph (a), to imprisonment for a term not exceeding 5 years; and
- (ii) in respect of paragraph (b), to imprisonment for a term not exceeding 2 years.

(2) For the purpose of subsection (1), whenever a ship is sunk, or an article on board a ship is discarded, or a book, document or thing on board a ship is removed or destroyed, or is rendered illegible or indecipherable or incapable of identification, it shall be presumed with respect to the person committing the act that the act was done wilfully unless that person proves the contrary.

(3) Where there is more than one person on board a ship, all persons on board the ship shall be presumed, for the purpose of subsection (2), to have committed the act concerned unless the contrary is proved.

(4) A person who attempts to commit an offence under subsection (1) commits an offence and is liable on conviction to the penalties prescribed in that subsection as if he or she had committed the complete offence, and section 350 of the Criminal Code shall apply accordingly.

(5) Where a person is charged under subsection (4) with an attempt to commit an offence, subsections (2) and (3) shall apply as if the attempt were the complete offence.

(Inserted by Act 3 of 2000)

Enforcement powers

19. (1) The powers conferred on an enforcement officer by Schedule 3 to this Act shall be exercisable in relation to any ship to which section 16 or 17 applies for the purpose of detecting, and the taking of appropriate action in respect of the offences mentioned in those sections.

(2) Those powers shall not be exercised outside the landward limits of the territorial sea of the Virgin Islands in relation to a ship registered in a Convention State except with the authority of the Attorney General; and he or

she shall not give his or her authority unless that State has in relation to that ship—

- (a) requested the assistance of the Virgin Islands for the purpose mentioned in subsection (1); or
- (b) authorised the Virgin Islands to act for that purpose.

(3) In giving his or her authority pursuant to a request or authorisation from a Convention State, the Attorney General shall impose such conditions or limitations on the exercise of the powers as may be necessary to give effect to any conditions or limitations imposed by that State, British Dependent Territory or Colony.

(4) The Attorney General may either of his or her own motion or in response to a request from a Convention State, authorise a Convention State to exercise, in relation to a Virgin Islands ship, powers corresponding to those conferred on enforcement officers by Schedule 3 to this Act, but subject to such conditions or limitations, if any, as he or she may impose.

(5) Subsection (4) is without prejudice to any agreement made, or which may be made, on behalf of the Virgin Islands whereby the Virgin Islands undertakes not to object to the exercise by any other state in relation to a British ship or powers corresponding to those conferred by that Schedule.

(6) The powers conferred by that Schedule shall not be exercised in the territorial sea of any state other than the Virgin Islands without the authority of the Attorney General and he or she shall not give his or her authority unless that state has consented to the exercise of those powers.

Enforcement powers in territorial waters of Convention State

20. (1) Subject to the other provisions of this section, a Convention State under an agreement made or which may be made by, or on behalf of the Virgin Islands may exercise in relation to a ship in the territorial waters of the Virgin Islands, powers corresponding to those conferred on enforcement officers by Schedule 3.

(2) A Convention State may—

- (a) when authorised by a law enforcement official of the Virgin Islands who is embarked on an enforcement vessel of that Convention State, exercise the powers referred to in subsection (1) in relation to a suspect ship that is not registered in the Virgin Islands;
- (b) even where there is no authorisation by a law enforcement official of the Virgin Islands, exercise the powers referred to in subsection (1) in relation to a suspect ship which is not registered in the Virgin Islands which flees into the waters of the Virgin Islands;
- (c) even where there is no authorisation by a law enforcement official of the Virgin Islands, exercise the powers referred to in subsection (1) in relation to a suspect ship not registered in the Virgin Islands,

for the purpose of detecting and taking appropriate action in respect of drug offences.

(3) A Convention State shall, before exercising the powers referred to in subsection (2)(b) and (c)—

- (a) give advance notice of its proposed action in relation to the ship to a law enforcement official of the Virgin Islands;
- (b) where it was not practicable to do so at the time, notify such officer of any action taken in relation to the ship as soon as possible after its occurrence.

(4) A Convention State shall not exercise the powers referred to in subsection (2)(b) and (c) unless an enforcement vessel of the Virgin Islands is not immediately available to exercise enforcement powers in relation to the suspect ship.

(5) For the purpose of this section—

“enforcement vessel”, in relation to a Convention State, means a warship or other ship, or aircraft of that State or Territory, authorised by the State or Territory to be on its services other than its commercial service, clearly identifiable as being on such service and having on board law enforcement officials of that state and includes any boat or aircraft carried on such ship;

“enforcement vessel of the Virgin islands” means an enforcement vessel operated by the Royal Virgin Islands Police Force or by the Customs Department;

“territorial waters” includes the territorial sea and inland waters.

(Inserted by Act 3 of 2000)

Jurisdiction and prosecutions

21. (1) Proceedings under this Part of this Act or Schedule 3 in respect of an offence on a ship may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the Virgin Islands.

(2) No such proceedings shall be instituted except by or with the consent of the Attorney General.

(3) Without prejudice to subsection (2) no proceedings for an offence under section 17 alleged to have been committed outside the landward limits of the territorial sea of the Virgin Islands on a ship registered in a Convention State shall be instituted except in pursuance of the exercise with the authority of the Governor of the powers conferred by Schedule 3 to this Act.

Supplementary

Extradition

22. The offences to which an Order in Council under section 2 of the Extradition Act 1870 (UK) can apply shall include drug trafficking offences.

Interpretation of Part II

23. (1) In this Part of this Act—

“Convention State” has the meaning given in section 17(1);

“scheduled substance” has the meaning given in section 11(4);

“ship” includes any vessel used in navigation;

“the Vienna Convention” means the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed in Vienna on 20th December, 1988;

“Virgin Islands ship” means a ship registered in the Virgin Islands.

(2) Any expression used in the Part of this Act which is also used in the Drug Trafficking Offences Act has the same meaning as in that Act.

(3) If in proceedings under this Part of this Act any question arises whether a country or territory is a state or is a party to the Vienna Convention, a certificate issued by or under the authority of the Governor shall be conclusive evidence on that question. (*Amended by Act 5 of 2004*)

PART III

GENERAL

Expenses and receipts

24. Any expenses incurred by the Governor and the Director of Public Prosecutions under this Act shall be defrayed out of money provided by the House of Assembly.

Certain provisions of the Repatriation of Prisoners Act to apply for transfer of prisoners

25. The provisions relating to the transfer of a prisoner out of the Virgin Islands or for the transfer of a prisoner into the Virgin Islands under the Repatriation of Prisoners Act, shall *mutatis mutandis* apply in relation to the transfer of a Virgin Islands prisoner to give evidence or assist in investigations overseas, or for transfer of an overseas prisoner to give evidence or assist in investigations in the Virgin Islands, under this Act.

SCHEDULE 1

(Section 5(6))

VIRGIN ISLANDS EVIDENCE FOR USE OVERSEAS: PROCEEDINGS OF COURT

Securing attendance of witness

1. The court shall have the like powers for securing the attendance of a witness for the purpose of the proceedings before the court.

Power to administer oaths

2. The court may in the proceedings take evidence on oath.

Privilege of witnesses

3. (1) A person shall not be compelled to give in the proceedings any evidence which he or she could not be compelled to give—

(a) in criminal proceedings in the Virgin Islands in which the nominated court exercises jurisdiction; or

(b) subject to subparagraph (2) in criminal proceedings in the country or territory from which the request for the evidence has come.

(2) Subparagraph (1)(b) shall not apply unless the claim of the person questioned to be exempt from giving the evidence is conceded by the court, tribunal or authority which made the request.

(3) Where such a claim made by any person is not conceded as aforesaid, he or she may (subject to the other provision of this paragraph), be required to give the evidence to which the claim relates, but the evidence shall not be transmitted to the court, tribunal or authority which requested it if a court in the country or territory in question, on the matter being referred to it, upholds the claim.

(4) Without prejudice to subparagraph (1) a person shall not be compelled under this Schedule to give any evidence if his or her doing so would be prejudicial to the security of the United Kingdom or the Virgin Islands, and a certificate signed by or on behalf of the Governor to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

(5) Without prejudice to subparagraph (1), a person shall not be compelled under this Schedule to give any evidence in his or her capacity as an officer or servant of the Crown.

(6) In this paragraph references to giving evidence include references to answering any question and to producing any document or other article and the references in subparagraph (3) above to the transmission of evidence given by a person shall be construed accordingly.

Transmission of evidence

4. (1) The evidence received by the court shall be furnished to the Director of Public Prosecutions for transmission to the court, tribunal or authority that made the request.

(2) If, in order to comply with the request, it is necessary for the evidence to be accompanied by any certificate, affidavit or other verifying documents, the court shall also furnish for transmission such document of that nature as may be specified in the notice nominating the court.

(3) Where the evidence consists of a document, the original or a copy shall be transmitted, and where it consists of any other article, the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the requests.

Supplementary

5. For the avoidance of doubt it is hereby declared that the Evidence Act applies to other proceedings before the court.

6. No order for costs shall be made in the proceedings.

SCHEDULE 2

(Sections 11 and 12)

SUBSTANCES USEFUL FOR MANUFACTURING CONTROLLED DRUGS

TABLE I

EPHEDRINE
ERGOMETRINE
EROGOTAMINE
ISOSAFROLE
1-PHENYL-2-PROPANONE
LYSERGIC ACID
N-ACETYLANTHRANILIC ACID
NOREPHEDRINE
PIPERONAL
PSEUDOEPHEDRINE
SAFROLE
3,4-METHYLENEDIOXYPHENYL-2-PROPANONE

The salts of the substances listed in this Table whenever the existence of such salts is possible.

(Amended by S.I. 22/2010)

TABLE II

ACETIC ANHYDRIDE
ACETONE
ANTHRANILIC ACID
ETHYL ETHER
HYDROCHLORIC ACID
METHYL ETHYL KETONE
PHENYLACETIC ACID
PIPERIDINE
POTASSIUM PERMANGANATE
SULPHURIC ACID
TOLUENE

The salts of the substances listed in this Table whenever the existence of such salts is possible (the salts of hydrochloric acid and sulphuric acid are specifically excluded).

(Amended by S.I. 22/2010)

SCHEDULE 3*(Section 19)***ENFORCEMENT POWERS IN RESPECT OF SHIPS*****Preliminary***

1. (1) In this Schedule “an enforcement officer” means—
- (a) a police officer or a customs officer;
 - (b) a Captain of any ship belonging to the Royal Navy or any person acting under the command of such Captain; and
 - (c) any other person of a description specified in an order made for the purposes of this Schedule by the Governor.

(2) The power to make an order under subparagraph (1)(b) shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Assembly.

(3) In this Schedule “the ship” means the ship in relation to which the powers conferred by this Schedule are exercised.

Power to stop, board, divert and detain

2. (1) An enforcement officer may stop the ship, board it and, if he or she thinks it necessary for the exercise of his or her functions, require it to be taken to a port in the Virgin Islands and detain it there.

(2) Where an enforcement officer is exercising his or her powers with the authority of the Attorney General given under section 19(2) of this Act the officer may require the ship to be taken to a port in the Convention State in question or, if that state has so requested, in any other country or territory willing to receive it.

(3) For any of those purposes he or she may require the member of the crew to take such action as may be necessary.

(4) If an enforcement officer detains a vessel he or she shall serve on the master a notice in writing stating that it is to be detained until the notice is withdrawn by the service on him or her of a further notice in writing signed by an enforcement officer.

Power to search and obtain information

3. (1) An enforcement officer may search the ship, anyone on it and anything on it including its cargo.

(2) An enforcement officer may require any person on the ship to give information concerning himself or herself or anything on the ship.

(3) Without prejudice to the generality of those powers an enforcement officer may—

- (a) open any containers;
- (b) make tests and take samples of anything on the ship;
- (c) require the production of documents, books or records relating to the ship or anything on it;

- (d) make photographs or copies of anything whose production he or she has power to require.

Powers in respect of suspected offence

4. If an enforcement officer has reasonable grounds to suspect that an offence mentioned in section 16 or 17 of this Act has been committed on a ship to which that section applies he or she may—

- (a) arrest without warrant anyone whom he or she has reasonable grounds for suspecting to be guilty of the offence; and
- (b) seize and detain anything found on the ship which appears to him or her to be evidence of the offence.

Assistants

5. (1) An enforcement officer may take with him or her, to assist him or her in exercising his or her powers—

- (a) any other persons; and
- (b) any equipment or materials.

(2) A person whom an enforcement officer takes with him or her to assist him or her may perform any of the officer's functions but only under the officer's supervision.

Use of reasonable force

6. An enforcement officer may use reasonable force, if necessary, in the performance of his or her functions.

Evidence of authority

7. An enforcement officer shall, if required, produce evidence of his or her authority.

Protection of officers

8. An enforcement officer shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his or her functions under this Schedule if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

Offences

9. (1) A person is guilty of an offence if he or she—

- (a) intentionally obstructs an enforcement officer in the performance of any of his or her functions under this Schedule;
- (b) fails without reasonable excuse to comply with a requirement made by an enforcement officer in the performance of those functions; or
- (c) in purporting to give information required by an officer for the performance of those functions—
 - (i) makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular; or (*Amended by Act 5 of 2004*)

(ii) intentionally fails to disclose any material particular.

(2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding \$5,000.
