

VIRGIN ISLANDS

**DRUG TRAFFICKING
OFFENCES ACT, 1992**

ARRANGEMENT OF SECTIONS

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I Assent
Peter A. Penfold
Governor
2nd June, 1992

VIRGIN ISLANDS

No. 5 of 1992

An Act to make provision for the recovery of the proceeds of drug trafficking and for matters connected therewith or incidental thereto.

[Gazetted 9th July, 1992]

ENACTED by the Legislature of the Virgin Islands as follows –

1. This Act may be cited as the Drug Trafficking Offences Act, 1992 and shall come into operation on such date as the Governor may, by Proclamation in the Gazette, appoint. Short title and commencement.

2. (1) In this Act, unless the context otherwise requires – Interpretation.

"corresponding law" has the meaning assigned thereto by section 3;

"Court" means the High Court;

"drug trafficking" means doing or being concerned in any of the following whether in the Territory or elsewhere-

(a) producing or supplying a controlled drug where the production or supply contravenes section 6(1) of the Drugs (Prevention of Misuse) Act, 1988* or a corresponding law;

(b) transporting or storing a controlled drug where possession of the drug contravenes section 7(1) of the Drugs (Prevention of Misuse) Act, 1988* or a corresponding law;

*Cap. 178 (Vol. III) in Revised Edition

- (c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 5(1) of the Drugs (Prevention of Misuse) Act, 1988* or a corresponding law;
- (d) entering into or being otherwise concerned in an arrangement whereby -
 - (i) the retention or control by or on behalf of another of the proceeds of drug trafficking by him is facilitated; or
 - (ii) the proceeds of drug trafficking by another are used to secure that funds are placed at his disposal or are used for his benefit to acquire property by way of investment;

"drug trafficking offence" means -

- (a) an offence under section 5, 6(2) or (3) or 7(2) (where subsection (4) applies) or 7(3) of the Drugs (Prevention of Misuse) Act, 1988* (Import, export, production, supply and possession for supply of controlled drugs);
- (b) an offence under section 21 of the Drugs (Prevention of Misuse) Act, 1988* (assisting in or inducing commission outside the Territory of an offence punishable under a corresponding law);
- (c) an offence under section 23 of this Act;
- (d) a conspiracy to commit any of those offences in paragraphs (a) to (c);
- (e) an offence of attempting to commit any of those offences in paragraphs (a) to (c);
- (f) an offence of inciting another to commit any of those offences in paragraphs (a) to (c);
- (g) aiding, abetting, counselling or procuring the commission of those offences in paragraphs (a) to (c);

*Cap. 178 (Vol. III) in Revised Edition

"interest", in relation to property, includes right;

"property" includes money and all other property, real or personal, including things in action and other intangible property.

(2) The expressions listed in column one below are respectively defined or (as the case may be) fall to be construed in accordance with the provision of this Act listed in column two in relation to those expressions.

COLUMN ONE

COLUMN TWO

Benefited from drug trafficking	Section 5 (1) (a)
Charging order	Section 12 (2)
Confiscation order	Section 5 (3)
Dealing with property	Section 11(8)
Defendant	Section 5 (3)
Gift caught by this Act	Section 4 (8)
Making a gift	Section 4 (9)
Proceeds of drug trafficking	Section 6 (1)
Realisable property	Section 4 (1)
Restraint order	Section 11(1)
Value of gift, payment or reward	Section 4 (5)
Value of proceeds of drug trafficking	Section 6 (1), (5)
Value of property	Section 4 (4)

(3) This Act applies to property whether it is situated in the Territory or elsewhere.

(4) References in this Act to offences include a reference to offences committed before the coming into operation of this Act but nothing in this Act imposes any duty or confers any power on the Court in or in connection with proceedings against a person for a drug tracking offence instituted before the coming into operation of this Act.

(5) References in this Act to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection.

(6) The following provisions shall have effect for the interpretation of this Act -

- (a) Property is held by any person if he holds any interest in it;
- (b) References to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator;

- (c) References to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested;
- (d) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property;
- (e) Proceedings for an offence are instituted in the Territory-
 - (i) when a summons or warrant is issued in respect of the offence;
 - (ii) when a person is charged with the offence after being taken into custody without a warrant;
 - (iii) when an indictment is preferred,

and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times;

- (f) Proceedings for an offence are concluded -
 - (i) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings;
 - (ii) on the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

(7) An 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 would be varied or set aside.

(8) Without prejudice to the provisions of any other law, the powers exercisable by the Court are exercisable by the Court of Appeal on appeal from the Court.

3. (1) In this Act the expression "corresponding law" means a law stated in a certificate purporting to be issued by or on behalf of the Government of a country outside the Territory to be a law providing for the control and regulation

Meaning of "corresponding law".

in that country of the production, supply, use, export and import of drugs and other substances in accordance with the provisions of the Single Convention on Narcotic Drugs signed at New York on 30th March 1961 or a law providing for the control and regulation in that country of the production, supply, use, export and import of dangerous or otherwise harmful drugs in pursuance of any treaty, convention or other agreement or arrangement to which the Government of the country and the Government of the United Kingdom of Great Britain and Northern Ireland including the Territory are for the time being parties.

(2) A statement in any such certificate as aforesaid to the effect that any facts constitute an offence against the law mentioned in the certificate shall be conclusive evidence of the matters stated.

4. (1) In this Act, "realisable property" means, subject to subsection (2) -

Provisions
as to profit.

- (a) any property held by the defendant; and
- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act.

(2) Property is not realisable property if an order under section 29 of the Drugs (Prevention of Misuse) Act, 1988*, is in force in respect of the property.

(3) For the purposes of sections 7 and 8, the amount that might be realised at the time a confiscation order is made against the defendant is -

- (a) the total of the value at that time of all the realisable property held by the defendant; less
- (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations,

together with the total of the values at that time of all gifts caught by this Act.

(4) Subject to the following provisions of this section, for the purposes of this Act the value of property (other than cash) in relation to any person holding the property-

*Cap. 178 (Vol. III) in Revised Edition

(a) where any other person holds an interest in the property, is -

- (i) the market value of the first-mentioned person's beneficial interest in the property; less
- (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and

(b) in any other case, is its market value.

(5) Subject to subsection (9), references in this Act to the value at any time (referred to in subsection (6) as "the material time") of a gift caught by this Act or of any payment or reward are references to -

(a) the value of the gift, payment or reward to the recipient when he receive it adjusted to take account of subsequent changes in the value of money; or

(b) where subsection (6) applies, the value there mentioned, whichever is the greater.

(6) Subject to subsection (9), if at the material time the recipient holds -

(a) the property which he received (not being cash);

(b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (5) (b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it represents the property which he received, but disregarding in either case any charging order.

(7) For the purposes of subsection (3), an obligation has priority at any time if it is an obligation of the defendant to -

(a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or

(b) pay any sum which, if the defendant had been adjudged bankrupt or was being wound up would be among the preferential debts.

(8) A gift (including a gift made before the coming into operation of this Act) is caught by this Act if-

- (a) it was made by the defendant at any time since the beginning of the period of six years ending when the proceedings were instituted against him; or
- (b) it was made by the defendant at any time and was a gift of property -
 - (i) received by the defendant in connection with drug trafficking carried on by him or another; or
 - (ii) which in whole or in part directly or indirectly represented in the defendant's ands property received by him in that connection.

(9) For the purposes of this Act-

- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
- (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

5. (1) Where a person appears before the Court to be sentenced in respect of one or more drug trafficking offences (and has not previously been sentence or otherwise dealt with in respect of his conviction for the offence or, as the case may be, any of the offences concerned) the Court shall act as follows -

Confiscation orders.

- (a) The Court shall first determine whether he has benefited from drug trafficking and for the purposes of this Act, a person who has at any time (whether before or after the coming into operation of this Act) received any payment or other reward in connection with drug trafficking carried on by him or another has benefited from drug trafficking;
- (b) If the Court determines that he has so benefited, the Court shall, before sentencing or otherwise dealing

with him in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 8 the amount to be recovered in his case by virtue of this section;

- (c) The Court shall then, in respect of the offence or offences concerned -
- (i) order him to pay that amount;
 - (ii) take account of the order before -
 - (a) imposing any fine on him; or
 - (b) making any order under section 29 of the Drugs (Prevention of Misuse) Act, 1988*;
and
 - (iii) subject to sub-paragraph (ii), leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

(2) No law restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way, shall by reason only of the making of an order under this section, restrict the Court from dealing with an offender in any way the Court considers appropriate in respect of a drug trafficking offence.

(3) In this Act -

- (a) an order under this section is referred to as a "confiscation order"; and
- (b) a person against whom proceedings have been instituted for a drug trafficking offence is referred to (whether or not he has been convicted) as "the defendant".

6. (1) For the purposes of this Act-

- (a) any payments or other rewards received by a person at any time (whether before or after the coming into operation of this Act) in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking; and

Assessing
the proceeds
of drug
trafficking.

*Cap. 178 (Vol. III) in Revised Edition

- (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

(2) The Court may, for the purpose of determining whether the defendant has benefited from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking make the following assumptions, except to the extent that any of the assumptions are shown to be incorrect in the defendant's case.

(3) Those assumptions are-

(a) that any property appearing to the Court -

- (i) to have been held by him at any time since his conviction; or
- (ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,

was received by him, at the earliest time at which he appears to the Court to have held it, as a payment or reward in connection with drug trafficking carried on by him;

- (b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug tracking carried on by him; and
- (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.

(4) Subsection (2) does not apply if the only drug trafficking offence in respect of which the defendant appears before the Court to be sentenced is an offence under section 23.

(5) For the purpose of assessing the value of the defendant's proceeds of drug trafficking in a case where a confiscation order has previously been made against him, the Court shall leave out of account any of his proceeds of drug trafficking that are shown to the Court to have been taken into account in determining the amount to be recovered under that order.

7. (1) Where -

- (a) there is tendered to the Court by the prosecutor a statement as to any matters relevant to the determination whether the defendant has benefited from drug trafficking or to the assessment of the value of his proceeds of drug trafficking; and
- (b) the defendant accepts to any extent any allegation in the statement,

the Court may, for the purposes of that determination and assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where -

- (a) a statement is tendered under subsection (1) (a); and
- (b) the Court is satisfied that a copy of the statement has been served on the defendant,

the Court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

(3) If the defendant fails in any respect to comply with a requirement under subsection (2), he may be treated for the purposes of this section as accepting every allegation in the statement apart from -

- (a) any allegation in respect of which he has complied with the requirement; and
- (b) any allegation that he has benefited from drug trafficking or that any payment or other reward was received by him in connection with drug trafficking carried on by him or another.

(4) Where -

- (a) there is tendered to the Court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
- (b) the prosecutor accepts to any extent any allegation in the statement,

the Court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters

to which it relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section either -

- (a) orally before the Court; or
- (b) in writing in accordance with rules of court (if any).

(6) No acceptance by the defendant under this section that any payment or other reward was received by him in connection with drug trafficking carried on by him or another shall be admissible in evidence in any proceeding for an offence.

8. (1) Subject to subsection (3), the amount to be recovered in the defendant's case under the confiscation order shall be the amount the Court assesses to be the value of the defendant's proceeds of drug trafficking.

Amount to be recovered under confiscation order.

(2) If the Court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under section 7 or otherwise), the Court may issue a certificate giving the Court's opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3).

(3) If the Court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the Court assesses to be the value of his proceeds of drug trafficking, the amount to be recovered in the defendant's case under the confiscation order shall be the amount appearing to the Court to be the amount that might be so realised.

9. (1) Where the Court orders the defendant to pay any amount under section 5, the order shall have effect as if that amount was a fine and the amount may be recovered in the same way as a fine may be recovered.

Application of procedure for enforcing fines.

(2) Where the whole or any part of an amount ordered to be paid remains unpaid after such period as the Court may determine the defendant shall be sentenced to imprisonment in accordance with the following table -

Where the amount does not exceed \$10,000	6 months
Where the amount exceeds \$10,000 but does not exceed \$20,000	12 months
Where the amount exceeds \$20,000 but does not exceed \$200,000	18 months

Where the amount exceeds \$200,000 but does not exceed \$400,000	2 years
Where the amount exceeds \$400,000 but does not exceed \$1,000,000	3 years
Where the amount exceeds \$1,000,000 but does not exceed \$4,000,000	5 years
Where the amount exceeds \$4,000,000	10 years

(3) Where-

- (a) a warrant of committal is issued for a default in payment of an amount ordered to be paid under section 5 in respect of an offence or offences; and
- (b) at the time the warrant is issued, the defendant is liable to serve a custodial sentence in respect of the offences,

the term of imprisonment to be served in default of payment of the amount shall not begin to run until after the expiry of the term mentioned in paragraph (b).

(4) The reference in subsection (3) to the custodial sentence which the defendant is liable to serve in respect of the offence or offences is a reference to the term of imprisonment which he is liable to serve in respect of the offence or offences and consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

10. (1) The powers conferred on the Court by sections 11 and 12 are exercisable where -

- (a) proceedings have been instituted in the Territory against the defendant for a drug trafficking offence;
- (b) the proceedings have not been concluded; and
- (c) the Court is satisfied that there is reasonable cause to believe that the defendant has benefited from drug trafficking.

(2) The powers conferred on the Court by sections 11 and 12 are also exercisable where the Court is satisfied -

- (a) that whether by the laying of an information or a charge or otherwise, a person is charged with a drug trafficking offence; and

Cases in which restraint orders and charging orders may be made.

- (b) that there is reasonable cause to believe that he has benefited from drug trafficking.

(3) For the purposes of sections 11 and 12, at any time when those powers are exercisable before proceedings have been instituted -

- (a) references in this Act to the defendant shall be construed as references to the person referred to in subsection (2) (a);
- (b) references in this Act to the prosecutor shall be construed as references to the person who the Court is satisfied is to have the conduct of the proposed proceedings; and
- (c) references in this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2) (a) for a drug trafficking offence.

(4) Where the Court has made an order under section 11 or 12 by virtue of subsection (2), the Court shall discharge the order if proceedings in respect of the offence are not instituted (whether by the laying of an information, a charge or otherwise) within such time as the Court considers reasonable.

11. (1) The Court may by order (in this Act referred to as a "restraint order") prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

Restraint orders.

(2) A restraint order may apply -

- (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
- (b) to realisable property held by a specified person, being property transferred to him after the making of the order.

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 12.

(4) A restraint order -

- (a) may be made only on an application by the prosecutor, with the written approval of the Attorney General;

- (b) may be made on an ex parte application to a Judge in chambers; and
- (c) shall provide for notice to be given to persons affected by the order.

(5) A restraint order -

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged when proceedings for the offences are concluded.

(6) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(7) Where the Court has made a restraint order, the Court may at any time appoint a receiver-

- (a) to take possession of any realisable property; and
- (b) in accordance with the Court's directions, to manage or otherwise deal with the property in respect of which he is appointed,

subject to such conditions and exceptions as may be specified by the Court; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.

(8) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression) -

- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
- (b) removing property from the Territory.

(9) Where the Court has made a restraint order a police officer may for the purpose of preventing any realisable property being removed from the Territory seize the property,

(10) Property seized under subsection (9) shall be dealt with in accordance with the Court's directions.

(11) The Title by Registration Act (Chapter 206)* and the Registered Land Ordinance, 1970** shall apply -

- (a) in relation to restraint orders, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and
- (b) in relation to applications for restraint orders, as they apply in relation to other pending land actions.

(12) The prosecutor shall be treated for the purposes of section 124 of the Registered Land Ordinance, 1970** (inhibitions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.

12. (1) The Court may make a charging order on realisable property for securing the payment to the Crown -

Charging orders in respect of land, securities etc.

- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
- (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

(2) For the purposes of this Act, a charging order is an order made under this section imposing on any such realisable property as may have been specified in the order a charge for securing the payment of money to the Crown.

(3) A charging order-

- (a) may be made only on an application by the prosecutor, with the written approval of the Attorney General;
- (b) may be made on an ex parts application to a Judge in chambers;
- (c) shall provide for notice to be given to persons affected by the order; and
- (d) may be made subject to such conditions as the Court thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.

(4) Subject to subsection (6), a charge may be

*Cap. 231(Vol. IV) in Revised Edition

**Cap. 229 (Vol. IV) in Revised Edition

imposed by a charging order only on -

- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Act in any asset of a kind mentioned in subsection (5); or
- (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first mentioned trust.

(5) The assets referred to in subsection (4) are -

- (a) land in the Territory, or
- (b) securities of any of the following kinds -
 - (i) Government stock;
 - (ii) stock of any body (other than a building society) incorporated within the Territory;
 - (iii) stock of any body incorporated outside the Territory, being stock registered in a register kept within the Territory;
 - (iv) units of any unit trust in respect of which a register of the unit holders is kept within the Territory.

(6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (5) (b), the Court may provide for the charge to extend to any interest or dividend payable in respect of that asset.

(7) The Court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings for the offence are concluded or the amount payment of which is secured by the charge is paid into Court.

(8) An application for the discharge or variation of a charging order may be made by any person affected by it.

13. Subject to any provision made under section 14 or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge creat-

Charging orders: supplementary provisions.

ed by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

14. (1) Where-

Realisation
of property

- (a) in proceedings instituted for a drug trafficking offence, a confiscation order is made;
- (b) the order is not subject to appeal; and
- (c) the proceedings have not been concluded,

the Court may, on an application by the prosecutor, with the written approval of the Attorney General, exercise the powers conferred by subsections (2) to (6).

(2) The Court may appoint a receiver in respect of realisable property.

(3) The Court may empower a receiver appointed under subsection (2), under section 11 or in pursuance of a charging order -

- (a) to enforce any charge imposed under section 12 on realisable property or on interest or dividends payable in respect of such property; and
- (b) in relation to any realisable property other than property for the time being subject to a charge under section 12, to take possession of the property subject to such conditions or exceptions as may be specified by the Court.

(4) The Court may order any person having possession of realisable property to give possession of it to any such receiver.

(5) The Court may empower any such receiver to realise any realisable property in such manner as the Court may direct.

(6) The Court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the Court may direct and the Court may on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 12.

(8) The Court shall not in respect of any property exercise the powers conferred by subsections (3) (a), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

Application
of proceeds
of realisa-
tion and
other sums.

15. (1) Subject to subsection (2), the following sums in the hands of a receiver appointed under section 11 or 12 or in pursuance of a charging order, that is -

- (a) the proceeds of the enforcement of any charge imposed under section 12;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 11 or 14; and
- (c) any other sums, being property held by the defendant,

shall, first be applied in payment of such expenses incurred by a person acting as a receiver or a liquidator as are payable under section 20 (2) and then shall after such payments (if any) as the Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

(2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums -

- (a) among such of those who held property which has been realised under this Act; and
- (b) in such proportions,

as the Court may direct after giving a reasonable opportunity for such persons to make representations to the Court.

(3) The receipt of any sum by the Registrar of the Court on account of an amount payable under a confiscation order shall reduce the amount so payable, but the Registrar of the Court shall apply the money received for the purposes specified in this section and in the order so specified.

(4) The Registrar of the Court shall first pay any expenses incurred by a person acting as a receiver or a liquidator and payable under section 20 (2) but not already paid under subsection (1).

(5) If the money was paid to the Registrar of the Court by a receiver appointed under section 11 or 14 or in pursuance of a charging order the Registrar of the Court

shall next pay the receiver's remuneration and expenses.

(6) After making-

- (a) any payment required by subsection (4); and
- (b) in a case to which subsection (5) applies, any payment required by that subsection,

the Registrar of the Court shall reimburse any amount paid under section 20 (2).

(7) Any balance in the hands of the Registrar of the Court after he has made all payments required by the foregoing provisions of this section shall be treated as if it were a fine imposed by the Court.

16. (1) The following provisions apply to the powers conferred on the Court by sections 11 to 15, or on a receiver appointed under section 11 or 14 or in pursuance of a charging order.

Exercise of powers by Court or receiver.

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) An order may be made or other action taken in respect of a debt owed by the Crown.

(6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

17. (1) If, on an application by the defendant in respect of a confiscation order, the Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order the Court shall issue a certificate to that effect, giving the Court's reasons.

Variation of confiscation orders.

(2) For the purposes of subsection (1) -

- (a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated, the Court shall take into account the extent to which any property held by him may be distributed among the creditors; and
- (b) the Court may disregard any inadequacy in the realisable property which appears to the Court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Act from any risk of realisation under this Act.

(3) Where a certificate has been issued under subsection (1), the defendant may apply to the Court for the amount to be recovered under the order to be reduced.

(4) The Court shall, on an application under subsection (3) -

- (a) substitute for the amount to be recovered under the order such lesser amount as the Court thinks just in all the circumstances of the case; and
- (b) substitute, if necessary, the appropriate term of imprisonment in accordance with the provisions of section 9.

18. (1) Where a person who holds realisable property is adjudged bankrupt -

- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and
- (b) any proceeds of property realised by virtue of section 11 (6) or 14 (5) or (6) for the time being in the hands of a receiver appointed under section 11 or 14,

is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act*.

(2) Where a person has been adjudged bankrupt, the powers conferred on the Court by sections 11 to 15 or on a receiver so appointed shall not be exercised in relation to -

Bankruptcy
of
defendant,
etc.

Cap. 9*.

*Cap. 8 (Vol. 1) in Revised Edition

- (a) property of the bankrupt for the time being for the purposes of the Bankruptcy Act*; and
- (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 27 (2) of that Act.

(3) Subsection (2) does not affect the enforcement of a charging order-

- (a) made before the order adjudging the person bankrupt; or
- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(4) Where, in the case of a debtor, an interim receiver stands appointed under section 10 of the Bankruptcy Act* and any property of the debtor is subject to a restraint order, the powers conferred on the interim receiver by virtue of that section do not apply to property for the time being subject to the restraint order.

(5) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Act -

- (a) no order shall be made under section 28 or 44 of the Bankruptcy Act* in respect of the making of the gift at any time when proceedings for a drug trafficking offence have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or a charging order; and
- (b) any order made under either of those sections after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.

19. (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to -

Winding up
of company
holding
realisable
property.

- (a) property for the time being subject to a restraint order made before the relevant time; and

*Cap. 8 (Vol. I) in Revised Edition

- (b) any proceeds of property realised by virtue of section 11 (6) or 14 (5) or (6) for the time being in the hands of a receiver appointed under section 11 or 14.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Court by sections 11 to 15 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable -

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Subsection (2) does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(4) In this section -

Cap. 243*.

"company" means any company which may be wound up under the Companies Act*; and

"the relevant time" means -

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the Court, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

20. (1) Without pre to the generality of any provisions contained in the Bankruptcy Act** or in any other Act, where -

Receivers and liquidators dealing with property subject to restraint order.
Cap 9**.

*Cap. 286 (Vol. V) in Revised Edition

**Cap. 8 (Vol. I) in Revised Edition

- (a) any person acting as a receiver or liquidator seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the Court or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting; and a person so acting shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(2) Any person who, acting as a receiver or liquidator incurs expenses -

- (a) in respect of such property as is mentioned in paragraph (a) of subsection (1) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
- (b) other than in respect of such property as is so mentioned, being expenses which but for the effect of restraint order, might have been met by taking possession of and realising the property,

shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 16.

(3) In this Act, the expression "acting as a receiver or liquidator" shall be construed in accordance- with the provisions of the Bankruptcy Act* and the Companies Act** respectively,

21. (1) Where a receiver appointed under section 11 or 14 or in pursuance of a charging order takes any action -

Receivers:
supplemen-
tary
provisions.

*Cap. 8 (Vol. I) in Revised Edition

**Cap. 285 (Vol. V) in Revised Edition

- (a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property,
- (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall be paid by the prosecutor or, in a case where proceedings for a drug trafficking offence are not instituted, by the person on whose application the receiver was appointed.

Compensation.

22. (1) If proceedings are instituted against a person for a drug trafficking offence or offences and either -

- (a) the proceedings do not result in his conviction for any drug trafficking offence; or
- (b) where he is convicted of one or more drug trafficking offences -
 - (i) the conviction or convictions concerned are quashed (and no conviction for any drug trafficking offence is substituted); or
 - (ii) he is pardoned by the Governor in respect of the conviction or convictions concerned,

the Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(2) The Court shall not order compensation to be paid in any case unless the Court is satisfied -

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned, and that but for that default, the proceedings would not have been instituted or continued; and
- (b) that the applicant has suffered substantial loss in consequence of anything done in relation to the property by or in pursuance of an order of the Court under sections 11 to 14.

(3) The amount of compensation to be paid under this section shall be such as the Court thinks just in all the circumstances of the case.

23. (1) Subject to subsection (3), any person who enters into or is otherwise concerned in an arrangement whereby -

Assisting another to retain the benefit of drug trafficking.

- (a) the retention or control by or on behalf of another (call him 'A') of A's proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
- (b) A's proceeds of drug trafficking -
 - (i) are used to secure that funds are placed at A's disposal; or
 - (ii) are used for A's benefit to acquire property by way of investment,

knowing or suspecting that A is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking, is guilty of an offence.

(2) In this section, references to any person's proceeds of drug trafficking include a reference to any property which in whole or in part directly or indirectly represented in his hands his proceeds of drug trafficking.

(3) Where a person discloses to a police officer a suspicion or belief that any funds or investments are derived from or used in connection with drug tracking or any matter on which such a suspicion or belief is based -

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract; and
- (b) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if the disclosure is made in accordance with this paragraph, that is -
 - (i) it is made before he does the act concerned, being an act done with the consent of the police officer; or
 - (ii) it is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

(4) In proceedings against a person for an offence under this section, it is a defence to prove -

- (a) that he did not know or suspect that the arrangement related to any person's proceeds of drug trafficking; or
- (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1); or
- (c) that -
 - (i) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement; but
 - (ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3) (b).

(5) Any person guilty of an offence under this section is liable -

- (a) on conviction on indictment, to imprisonment for a term not exceeding fifteen years; and
- (b) on summary conviction, to a fine of one hundred thousand dollars or where there is evidence of the street value of the controlled drug, three times the value of the controlled drug, whichever is the greater and to imprisonment for a term not exceeding ten years but which shall not be less than five years.

24. (1) The Governor in Council may by Order published in the Gazette -

- (a) direct in relation to a country or territory outside the Territory designated by the Order ("a designated country") that, subject to such modifications as maybe specified, this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
- (b) make -
 - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order;

Enforce-
ment of
external
confiscation
orders.

- (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 25; and
- (iii) such incidental, consequential and transitional provision,

as appears to the Governor in Council to be expedient; and

- (c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order and which are retained there shall nevertheless be treated as reducing the amount payable under the order to such extent as may be specified.

(2) In this Act-

"external confiscation order" means an order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value; and

"modifications" includes additions, alterations and omissions.

(3) An Order by the Governor in Council under this section may make different provision for different cases or classes of case.

(4) An Order by the Governor in Council under this section shall not be made unless a draft of the Order has been laid before and approved by resolution of the Legislative Council.

25. (1) On an application made by or on behalf of the Government of a designated country, the Court may register an external confiscation order made there if-

Registration of external confiscation orders.

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
- (c) it is of the opinion that enforcing the order in the

Territory would not be contrary to the interests of justice.

(2) In subsection (1) "appeal" includes-

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial or a stay of execution.

(3) The Court shall cancel the registration of an external confiscation order if it appears to the Court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

26. (1) A police officer may, for the purpose of an investigation into drug trafficking, apply with the written consent of the Attorney General, to a Judge for an order under subsection (2) in relation to particular material or material of a particular description.

(2) Subject to section 32 (11), if on such an application the Judge is satisfied that the conditions in subsection (4) are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall -

- (a) produce it to a police officer for him to take away; or
- (b) give a police officer access to it,

within such period as the order may specify.

(3) The period to be specified in an order under subsection (2) shall be seven days unless it appears to the Judge that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) are-

- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
- (b) that there are reasonable grounds for suspecting that the material to which the application relates -
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and

Orders to
make
material
available.

- (ii) does not consist of or include items subject to legal privilege or excluded material; and
- (c) that there are reasonable grounds for believing that it is in the public interest, having regard -
 - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

(5) Where the Judge makes an order under subsection (2) (b) in relation to material on any premises he may, on the application of a police officer, order any person who appears to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material.

(6) Provision may be made by rules of court as to the discharge and variation of orders under this section, and proceedings relating to such orders; and until such rules are made the procedure with respect to the discharge and variation of orders under this section, and the proceedings relating to such orders shall be determined by the Judge.

(7) Where the material to which an application under this section relates consists of information contained in a computer -

- (a) an order under subsection (2) (a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
- (b) an order under subsection (2) (b) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(8) An order under subsection (2)-

- (a) shall not confer any right to production of, or access to, items subject to legal privilege or excluded material;
- (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by written law or otherwise; and

- (c) may be made in relation to material in the possession of a government department.

Authority
for search.

27. (1) A police officer may, for the purpose of an investigation into drug trafficking, apply with the written consent of the Attorney General to a Judge or a Magistrate for a warrant under this section in relation to specified premises.

(2) On an application under subsection (1), the Judge or a Magistrate may issue a warrant authorising a police officer to enter and search the premises if he is satisfied –

- (a) that an order under section 26 in relation to material on the premises has not been complied with;
- (b) that the conditions in subsection (3) are fulfilled; or
- (c) that the conditions in subsection (4) are fulfilled.

(3) The conditions referred to in subsection (2) (b) are –

- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
- (b) that the conditions in section 26 (4) (b) and (c) are fulfilled in relation to any material on the premises; and
- (c) that it would not be appropriate to make an order under that section in relation to the material because –
 - (i) it is not practicable to communicate with any person entitled to produce the material;
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the material.

(4) The conditions referred to in subsection (2) (c) are –

- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;

(b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at type time of the application be particularised; and

(c) that -

(i) it is not practicable to communicate with any person entitled to grant entry to the premises;

(ii) entry to the premises will not be granted unless a warrant is produced; or

(iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a police officer arriving at the premises could secure immediate entry to them.

(5) Where a police officer has entered any premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege and excluded material, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

28. (1) Subject to subsection (2), in sections 26 and 27 "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

Meaning of
"items sub-
ject to legal
privilege."

- (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.

(2) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

Meaning of "excluded material".

29. (1) Subject to the following provisions of this section, in sections 26 and 27 "excluded material" means -

- (a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;
- (b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;
- (c) journalistic material which a person holds in confidence and which consists -
 - (i) of documents; or
 - (ii) of records other than documents.

(2) A person holds material other than journalistic material in confidence for the purposes of this section if he holds it subject-

- (a) to an express or implied undertaking to hold it in confidence; or
- (b) to a restriction on disclosure or an obligation of secrecy contained in any written law, including any written law passed or made after this Act.

(3) A person holds journalistic material in confidence for the purposes of this section if-

- (a) he holds it subject to such an undertaking, restriction or obligation; and
- (b) it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

30. (1) In section 29, "personal records" means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating-

Meaning of "personal records".

- (a) to his physical or mental health;
- (b) to spiritual counselling or assistance given or to be given to him; or
- (c) to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who -
 - (i) by reason of his office or occupation has responsibilities for his personal welfare; or
 - (ii) by reason of an order of a court has responsibilities for his supervision.

31. (1) Subject to subsection (2), in section 29 "journalistic material" means material acquired or created for the purposes of journalism.

Meaning of "journalistic material".

(2) Material is only journalistic material if it is in the possession of a person who acquired or created it for the purposes of journalism.

(3) A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

32. (1) Subject to subsection (4), the Attorney General, after consulting the Governor, may apply, either by himself, or by a person authorised by him in writing, to the Court for an order that any material mentioned in subsection (3) which is in the possession of a government department be produced to the Court and the Court may, upon such application, make such order and specify the period within which such material should be produced to the Court.

Disclosure of information held by government departments.

(2) The power to make an order under subsection (1) is exercisable if-

- (a) the powers conferred on the Court by sections 11 (1) and 12 (1) are exercisable by virtue of section 10 (1); or
- (b) those powers are exercisable by virtue of section 10 (2) and the Court has made a restraint or charging order which has not been discharged;

but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b) of this subsection, section 10 (3) shall apply for the purposes of this section as it applies for the purposes of sections 11 and 12.

(3) The material referred to in subsection (1) is any material which -

- (a) has been submitted to an officer of a government department by the defendant or by a person who has at any time held property which was realisable property;
- (b) has been made by an officer of a government department in relation to the defendant or such a person; or
- (c) is correspondence which passed between an officer of a government department and the defendant or such a person,

and an order under that subsection may require the production of all such material or of a particular description of such material, being material in the possession of the department concerned.

(4) An order under subsection (1) shall not require the production of any material unless it appears to the Court that the material is likely to contain information that would facilitate the exercise of the powers conferred on the Court by sections 11 to 14 or on a receiver appointed under section 11 or 14 or in pursuance of a charging order.

(5) The Court may, by order, authorise the disclosure to such a receiver of any material produced under subsection (1) or any part of such material; but the Court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the department to make representations to the Court.

(6) Material disclosed in pursuance of an order under subsection (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Act of the receiver.

(7) The Court may, by order, authorise the disclosure to a police officer of any material produced under subsection (1) or any part of such material; but the Court shall not make an order under this subsection unless -

- (a) a reasonable opportunity has been given for an officer of the department to make representations to the Court; and

- (b) it appears to the Court that the material is likely to be of substantial value in exercising functions relating to drug trafficking.

(8) Material disclosed in pursuance of an order under subsection (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to drug trafficking.

(9) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by written law or otherwise.

(10) An order under subsection (1) and, in the case of material in the possession of a government department, an order under section 26 (2) may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the department.

(11) The person on whom such an order is served -

- (a) shall take all reasonable steps to bring it to the attention of the officer concerned; and
- (b) if the order is not brought to that officer's attention within the period referred to in subsection (1), shall report the reasons for the failure to the Court,

and it shall be the duty also of any other officer of the department in receipt of the order to take such steps as are mentioned in paragraph (a).

33. (1) Where in relation to an investigation into drug trafficking, an order under section 26 has been made or has been applied for and has not been refused or a warrant under section 27 has been issued, any person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation is guilty of an offence.

Offence of
prejudicing
investigation.

(2) In proceedings against a person for an offence under this section, it is a defence to prove -

- (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation; or
- (b) that he had lawful authority or reasonable excuse for the disclosure.

(3) Any person guilty of an offence under this section is liable -

- (a) on conviction on indictment, to imprisonment for five years and to a fine; or
- (b) on summary conviction, to imprisonment for six months and to a fine of one thousand dollars.

Seizure and
detention of
cash.

34. (1) A customs officer or a police officer may seize and, in accordance with this section, detain any cash which is being imported into or exported from the Territory if its amount is not less than ten thousand dollars and he has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking.

(2) Cash seized by virtue of this section shall not be detained for more than forty-eight hours unless its continued detention is authorised by order of a Magistrate upon an application made by the Comptroller of Customs or a police officer; and no such order shall be made unless the Magistrate is satisfied -

- (a) that there are reasonable grounds for the suspicion mentioned in subsection (1); and
- (b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the Territory or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.

(3) Any order under subsection (2) shall authorise the continued detention of the cash to which it relates for such period, not exceeding three months beginning with the date of the order, as may be specified in the order; and the Magistrate, if satisfied as to the matters mentioned in that subsection, may thereafter from time to time by order authorise the further detention of the cash but so that -

- (a) no period of detention specified in such an order shall exceed three months beginning with the date of the order; and
- (b) the total period of detention shall not exceed two years from the date of the order under subsection (2).

(4) No application to the Magistrate for an order under subsection (2) or (3) shall be made by the Comptroller

of Customs or a police officer, except with the written approval of the Attorney General.

(5) At any time while cash is detained by virtue of the foregoing provisions of this section -

(a) the Magistrate may direct its release if satisfied -

- (i) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer, any such grounds for its detention as are mentioned in subsection (2); or
- (ii) on an application made by any other person, that detention of the cash is not for that or any other reason justified; and

(b) a customs officer or police officer may release the cash if satisfied that its detention is no longer justified but shall first notify the Magistrate under whose order it is being detained.

(6) If at a time when any cash is being detained by virtue of the foregoing provisions of this section -

- (a) an application for its forfeiture is made under section 35; or
- (b) proceedings are instituted (whether in the Territory or elsewhere) against any person for an offence with which the cash is connected,

the cash shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.

35. (1) The Magistrate may order the forfeiture of any cash which has been seized under section 34 if satisfied, on an application made by the Comptroller of Customs or a police officer while the cash is detained under that section, that the cash directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking.

Forfeiture.

(2) No application under this section to the Magistrate shall be made by the Comptroller of Customs or a police officer, except with the written approval of the Attorney General.

(3) The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings; and an order may be made under this section whether or not proceedings are brought against any person for an offence with which the cash in question is connected.

Interest.

36. Cash seized under section 34 and detained for more than forty-eight hours shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.

Procedure.

37. (1) An order under section 34 (2) shall provide for notice to be given to persons affected by the order.

(2) Until provision is made by rules under the Magistrate's Code of Procedure Act*, the procedure with respect to applications to a Magistrate, for the giving of notice of such applications to persons affected, for the joinder of such persons as parties and generally with respect to the procedure under sections 34 and 35, shall be determined by the Magistrate.

(3) Subsection (2) is without prejudice to the generality of any existing power to make rules.

Interpretation of certain expressions in sections 34 to 36.

38. In sections 34, 35 and 36 -

"cash" includes coins and notes in any currency;

"customs officer" means an officer appointed under section 6 of the Customs Ordinance 1975**, or any statute amending or replacing the same;

"exported", in relation to any cash, includes its being brought to any place in the Territory for the purpose of being exported.

Repeal of section 17 of Act No. 9 of 1988***.

39. Section 17 of the Drugs (Prevention of Misuse) Act 1988*** is repealed.

Passed the Legislative Council this 15th day of May, 1992.

K. L. FLAX,
Speaker.

HUGH A. HODGE,
Clerk of the Legislative Council.

*Cap. 44 (Vol. I) in Revised Edition

**Cap. 104 (Vol. II) in Revised Edition

***Cap. 178 (Vol. III) in Revised Edition