

VIRGIN ISLANDS

**DRUG TRAFFICKING OFFENCES (DESIGNATED
COUNTRIES AND TERRITORIES) ORDER, 1996**

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 1996 NO. 65

**DRUG TRAFFICKING OFFENCES ACT
(No. 5 of 1992)**

Drug Trafficking Offences (Designated Countries and Territories) Order, 1996

[Gazetted 24th January, 1997]

The Governor in Council in exercise of the powers conferred by section 24 of the Drug Trafficking Offences Act, 1992 makes the following Order:

Short title.

1. This Order may be cited as the Drug Trafficking Offences (Designated Countries and Territories) Order, 1996.

Interpretation.

2. In this Order, unless the context otherwise requires,

"the Act" means the Drug Trafficking Offences Act, 1992;

"designated country" means a country or territory designated under section 3 (1);

"appropriate authority of a designated country" means

(a) the authority specified opposite that country in Schedule 1; or

(b) where no authority is so specified the authority appearing to the court to be the appropriate authority of that country for the purposes of sections 24 and 25 of the Act, and of the other provisions of the Act as applied under section 3 (2);

"a court of a designated country" includes a court of any state or territory of a designated country.

Designation of and application the Act to countries and territories. Schedule 1 Schedule 2

3. (1) The countries and territories specified in Schedule 1 are designated for the purposes of sections 24 and 25 of the Act.

(2) In relation to a designated country, the Act shall apply, subject to the modifications specified in Schedule 2, 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, and

in relation to those orders and proceedings, the Act shall have effect as set out in Schedule 3.

Schedule 3

4. (1) For the purposes of sections 24 and 25 of the Act, and of the other provisions of the Act as applied under section 3 (2),

Proof of orders and judgement of court in a designated country.

- (a) any order made or judgement given by a court in a designated country purporting to bear the seal of that court or to be signed by a person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person; and
- (b) a document, duly authenticated, which purports to be a copy of any order made or judgement given by a court in a designated country shall be deemed without further proof to be a true copy.

(2) A document which purports to be a copy of any order made or judgement given by a court in a designated country is duly authenticated for the purpose of subsection 1 (b) if it purports to be certified by a person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of the designated country.

5. (1) For the purposes of section 24 and 25 of the Act, and of the other provisions of the Act as applied under section 3 (2), a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating,

Evidence in relation to proceedings and orders in a designated country.

- (a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, there,
- (b) in a case to which section 2 (1) (e) (ii) of the Act, as modified by Schedule 2, applies, that the defendant has been notified as specified in section 2 (1) (e) (ii),
- (c) that an external confiscation order is in force and is not subject to appeal,
- (d) that all or a certain amount of the sum payable under an external confiscation order remains unpaid in the designated country, or that other property recoverable under an external confiscation order remains unrecovered there,
- (e) that any person has been notified of any proceedings

in accordance with the law of the designated country, or

- (f) that an order (however described) made by a court of the designated country has the purpose of recovering payments or other reward received in connection with drug trafficking or their value,

shall, in any proceedings in the High Court, be admissible as evidence of the facts so stated.

(2) In such proceedings a statement contained in a document, duly authenticated which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court in a designated country, shall be admissible as evidence of the facts stated therein.

(3) A document is duly authenticated for the purposes of subsection (2) if it purports to be certified by a person in his capacity as a judge, magistrate or officer of the court in a designated country, or by or on behalf of the appropriate authority of the designated country, to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document containing or summarising the evidence or a true copy of that document.

(4) Nothing in this section shall prejudice the admission of any evidence, whether contained in a document or otherwise, which is admissible apart from this section.

Certificate as to appropriate authority of a designated country.

6. Where in relation to country no authority is specified in Schedule 1, a certificate made by the Governor to the effect that the authority specified therein is the appropriate authority for the purpose of sections 24 and 25 of the Act, and of the other provisions of the Act as applied by section 3 (2) shall be sufficient evidence of that fact.

Representation of government of a designated country.

7. A request for assistance sent to the Governor by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the designated authority of the government of that country for the crown prosecution service or the Comptroller of Customs to act on its behalf in proceedings in the High Court under section 25 of the Act or any other provision of the Act as applied by section 3 (2).

8. (1) The amount payable under the confiscation order shall be treated as reduced by the value of the property so recovered, where

Satisfaction of confiscation order in a designated country.

- (a) a confiscation order has been made under section 5 of the Act;
- (b) a request as been sent by the Governor to the appropriate authority of a designated country for assistance in enforcing that order; and
- (c) in execution of that request property is recovered in that country.

(2) For the purpose of this section, and without prejudice to the admissibility of any evidence which may be admissible apart from this subsection, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating that property has been recovered there in execution of a request by the Governor stating the value of the property so recovered and the date on which it was recovered shall, in any proceedings in a court in the Territory, be admissible as evidence of the facts so stated.

9. (1) Where the value of property recovered as described in section 7 (1) is expressed in a currency other than the currency of the United States of America, the extent to which the amount payable under the confiscation order is to be reduced under section 7 (1) shall be calculated on the basis of the exchange rate prevailing on the date on which the property was recovered in the designated country concerned.

Currency conversion.

(2) Where an amount of money payable or remaining to be paid under an external confiscation order registered in the High Court under section 25 of the Act is expressed in a currency other than the currency of the United States of America, for the purpose of an action taken in relation to that order under the Act as applied under section 3 (2) the amount shall be converted into the currency of the United States of America on the basis of the exchange rate prevailing on the date of registration of the order.

(3) For the purposes of this section a written certificate purporting to be signed by a person acting in his capacity as an officer of a bank in the Territory and stating the exchange rate prevailing on a specified date shall be admissible as evidence of the facts so stated.

SCHEDULE 1**[Section 3 (1)]**

Designated Country	Appropriate Authority
Afghanistan	
Algeria	
Anguilla	the Attorney General of Anguilla
Antigua and Barbuda	
Argentina	
Armenia	
Australia	the Attorney General's Department
Azerbaijan	
The Bahamas	the Attorney General of the Bahamas
Bahrain	the Ministry of the Interior
Bangladesh	
Barbados	the Attorney General of Barbados
Belarus	
Bermuda	the Attorney General of Bermuda
Bhutan	
Bolivia	
Bosnia and Herzegovina	
Brazil	
Brunei	
Bulgaria	
Burkina Faso	
Burma	
Burundi	
Cameroon	
Canada	the Minister of Justice or officials designated by that Minister
The Cayman Islands	the Attorney General of the Cayman Islands
Chad	
Chile	
China	
Columbia	the Fiscalia General de la Nacion
Costa Rica	
Croatia	
Cyprus	
The Czech Republic	
Denmark	
Dominica	
Dominican Republic	

Designated Country	Appropriate Authority
Ecuador	Consejo Nacional de Control de Sustancias Estupefacientes y Psicótropicas (CONSEP)
Egypt	
El Salvador	
Ethiopia	
Fiji	
Finland	
France	
Germany	
Ghana	
Gibraltar	the Attorney General of Gibraltar
Greece	
Grenada	
Guatemala	
Guernsey	Her Majesty's Attorney General for the Bailiwick of Guernsey
Guinea	
Guyana	the Permanent Secretary, Ministry of Home Affairs
Honduras	
Hong Kong	the Attorney General of Hong Kong
India	the Ministry of Home Affairs
Iran	
Isle of Man	Her Majesty's Attorney General for the Isle of Man
Italy	the Ministry of Justice
Ivory Coast	
Japan	
Jersey	Her Majesty's Attorney General for the Bailiwick of Jersey
Jordan	
Kenya	
Kyrgyzstan	
Latvia	
Lesotho	
Luxembourg	
Macedonia	
Madagascar	
Malaysia	The Inspector General of Police, Malaysia
Mauritania	
Moldova	
Monaco	
Montserrat	the Attorney General of Montserrat
Morocco	
Myanmar	
Nepal	

Designated Country	Appropriate Authority
Netherlands	Afdeling International Rechtshulp
Nicaragua	
Niger	
Nigeria	the Attorney General of the Federation of the Republic of Nigeria
Norway	
Oman	
Pakistan	
Panama	the Ministry of Government and Justice
Paraguay	
Peru	
Poland	
Portugal	
Qatar	
Romania	
The Russian Federation	
St Kitts and Nevis	
St. Lucia	
St Vincent and the Grenadines	
Saudi Arabia	the Ministry of the Interior
Senegal	
Seychelles	
Sierra Leone	
Slovakia	
Slovenia	
South Africa	the Department of Foreign Affairs
Spain	the Ministerio de Justicia, Madrid
Sri Lanka	
Sudan	
Suriname	
Sweden	the Ministry for Foreign Affairs
Switzerland	Office federal de la police
Syria	
Togo	
Trinidad and Tobago	
Tunisia	
Turks and Caicos Islands	
Uganda	
Ukraine	
United Arab Emirates	
United Kingdom	the Home Office

Designated Country	Appropriate Authority
United Mexican States	the Office of the Attorney General
United States of America	the Attorney General of the United States of America
Uruguay	the Ministry of Education and Culture
Uzbekistan	
Venezuela	
Yugoslavia	
Zambia	
Zimbabwe	

SCHEDULE 2

[Section 3 (2)]

Modifications of the Drug Trafficking Offences Act, 1992

1. Section 1 shall be omitted.
2. In section 2,
 - (a) in subsection (1) the definition of "drug trafficking offence" shall be omitted;
 - (b) in subsection (2) in the list of expressions and relevant provisions the entries for "Benefited from drug trafficking", "Proceeds of drug trafficking" and "Value of proceeds of drug trafficking" shall be omitted, and for the words "confiscation order" there shall be substituted the words "External confiscation order";
 - (c) subsection (4) shall be omitted;
 - (d) at the end of subsection (5) the full stop shall be omitted and there shall be added the words "and whether received before or after the commencement of the Drug Trafficking Offences (Designated Countries and Territories) Order, 1996 and whether received in connection with drug trafficking carried on by the recipient or some other person.";
 - (e) for subsection (6) (e), there shall be substituted the following:

"(e) Proceedings are instituted in a designated country when

 - (i) under the law of the designated country concerned one of the steps specified in relation to that country in Column 2 of the Appendix hereto has been taken there in respect of alleged drug trafficking by the defendant,
 - (ii) where no steps have been specified in relation thereto as mentioned in sub-paragraph (i), the defendant has been notified in writing in accordance with the laws of the designated country that the competent authorities of that country have begun proceedings against him in respect of an offence, or
 - (iii) an application has been made to a court in a designated country for an external confiscation order,

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."; and

- (f) in subsection (6) (f) (ii), for the words from "payment" to the end of the subsection there shall be substituted the words "the recovery of all property liable to be recovered, or the payment of any amount due, or otherwise)".

3. In section 4,

- (a) for subsection (1) there shall be substituted the following subsection:

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

- (a) in relation to an external confiscation order made in respect of specified property, the property which is specified in the order; and

- (b) in any other case,

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

- (b) subsections (3) and (7) shall be omitted; and

- (c) in subsection (8) for the words "this Act" there shall be substituted the words "the Drug Trafficking Offences (Designated Countries and Territories) Order, 1996".

4. For section 5 there shall be substituted the following section:

5. (1) 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 is referred to in this Act as an "external confiscation order".

"External
confiscation
orders.

(2) In subsection (1) the reference to an order includes any order, decree, direction or judgement, or any part thereof, however described.

(3) A person against whom an external confiscation order has been made, or a person against whom proceedings

which may result in an external confiscation order being made have been or are to be, instituted in a court in a designated Country, is referred to in this Act as "the defendant".

5. Sections 6 to 9 shall be omitted.

6. In section 10,

(a) for subsection (1) (a) there shall be substituted the following:

"(a)proceedings have been instituted against the defendant in a designated country.";

(b) for subsection (1) (c) there shall be substituted the following:

"(c)either an external confiscation order has been made in the proceedings or it appears to the Court that there are reasonable grounds for believing that an external confiscation order may be made in them.";

(c) for subsection (2) there shall be substituted the following subsection:

"(2) The powers conferred on the Court by sections 11 and 12 are also exercisable where it appears to the Court that proceedings are to be instituted against the defendant in a designated country and that there are reasonable grounds for believing that an external confiscation order may be made in them.";

(d) subsection (3) shall be omitted; and

(e) in subsection (4), for the words "proceedings" to "otherwise)", there shall be substituted the words "the proposed proceedings are not instituted".

7. In section 11,

(a) for subsection (2) (a) and (b) there shall be substituted the following:

"(a) where an application under subsection (4) relates to an external confiscation order made in respect of specified property, to property which is specified in that order; and

(b) in any other case,

- (i) to all realisable property held by a specified person, whether the property is described in the restraint order or not; and
 - (ii) to realisable property held by specified person, being property transferred to him after the making of the restraint order.”;
- (b) in subsection (4) (a) for the words "the prosecutor, with the written approval of the Attorney General" there shall be substituted the words "or on behalf of the Government of a designated country or, in a case registered under section 25, by a receiver appointed under section 14, a crown prosecutor or a person authorised in that behalf by the Comptroller of Customs";
- (c) for subsection (4) (c) there shall be substituted the following:
- "(c) notwithstanding anything in Order 11 of the rules of the Supreme Court 1970, may provide for service on, or the provision of notice to, persons affected by the order in a manner the Court may direct";
- (d) for subsection (5) (b) there shall be substituted the following:
- "(b) shall be discharged when the proceedings in relation to which the order was made are concluded.";
- (e) in subsection (12), for the words "The prosecutor" there shall be substituted the words "A person applying for a restraint order under subsection (4) (a)".

8. In section 12,

- (a) for subsection (1) (a) and (b) there shall be substituted the following:
- "(a) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount payable; and
- (b) in any other case, of an amount equal to the value from time to time of the property charged.";
- (b) in subsection (3) (a) for the words "the prosecution, with the written approval of the Attorney General"

there shall be substituted the words "or on behalf of the Government of a designated country or in a case where an external confiscation order has been registered under section 25, by a receiver appointed under section 14, a crown prosecutor, or a person authorised in that behalf by the Comptroller of Customs";

(c) for subsection (3) (c) there shall be substituted the following:

"(c) notwithstanding anything in Order 11 of the Rules of the Supreme Court 1970, shall provide for service on, or the provision of notice to persons affected by the order in a manner the Court may direct;"

(d) in subsection (7) for the words "for the offence" there shall be substituted the words "against the defendant in the designated country".

9. After section 13 there shall be inserted the following section:

13A. An application under section 11 (4) or (12) 3 shall be supported by an affidavit which shall

- (a) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the designated country concerned,
- (b) to the best of the deponent's ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding that property,
- (c) in a case to which section 10 (2) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned,

and the affidavit may unless the court otherwise directs, contain statements of information or belief with the sources and grounds thereof."

10. In section 14, for subsection (1) there shall be substituted the following:

"(1) Where an external confiscation order has been registered in the Court under section 25, the Court may, on the application of a crown prosecutor or a person

"Applica-
tions for
restraint
and
charging
Orders.

authorised in that behalf by the Comptroller of Customs, exercise the powers conferred by subsections (1A) to (6).

(1A) In respect of any sum of money payable under the external confiscation order the Court may make a garnishee order as if the sum were due to the Crown in pursuance of a judgement or order of the Court, but any such order shall direct that the sum payable be paid to the Court."

11. In section 15,

- (a) in subsection (1), for the words from "sums", in the last place where it occurs, to the end of the subsection, there shall be substituted the words "be paid to the Court and applied for the purposes specified in subsections (4) to (6) and in the order so specified.";
- (b) in subsection (2), for the words "If, after the amount payable under the confiscation order", there shall be substituted the words "Where a fixed amount is payable under the external confiscation order and after that amount";
- (c) subsection (3) shall be omitted;
- (d) in subsection (4) for the words "The Registrar of the Court shall first", there shall be substituted the words "Any sums paid to the Court under subsection (1) or under an order made under section (14) (1A) or otherwise in satisfaction an external confiscation order shall be first applied to";
- (e) for subsection (5) there shall be substituted the following subsection:

"(5) If the money was paid to the Court by a receiver appointed under section 11 or 14 or in pursuance of a charging order the receiver's remuneration and expenses shall next be paid.";
- (f) in subsection (6), for the words "After making" there shall be substituted the words "After there has been made," and for the words "Registrar of the Court shall reimburse any amount paid under section 20 (2)" there shall be substituted the words "any amount paid under section 18 (2) shall be reimbursed."; and
- (g) for subsection (7) there shall be substituted the following subsection:

"(7) Any sums remaining after all payments required to be paid under the foregoing provisions of this section have been made shall be paid into the Consolidated Fund."

12. In section 16,

- (a) in subsection (2), for the words from "making available" to the end of the subsection there shall be substituted the words "recovering property which is liable to be recovered under an external confiscation order registered in the Court under section 25 or as the case may be, with a view to making available for recovery property which may become liable to be recovered under any external confiscation order which may be made in the defendant's case."; and
- (b) in subsection (6), after the word "the" in the fourth place where it occurs, there shall be inserted the word "external".

13. Section 17 shall be omitted.

14. In section 18,

- (a) in subsection (5) (a), the words "proceedings for a drug trafficking offence have been instituted against him and have not been concluded or when" shall be omitted;
- (b) in subsection (5) (b), for the words "conclusion of the proceedings" there shall be substituted the words "discharge of the restraint or charging order".

15. In subsection (2) of section 21 the words "by the prosecutor or, in a case where proceedings for a drug trafficking offence are not instituted," shall be omitted.

16. Sections 22 to 24 shall be omitted.

17. Sections 26 to 39 shall be omitted.

18. After section 25 there shall be inserted the Appendix set out at the end of Schedule 3 to this Order.

SCHEDULE 3

[Section 3 (2)]

The Drug Trafficking Offences Act 1992 as modified

1. (Omitted)

2. (1) In this Act, unless the context otherwise requires, Interpre-
tation.

"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) and (2) of the Drugs (Prevention of Misuse) Act or a corresponding law; Cap. 178

(b) transporting or storing a controlled drug where possession of the drug contravenes section 7 (1) of the Drugs (Prevention of Misuse) Act or a corresponding law; Cap. 178

(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, or a corresponding law; Cap. 178

(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;

(e) manufacturing or supplying a scheduled substance within the meaning of section 9 of the Criminal Justice (International Co-operation) Act, 1993 where the manufacture or supply is an offence under that section.

"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
Charging order	Section 12 (2)
External 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)
Realisable property	Section 4 (1)
Restraint order	Section 11(1)
Value of gift, payment or reward	Section 4 (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 anything received in connection with drug trafficking in that connection and in some other connection, and whether received, before or after the commencement of the Drug Trafficking Offences (Designated Countries and Territories) Order, 1996 and whether received in connection with drug trafficking carried on by the recipient or some other person.

(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 are instituted in a designated country when,
 - (i) under the law of the designated country concerned one of the steps specified in relation to that country in Column 2 of the Appendix hereto has been taken in respect of alleged drug trafficking by the defendant,
 - (ii) where no steps have been specified in relation thereto as mentioned in sub-paragraph (i), the defendant has been notified in writing in accordance with the laws of the designated country that the competent authorities of that country have begun proceedings against him in respect of an offence, or
 - (iii) an application has been made to a Court in a designated country for an external confiscation order,

and where the application of this section 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 the recovery of all property liable to be recovered, or the payment of any amount due, or otherwise).

(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.

Meaning of corresponding law".

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 in that country of 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.

Provisions as to profit.

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

(a) in relation to an external confiscation order made in respect of specified property, the property which is specified in the order; and

(b) in any other case,

(i) any property held by the defendant; and

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

Cap. 178

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

(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

(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 section (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 received 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.

(8) A gift (including a gift made before the coming into operation of the Drug Trafficking Offences (Designated Countries and Territories) Order, 1996) 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 hands 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.

External
confiscation
orders.

5. (1) 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 is referred to in this Act as an "external confiscation order".

(2) In subsection (1) the reference to an order includes any order, decree, direction or judgement, or any part thereof, however describe.

(3) A person against whom an external confiscation order has been made, or a person against whom proceedings which may result in an external confiscation order being made have been, or are to be, instituted in a court in a designated country, is referred to in this Act as "the defendant".

6. to 9. (Omitted)

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

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

- (a) proceedings have been instituted against the defendant in a designated country;
- (b) the proceedings have not been concluded; and
- (c) either an external confiscation order has been made in the proceedings or it appears to the Court that there are reasonable grounds for believing that an external confiscation order may be made in them.

(2) The powers conferred on the Court by sections 11 and 12 are also exercisable where it appears to the Court that proceedings are to be instituted against the defendant in a designated country and that there are reasonable grounds for believing that an external confiscation order may be made in them.

(4) Where the Court has made an order under section 11 and 12 by virtue of subsection (2), the Court shall discharge the order if the proposed proceedings are not instituted.

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) where an application under subsection (4) relates to an external confiscation order made in respect of specified property, to property which is specified in that order; and

(b) on any other case,

(i) all realisable property held by a specified person whether the property is described in the restraint order or not; and

(ii) to realisable property held by a specified person, being property transferred to him after the making of the restraint 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 or on behalf of the government of a designated country or, in a case where an external confiscation order as been registered under section 25, by a receiver appointed under section 14, a crown prosecutor or a person authorised in that behalf by the Comptroller of Customs;

(b) may be made on an *ex parte* application to a Judge in Chambers; and

(c) notwithstanding anything in Order 11 of the Rules of the Supreme Court 1970, may provide for service on, or the provision of notice to, persons affected by the order in a manner the Court may direct.

(5) A restraint order,

(a) may be discharged or vary in relation to any property; and

(b) shall be discharged when the proceedings in relation to which the order was made 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 expectations 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 and the Registered Land Ordinance, 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 judgements or recognisances; and

(b) in relation to applications for restraint orders, as they apply in relation to other pending land actions.

(12) A person applying for a restraint order under

subsection (4) (a) shall be treated for the purposes of section 124 of the Registered Land Ordinance as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.

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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 fixed amount is payable under an external confiscation order, of an amount not exceeding the amount payable; and
- (b) in any other case, of an amount equal to the value from time to time of the property charged.

(2) For the purposes of this Act, a charging 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 or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 25 of this Act, a crown prosecutor, or a person authorised in that behalf by the Comptroller of Customs;
- (b) may be made on an *ex parte* application to a Judge in Chambers;
- (c) notwithstanding anything in Order 11 of the Rules of the Supreme Court 1970, shall provide for service on, or the provision of notice to persons affected by the order in such manner as the Court may direct; 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 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 against the defendant in the designated country are concluded or the amount of 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 created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

Charging
orders:
supple-
mentary
provisions.

13A. An application under section 11 (4) or 12 (3) shall be supported by an affidavit which shall,

Applications for restraint and charging orders.

- (a) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the designated country concerned,
- (b) to the best of the deponent's ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding that property,
- (c) in a case to which section 10 (2) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned,

and the affidavit may, unless the court otherwise directs, contain statements of information or belief with the sources and grounds thereof.

14. (1) Where an external confiscation order has been registered in the Court under section 25, the Court may, on the application of a crown prosecutor or a person authorised in that behalf by the Comptroller of Customs, exercise the powers conferred by subsections (1A) to (6).

Realisation of property.

(1A) In respect of any sum of money payable under the external confiscation order the Court may make a garnishee order as if the sum were due to the Crown in pursuance of a judgement or order of the Court, but any such Order shall direct that the sum payable shall be paid to the Court.

(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 the 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
realisation
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 paid to the Court and applied for the purposes specified in subsections (4) to (6) and in the order so specified.

(2) Where a fixed amount is payable under the external confiscation order and after that amount has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums

- (a) among some 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.

(4) Any sums paid to the Court under subsection (1) or under an order made under section 14 (1A) or otherwise in satisfaction of an external confiscation order shall be first applied to 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 Court by a receiver appointed under section 11 or 14 or in pursuance of a charging order the receiver's remuneration and expenses shall next be paid.

(6) After there has been made

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

any amount paid under section 18 (2) shall be reimbursed.

(7) Any sums remaining after all the sums required to be made under the foregoing provisions of this section have been made shall be paid into the Consolidated Fund.

16. (1) The following provisions apply to the powers conferred on the Court by sections 11 to 15, or on a receiver appointed under sections 11 to 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 recovering property which is liable to be recovered under an external confiscation order registered in the Court under section 25, or as the case may be, with a view to making available for recovery property which may become liable to be recovered under any external confiscation order which may be made in the defendant's case.

(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 external confiscation order.

17. (Omitted)

Bankruptcy of
defendant, etc.

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,

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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 by the Court by sections 11 to 15 or on a receiver so appointed shall not be exercised in relation to

Cap. 8

- (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 or 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.

Cap. 8

(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 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 discharge of the restraint or charging order shall take into account any realisation under this Act or property held by the person to whom the gift was made.

Cap. 8

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
- (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 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 the 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,

"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 has been passed by the company, the time of the passing of the resolution; and
- (c) in any other cases where such an order has been made, the time of the making of the order.

Receivers and liquidators dealing with property subject to restraint order. Cap. 8

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

- (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 the 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

a restraint order, might have been met by taking possession 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 the subsection) to payment of those expenses under section 15.

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

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Cap. 285

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

Receivers:
supple-
mentary
provisions.

- (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 person on whose application the receiver was appointed.

22. to 24. (Omitted)

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 interest of justice.

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

(a) any proceedings by way of discharging or setting aside a judgement; 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. to 38. (Omitted)

APPENDIX

Section 2 (6) (e) (i)

INSTITUTION OF PROCEEDINGS

Designated country	Point at which proceedings are instituted
Anguilla	(a) when a summons or warrant is issued in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant; (c) when a bill of indictment is Preferred
Argentina	when a judge has ordered that a person be detained for the purpose of testifying in connection with the commission of an offence
Australia	(a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence after having been taken into custody without a warrant; (c) when a bill of indictment is Preferred
The Bahamas	(a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence after having been taken into custody without a warrant; (c) when a bill of indictment is Preferred
Bahrain	when a bill of indictment is lodged in court against any person for an Offence
Barbados	(a) when an information has been laid before the magistrate;

Designated country	Point at which proceedings are instituted
Barbados (cont.)	(b) when a person is charged with an offence; (c) when a bill of indictment is Preferred
Bermuda	when information is laid charging a person with an offence
The Cayman Islands	(a) when a charge has been signed under subsection (3) or (4) of section 13 of the Criminal Procedure Code in respect of the offence; (b) when a person is being charged with an offence after being arrested without a warrant under subsection (5) of that section
Ecuador	when a writ is issued by a judge initiating criminal proceedings
Germany	when a person is notified that he is accused of an offence and will be brought before a court
Gibraltar	when a person is charged with an offence, whether by the laying of an information or otherwise
Guernsey	when a person is charged with an offence
Guyana	when a charge has been laid against a person for an offence
Hong Kong	(a) when a magistrate issues a warrant or summons; (b) when a person is charged with an offence; (c) when an indictment is preferred

Designated country	Point at which proceedings are instituted
India	<p>(a) when information relating to commission of any crime is received by any law enforcement agency empowered to investigate such crime under the law for the time being in force and laid before a court of law;</p> <p>(b) when any allegation is made orally or in writing to a court of law that a person has committed an offence;</p> <p>(c) when a person is charged with an offence</p> <p>(d) when any investigation or inquiry into the commission of any offence is directed by a court of law</p>
Isle of Man	<p>(a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1980, when the complaint in relation to the offence is made to him;</p> <p>(b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him;</p> <p>(c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody;</p> <p>(d) where an information is preferred by the Attorney General in a case where there have been no committal proceedings, when the information is lodged in the General Registry in accordance with section 4 (1) of the Criminal Code Amendment Act 1917</p>

Designated country	Point at which proceedings are instituted
Italy	<p>(a) when a person is notified, in accordance with article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in progress;</p> <p>(b) when a proposal for the application of a preventative measure ("misura di prevenzione") is laid before a court</p>
Jersey	<p>(a) when the Bailiff issues a warrant in respect of an offence for the arrest of a person who is out of the island;</p> <p>(b) when a person is arrested and charged with an offence;</p> <p>(c) when a summons in respect of an offence is served on a person at the instance of the Attorney General;</p>
Jersey	<p>(d) when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the Police Court (Miscellaneous Provisions) (Jersey) Law, 1949</p>
Malaysia	<p>when a person is charged with an Offence</p>
Montserrat	<p>(a) when a judge issues a summons or warrant in respect of an offence;</p> <p>(b) when a person is charged with an offence after being taken into custody without a warrant</p>
Netherlands	<p>(a) when a pre-trial financial investigation has been initiated;</p>

Designated country	Point at which proceedings are instituted
Netherlands (cont.)	<p>(b) when the provisional order has been ordered by an investigating magistrate;</p> <p>(c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted;</p> <p>(d) when a public prosecutor has laid an indictment</p>
Panama	when a person has been charged with an offence
Saudi Arabia	when an information has been laid before a judicial authority
South Africa	<p>(a) when a summons is issued in respect of an offence;</p> <p>(b) when a person is charged with an offence;</p> <p>(c) when a bill of indictment is preferred</p>
Spain	when by virtue of a judicial resolution it is decided to proceed against a person for an offence
Sweden	when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion
Switzerland	when proceedings for an offence are brought before an examining magistrate

Designated country	Point at which proceedings are instituted
United Kingdom	(a) when an information is laid before a justice of the peace; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred; (d) when a petition warrant is granted
United Mexican	when criminal proceedings are States instituted by a judicial Authority
United States of	when an indictment, information or America complaint has been filed against a person in respect of an offence
Uruguay	when criminal proceedings are instituted by a judicial authority.

Made by the Governor in Council this 27th day of November, 1996.

ENA VANTERPOOL,
Clerk of the Executive Council.

