

**VIRGIN ISLANDS**

**DRUG TRAFFICKING OFFENCES (AMENDMENT) ACT, 2008**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title.
2. Section 2 amended.
3. Section 4 amended.
4. Section 5 amended.
5. Section 5A amended.
6. Section 6 amended.
7. Section 8C amended.
8. Section 11 amended.
9. Section 12 amended.
10. Section 15 amended.
11. Section 18 amended.
12. Section 19 amended.
13. Section 20 amended.
14. Section 23 amended.
15. Section 23A amended.
16. Section 23B amended.
17. Section 23C amended.
18. Section 23D amended.
19. Section 24 amended.
20. Section 26 amended.
21. Section 27 amended.
22. Section 32 amended.
23. Section 33 repealed and replaced.
24. Section 34 amended.
25. Section 35 amended.
26. Section 35A inserted.
27. Section 38 amended.

**No. 2 of 2008**

**Drug Trafficking Offences  
(Amendment) Act, 2008**

**Virgin  
Islands**

**I Assent**

**(Sgd.) DAVID PEAREY,  
Governor.**

7<sup>th</sup> February, 2008

**VIRGIN ISLANDS**

**No. 2 of 2008**

An Act to amend the Drug Trafficking Offences Act, 1992 (No. 5 of 1992).

[Gazetted 8<sup>th</sup> February, 2008]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

**1.** This Act may be cited as the Drug Trafficking Offences (Amendment) Act, 2008.

Section 2  
amended.  
No. 5 of 1992

**2.** Section 2 of the Drug Trafficking Offences Act, 1992 (hereinafter referred to as “the principal Act”) is amended

(a) in subsection (1)

(i) by inserting in the appropriate alphabetical order the following:

““Agency” means the Financial Investigation Agency established under section 3 (1) of the Financial Investigation Agency Act, 2003;

“country” includes territory;

“drug money laundering” means doing any act which constitutes an offence under section 23, 23A or 23B or, in the case of an act done otherwise than in the Territory, would constitute such an offence if done in the Territory;

“police officer” includes, in relation to drug trafficking or drug trafficking offences, the Director or an investigating officer of the Agency;

“Steering Committee” means the Steering committee established under section 3 (3) of the Financial Investigation Agency Act, 2003;”;

- (ii) by deleting “Court” and the definition thereto and substituting the following:

““court” means the High Court or the Magistrate’s Court;”;

- (b) in subsection (4) by deleting “Court” and substituting “court” and the same applies wherever in the principal Act reference is made to “Court”;

- (c) by inserting after subsection (1), the following subsection:

“(1A) Where in this Act provision is made

- (a) for a report or a disclosure to be made to a police officer or the Steering Committee or a disclosure to be made by the Steering Committee, the requirement shall be considered to be complied with if it is made to or by the Agency; or

- (b) conferring power on a police officer, that power may be exercised by or on the authority of the Agency.”;

- (d) in subsection (6) by inserting between the words “holds” and “any interest” in paragraph (a), the words “or obtains”; and

- (e) by inserting after subsection (6), the following subsection:

“(6A) A proceeding referred to in paragraph (f) or an application referred to in paragraph (g) or (h) shall not be treated as concluded,

until there is no further possibility of an appeal in respect of the proceeding or the application.”

Section 4  
amended.

**3. Section 4 of the principal Act is amended**

- (a) by deleting subsection (2) and substituting it with the following:

“(2) Property is not realizable property if an order

- (a) under section 29 of the Drugs (Prevention of Misuse) Act,
- (b) under section 37B of the Proceeds of Criminal Conduct Act, 1997,
- (c) under article 15 of the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002, or
- (d) made pursuant to any other enactment,

is in force in respect of the property.”; and

- (b) in subsection (4) (a) (ii) by deleting the words “(other than a charging order)” and substituting them with the words “(other than a charging order under this Act, the Proceeds of Criminal Conduct Act, 1997 or any other enactment)”.

Section 5  
amended.

**4. Section 5 of the principal Act is amended**

- (a) by re-designating subsection (1) as subsection “(1C)” and providing the following subsections:

“(1) For the purposes of this Act, a confiscation order may be made by a Magistrate or a judge of the High Court.

(1A) Where a confiscation order is made pursuant to subsection (1) by a Magistrate, it shall relate in monetary terms to a sum not exceeding one hundred thousand dollars.

(1B) Where on the evidence before him, a Magistrate concludes that a confiscation order to be made by him will or is likely to exceed the sum allowable under subsection (1A), he shall, notwithstanding anything to the contrary contained in any enactment

- (a) proceed to sentence the defendant, if the defendant is not already sentenced; and
- (b) commit the defendant to a judge of the High Court for a confiscation order to be made in respect of the defendant.”;

(b) in subsection (1C) as re-designated

- (i) by deleting the opening paragraph of that subsection and substituting it with the following:

“Where a person appears before a court, whether on committal under subsection (1B) or otherwise, to be sentenced in respect of one or more drug trafficking offences, the court shall act as follows:”;

- (ii) by deleting the words “other reward” in paragraph (a) and substituting them with the words “other pecuniary or other quantifiable advantage”;

- (iii) by inserting after paragraph (b), the following:

“(ba) With respect to paragraph (b), the court shall exclude in the determination any property that is subject to a cash forfeiture order or a forfeiture order under the Drugs (Prevention of Misuse) Act, Drug Trafficking Offences Act, 1992, the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 or any other enactment; and”;

(c) by repealing subsection (2A) and substituting it with the following:

“(2A) In determining any question arising under this Act as to whether a person has benefitted from drug trafficking or the amount to be recovered in his case, proof shall be established on a balance of probabilities.”.

**5.** Section 5A of the principal Act is amended in subsection (3) by deleting the words “six months” and substituting them with “eighteen months”.

Section 5A amended.

Section 6 amended.

**6.** Section 6 of the principal Act is amended in subsection (1) by deleting the words “other rewards” in paragraphs (a) and (b) and substituting them with “other pecuniary or quantifiable advantage”.

Section 8C amended.

**7.** Section 8C of the principal Act is amended in paragraph (b) of subsection (2) by deleting the word “had” where it first occurs.

Section 11 amended.

**8.** Section 11 of the principal Act is amended in subsection (4)

- (a) by placing a semi-colon after “prosecutor” in paragraph (a) and deleting the rest of the words in that paragraph; and
- (b) by inserting between “Judge” and “in chambers”, the words “or Magistrate”.

Section 12 amended.

**9.** Section 12 of the principal Act is amended in subsection (3) by placing a semi-colon after “prosecutor” in paragraph (a) and deleting the rest of the words in that paragraph.

Section 15 amended.

**10.** Section 15 of the principal Act is amended by adding after subsection (7), the following:

“(8) The receipt, payment or reimbursement by the Registrar of the court of any sums or expenses under this section shall, in relation to the Magistrate’s Court, be construed to refer to the Magistrate or to such other person of his staff as may be appointed in that regard to assist the Magistrate.”.

Section 18 amended.

**11.** Section 18 of the principal Act is amended

- (a) in subsection (1) by deleting “Bankruptcy Act” and substituting “Insolvency Act”;
- (b) in subsection (2)
  - (i) by deleting “Bankruptcy Act” in paragraph (a) and substituting “Insolvency Act”; and
  - (ii) by deleting the words “imposed under section 27 (2) of that Act” and substituting them with the words “imposed pursuant to the Insolvency Act”.
- (c) by repealing subsection (4) and substituting it with the following:

“(4) Where, in the case of a debtor, a receiver or liquidator is appointed in his case or in relation to him under the Insolvency Act and any property of the debtor is subject to a restraint order, the powers conferred on the receiver or liquidator by virtue of that Act shall not apply to property for the time being subject to the restraint order.”; and

- (d) in subsection (5) by deleting the words “under section 28 or 44 of the Bankruptcy Act” in paragraphs (a) and (b) and substituting them with the words “under the Insolvency Act”.

**12.** Section 19 of the principal Act is amended in subsection (4) by deleting “Companies Act” in the definition of “company” in subsection (4) and substituting “BVI Business Companies Act, 2004”. Section 19 amended.

**13.** Section 20 of the principal Act is amended Section 20 amended.

- (a) in subsection (1) by deleting the opening paragraph and substituting it with the following:

“Without prejudice to the generality of any provisions contained in the Insolvency Act or any other enactment, where”; and

- (b) by repealing subsection (3) and substituting it with the following:

“(3) In this Act, the expression “acting as a receiver or liquidator” shall be construed in accordance with the provisions of the Insolvency Act, 2003 and the BVI Business Companies Act, 2004.”.

**14.** Section 23 of the principal Act is amended Section 23 amended.

- (a) by repealing subsection (1) and substituting it with the following:

“(1) Subject to subsections (3) and (4), a person commits an offence if he enters into or is otherwise concerned in an arrangement which he knows or suspects facilitates, whether by concealment, removal from the Territory, transfer to nominees or other means, the acquisition, retention, use or control of the proceeds of drug trafficking by or of himself or by or on behalf of another person.”;

- (b) in subsection (3)

- (i) by deleting in the opening paragraph the words “any funds or investments are derived from” and substituting them with the words “any funds, investments or other property are derived from”;
  - (ii) by adding at the end of paragraph (b) (i) before the semi-colon, the words “in aid of a law enforcement function”;
  - (iii) by deleting the full-stop at the end of paragraph (b) (ii) and substituting it with a semi-colon and the word “and” and adding thereafter the following:
    - “(iii) he had good reason for his failure to make the disclosure before he did the act concerned.”;
- (c) by deleting paragraph (b) of subsection (4) and substituting it with the following:
- “(b) that he did not know or suspect that by the arrangement the acquisition, retention, use or control by or on behalf of the other person mentioned in subsection (1) of any property was facilitated as mentioned in that subsection; or”;
- (d) in subsection (4B) by deleting paragraph (b) and substituting it with the following:
- “(b) to the Steering Committee in connection with any offence that may be committed under this Act, the Proceeds of Criminal Conduct Act, 1997 or any other enactment or for the purpose of facilitating an investigation under this Act, the Proceeds of Criminal Conduct Act or other enactment;” and
- (e) by adding after subsection (4B), the following:
- “(4C) Before any disclosure is made pursuant to subsection (4B), the interests of third parties shall be considered.
  - (4D) No member of the Steering Committee or the Agency or a police officer or other person concerned in law enforcement commits an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to drug trafficking or the proceeds of such drug trafficking.”.

15. Section 23A of the principal Act is amended

Section 23A  
amended.

- (a) by repealing subsection (1) and substituting it with the following:

“(1) A person commits an offence if

- (a) he acquires, transfers or uses any property or has possession of it, which, in whole or in part, directly or indirectly represents his proceeds of drug trafficking; or
- (b) knowing or suspecting that any property is, or in whole or in part directly or indirectly represents, another person’s proceeds of drug trafficking, he acquires, transfers or uses that property or has possession of it.”;

- (b) by repealing subsection (2) and substituting it with the following:

“(2) It is a defence to a charge of committing an offence under this section, save under subsection (1) (a), that the person charged acquired, transferred or used the property or had possession of it for adequate consideration.”;

- (c) in subsection (3) by inserting after “a person acquires” in paragraph (a), the words “or transfers”;

- (d) in subsection (5)

- (i) by adding at the end of paragraph (b) (i) before the semi-colon, the words “in aid of a law enforcement function”;

- (ii) by deleting the full-stop at the end of paragraph (b) (ii) and substituting a semi-colon and the word “and” and adding thereafter the following:

“(iii) he had good reason for his failure to make the disclosure before he did the act concerned.”;

- (e) in subsection (7) by inserting after “under this section,” in the opening paragraph, the words “save under subsection (1) (a),”;

- (f) in subsection (9) by deleting paragraph (b) and substituting it with the following:
  - “(b) to the Steering Committee in connection with any offence that may be committed under this Act, the Proceeds of Criminal Conduct Act, 1997 or any other enactment or for the purpose of facilitating an investigation under this Act, the Proceeds of Criminal Conduct Act or other enactment.”;
- (g) by inserting after subsection (9), the following:
  - “(9A) Before any disclosure is made pursuant to subsection (9), the interests of third parties shall be considered.”; and
- (h) in subsection (11) by deleting the words “No police officer or other person shall be guilty of an offence” and substituting them with “No member of the Steering Committee or the Agency or a police officer or other person concerned in law enforcement commits an offence”.

Section 23B  
amended.

**16.** Section 23B of the principal Act is amended

- (a) by repealing subsection (1) and substituting it with the following:
  - “(1) A person commits an offence if he
    - (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, the proceeds of drug trafficking; or
    - (b) converts or transfers that property or removes that property from the Territory.”;
- (b) by repealing subsection (2) and substituting it with the following:
  - “(2) A person commits an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part represents, another person’s proceeds of drug trafficking, he
    - (a) conceals or disguises that property; or
    - (b) converts or transfers that property or removes it from the Territory.”; and
- (c) by inserting after subsection (3), the following:

“(3A) If a person does any act in relation to property which belongs to another person in contravention of subsection (2), he does not commit an offence under that subsection if he discloses that act and

- (a) the disclosure is made before he does the act concerned, being an act done with the consent of a police officer in aid of a law enforcement function; or
- (b) the disclosure is made after he does the act, but on his initiative and as soon as it is reasonable for him to make it; and
- (c) he had a good reason for his failure to make the disclosure before he did the act concerned.

(3B) No member of the Steering Committee or the Agency or a police officer or other person concerned in law enforcement commits an offence under this section in respect of anything done by him in the due discharge of the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to drug trafficking or the proceeds of drug trafficking.”.

**17.** Section 23C of the principal Act is amended

Section 23C amended.

- (a) in paragraph (a) of subsection (1) by inserting after the words “he knows, or suspects,”, the words “or has reasonable grounds for knowing or suspecting,”;
- (b) by repealing subsection (7);
- (c) by repealing subsection (8); and
- (d) inserting a new subsection as follows:

“(7) For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it.”.

**18.** Section 23D of the principal Act is amended

Section 23D amended.

- (a) in subsection (1) by adding at the end of paragraph (a) before the semi-colon, the words “or any action in relation to or arising from drug money laundering”; and

- (b) in subsection (4)
  - (i) by deleting “or” at the end of paragraph (a); and
  - (ii) changing paragraph (b) to paragraph “(c)” and inserting the following as paragraph (b):
    - “(b) by, or by a representative of, a person seeking legal advice from the adviser; or”; and
- (c) in subsection (9) by deleting the words “No police officer or other person shall be guilty of an offence” and substituting them with “No member of the Steering Committee or the Agency or a police officer or other person concerned in law enforcement commits an offence”.

Section 24  
amended.

**19.** Section 24 of the principal Act is amended

- (a) in the opening paragraph of subsection (1) and in the closing paragraph of subsection (1) (b) by deleting the words “Governor in Council” and substituting them with “Cabinet”;
- (b) in subsection (3) by deleting the words “Governor in Council” and substituting them with “Cabinet”; and
- (c) in subsection (4) by deleting the words “Governor in Council” and “Legislative Council” and respectively substituting them with “Cabinet” and “House of Assembly”.

Section 26  
amended.

**20.** Section 26 of the principal Act is amended

- (a) by repealing subsection (1) and substituting it with the following:
  - “(1) A police officer may, for the purpose of an investigation into drug trafficking or drug money laundering, apply to the court for an order under subsection (2) in relation to particular material or material of a particular description.”;
- (b) in subsection (2) by deleting the references to “Judge”, “he” and “him” in the opening paragraph and substituting them respectively with “court”, “it” and “it”;
- (c) in subsection (3) by deleting “Judge” and substituting “court”;
- (d) in subsection (4) by deleting paragraph (a) and substituting it with the following:

“(a) that there are reasonable grounds for suspecting that a specified person is involved in drug trafficking or drug money laundering or has carried on or has benefitted from drug trafficking or drug money laundering;”;

- (e) in subsection (5) by deleting “Judge” and substituting “court”;
- (f) in subsection (6) by deleting “Judge” and substituting “Judge or Magistrate, as the case may be”;
- (g) by converting the second subsection (8) (introduced by Act No. 5 of 2000) into subsection (9) and inserting therein after “judge” the words “or magistrate”; and
- (h) by adding after subsection (9), the following:

“(10) Where material is produced pursuant to an order under this section,

- (a) a police officer or the Agency may make a copy of the material; and
- (b) the material may
  - (i) be retained for as long as it is necessary for the purposes of completing an investigation; and
  - (ii) where it is required for legal proceedings, be retained until those proceedings are concluded.”.

**21.** Section 27 of the principal Act is amended

Section 27  
amended.

- (a) by repealing subsection (1) and substituting it with the following:

“(1) A police officer may, for the purposes of an investigation into drug trafficking or drug money laundering, apply to a court for a warrant under this section in relation to specified premises.”;
- (b) in subsection (3) by deleting paragraph (a) and substituting it with the following paragraph:

“(a) that there are reasonable grounds for suspecting that a specified person is involved in or may be related to an act of drug trafficking or drug money laundering or has carried on or has benefitted from drug trafficking or drug money laundering;”;

- (c) in subsection (4)
  - (i) by deleting paragraph (a) and substituting it with the following:
    - “(a) that there are reasonable grounds for suspecting that a specified person is involved in or may be related to an act of drug trafficking or drug money laundering or has carried on or has benefitted from drug trafficking or drug money laundering;”;
  - (ii) by inserting after “drug trafficking” in paragraph (b), the words “or drug money laundering”; and
- (d) by adding after subsection (5), the following:
  - “(6) Where any material is seized pursuant to subsection (5),
    - (a) a police officer or the Agency may make a copy of the material; and
    - (b) the material may,
      - (i) be retained for as long as it is necessary for the purposes of completing an investigation; and
      - (ii) where it is required for legal proceedings, be retained until those proceedings are concluded.”.

Section 32 amended.

**22.** Section 32 of the principal Act is amended

- (a) by repealing subsection (1) and substituting it with the following:
  - “(1) Subject to subsection (4), a police officer may apply to a court for an order that any material mentioned in subsection (3) which is in the possession of a government department be produced to the police officer and the court may, upon such application, make such order and specify the period within which such material should be produced to the police officer.”;
- (b) by repealing subsection (4) and substituting it with the following:

“(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

(a) 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;

(b) the conduct of investigations into drug trafficking or drug money laundering; or

(c) the conduct of proceedings before the court.”;

(c) by repealing subsection (7);

(d) by repealing subsection (8); and

(e) by inserting a new subsection as follows:

“(7) Material disclosed in pursuance of an order under this section may, subject to any conditions contained in the order, be further disclosed by a police officer or the Agency for the purposes of functions relating to drug trafficking or drug money laundering.”.

**23.** Section 33 of the principal Act is repealed and substituted with the following:

Section 33  
repealed and  
replaced.

“Prejudicing  
an investigation

33. (1) For the purposes of this section,

(a) “confiscation investigation” is an investigation into whether a person has benefitted from drug trafficking or drug money laundering, or the extent or whereabouts of his benefit from the drug trafficking or drug money laundering; and

(b) “drug trafficking or drug money laundering investigation” is an investigation into whether a person has committed a drug trafficking or drug money laundering offence.

(2) Where a person knows or suspects that a police officer or the Agency is acting or proposing to act in connection with a confiscation investigation or drug trafficking or drug money laundering investigation which is being or is about to be conducted, he commits an offence if

- (a) he makes a disclosure which is likely to prejudice the investigation; or
- (b) he falsifies, conceals, mutilates, destroys or otherwise disposes of, or causes or permits the falsification, concealment, mutilation, destruction or disposal, of documents which are relevant to the investigation.

(3) A person does not commit an offence under subsection (2) (a) if

- (a) he does not know or suspect that the disclosure is likely to prejudice the investigation;
- (b) the disclosure is made in the exercise of a function under this Act or any other enactment relating to drug trafficking or drug money laundering or benefit from drug trafficking or drug money laundering or in compliance with a requirement imposed under or by virtue of this Act; or
- (c) he is a professional legal adviser and the disclosure is made
  - (i) to, or to a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or
  - (ii) to any person in contemplation of, or in connection with, legal proceedings and for the purpose of those proceedings.

(4) A person does not commit an offence under subsection (2) (b) if

- (a) he does not know or suspect that the documents are relevant to the investigation; or
- (b) he does not intend to conceal any facts disclosed by the documents from a police

officer or the Agency carrying out the investigation.

(5) A person who commits an offence under subsection (2) is liable

(a) on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding three years, or both; or

(b) on conviction on indictment to a fine not exceeding twenty-five thousand dollars or imprisonment for a term not exceeding five years, or both.”.

**24.** Section 34 of the principal Act is amended

Section 34 amended.

(a) in subsection (1)

(i) by deleting “A customs officer” and substituting “The Comptroller of Customs”;

(ii) by inserting between the words “which is” and “being imported”, the words “found in the Territory or is”; and

(iii) by adding at the end of the subsection before the full-stop, the words “or drug money laundering”;

(b) by inserting after subsection (1), the following subsection:

“(1A) Cash whose amount is caught by the restriction provided in subsection (1) that is being imported into or exported from the Territory shall not be seized and detained if it is declared to the Comptroller of Customs at the port of entry or exit, unless there are reasonable grounds for suspecting that the cash

(a) is intended by any person for use in drug trafficking or drug money laundering; or

(b) directly or indirectly represents any person’s proceeds of drug trafficking or drug money laundering.”;

(c) in subsection (2)

- (i) by deleting “forty-eight hours” in the opening paragraph and substituting “seventy-two hours;”
- (ii) by deleting “and” in paragraph (a);
- (iii) by deleting the full-stop at the end of paragraph (b) and substituting it with a semi-colon and adding thereafter the word “and”; and
- (iv) by adding after paragraph (b), the following paragraph:
  - “(c) that proceedings against any person for an offence with which the cash is connected have been started but have not been concluded.”;
- (d) by repealing subsection (4);
- (e) in subsection (5)
  - (a) by deleting “a customs officer or police officer” in paragraph (b) and substituting “the Comptroller of Customs or a police officer”; and
  - (b) by adding at the end of paragraph (b) before the full-stop, the words “or another Magistrate in the absence of the one under whose order it is being detained”; and
- (f) by inserting after subsection (5), the following subsections:
  - “(5A) Where on an application under subsection (5) for the release of cash that is being detained the Magistrate finds that only a part of the cash, if it relates to liquid currency, is intended for use by a person for drug trafficking or drug money laundering or directly or indirectly represents any person’s proceeds of drug trafficking or drug money laundering, the Magistrate may order the release of that part of the cash as does not relate to the intended drug trafficking or drug money laundering or directly or indirectly represent the proceeds of drug trafficking or drug money laundering.
  - (5B) Subsection (5A) does not apply to cash that is in the form of bearer negotiable or other monetary instrument.”.

Section 35 amended.

**25.** Section 35 of the principal Act is amended

- (a) by deleting the words in the opening paragraph and substituting them with the words “In sections 34, 35, 35A and 36.”;
- (b) in subsection (1) by adding after “drug trafficking” before the full-stop, the words “or drug money laundering”;
- (c) by repealing subsection (2);
- (d) by repealing subsection (3) and substituting it with the following:
  - “(3) The standard of proof in proceedings on an application under subsection (1) shall be on a balance of probabilities.”;
- (e) by adding after subsection (3), the following:
  - “(3A) An order may be made under subsection (1) irrespective of whether proceedings are brought against a person for an offence with which the cash in question is connected.
  - (3B) Where an application for the forfeiture of any cash is made under subsection (1), the cash is to be detained (and may not be released under any power conferred by this section or section 34) until any proceedings in pursuance of the application, including any proceedings on appeal, are concluded.
  - (3C) Any party to proceedings under this section who is aggrieved by an order of the Magistrate may, within thirty days from the date on which the order is made, appeal to the Court of Appeal which may make such order as it thinks appropriate.”; and
- (f) by repealing subsections (4) to (7).

**26.** The principal Act is amended by inserting after section 35, the following:

Section 35A inserted.

“Forfeiture: general.

35A. (1) Subject to subsection (3), where a person is convicted of an offence under this Act, the court

- (a) may, in passing sentence, order the forfeiture of any real property or any ship, vessel, boat, aircraft, vehicle or other means of conveyance of any description shown to the satisfaction of the court to relate to the offence; and
- (b) shall, in passing sentence, order the forfeiture of any article, cash or valuable consideration

shown to the satisfaction of the court to relate to the offence.

(2) Subject to subsection (3), where, in a trial for an offence under this Act, it is shown to the satisfaction of the court that any property is or represents the proceeds of drug trafficking or drug money laundering or has been, is being or is reasonably likely to be, used in connection with the retention, control, acquisition, possession, use, concealment, disguising, conversion, transfer or moving of proceeds of drug trafficking or drug money laundering, the court may, whether or not the defendant is convicted of the offence, order forfeiture to the Government of the Territory of any such property.

(3) The court shall not order anything to be forfeited under subsection (1) or (2) unless an opportunity has been given to the person claiming to be the owner or other person interested in it to show cause within thirty days from the date of conviction why the order should not be made.

(4) Forfeiture under subsection (1) shall extend

- (a) to any property which there is reason to believe has been obtained from the proceeds of anything relating to the offence for which a person is convicted or to a conspiracy to commit any such offence; or
- (b) to anything into which any such property has been converted.”.

Section 38  
amended.

**27.** Section 38 of the principal Act is amended

- (a) by deleting “cash” and the definition attached thereto and substituting it with the following:

““cash” includes coins and notes in any currency and any other monetary type of bearer negotiable or monetary instrument;”;

- (b) by deleting “customs officer” and the definition attached thereto and substituting it with the following:

“Comptroller of Customs” includes a customs officer appointed under section 6 of the Customs Ordinance;”.

Passed by the House of Assembly this 31<sup>st</sup> day of January, 2008.

(Sgd.) ROY HARRIGAN,  
Speaker.

(Sgd.) ALVA MCCALL,  
Clerk of the House of Assembly.