



MONTSERRAT

## CHAPTER 4.08

# DRUG TRAFFICKING OFFENCES ACT and Subsidiary Legislation

### Revised Edition

showing the law as at 1 January 2008

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

This edition contains a consolidation of the following laws—

### **DRUG TRAFFICKING OFFENCES ACT**

Act 4 of 1990 .. in force 1 March 1991 (S.R.O. 1/1991)

Amended by Act 9 of 1991 .. in force 6 September 1991

Amended by S.R.O. 47/1996 .. in force 9 July 1996

Amended by Act 3 of 2004 .. in force 1 January 2005 (S.R.O. 73/2005)

### **DESIGNATED COUNTRIES AND TERRITORIES ORDER – Section 22**

S.R.O. 47/1996 .. in force 9 July 1996 (S.R.O. 46/1996)

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**CHAPTER 4.08**

**DRUG TRAFFICKING OFFENCES ACT**

**ARRANGEMENT OF SECTIONS**

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**CHAPTER 4.08**

**DRUG TRAFFICKING OFFENCES ACT**

*(Acts 4 of 1990, 9 of 1991, 3 of 2004 and S.R.O. 47/1996)*

AN ACT TO MAKE PROVISIONS FOR THE RECOVERY OF THE PROCEEDS OF DRUG TRAFFICKING AND OTHER PROVISIONS IN CONNECTION WITH DRUG TRAFFICKING.

**Commencement**

*[1 March 1991]*

**Short title**

1. This Act may be cited as the Drug Trafficking Offences Act.

**Interpretation**

2. (1) In this Act—

“**Anti-Money Laundering Regulations**” means the Regulations made under section 49 of the Proceeds of Crime Act; *(Inserted by Act 3 of 2004)*

“**authorised government department**” means a government department authorised by Order made by the Governor in Council to be an authorised government department for the purpose of this Act;

“**drug money laundering**” means doing any act which constitutes an offence under—

- (i) section 21 of this Act, or
- (ii) section 13(1), (2) or (3) of the Criminal Justice (International Co-operation) Act;

or, in the case of an act done outside Montserrat, would constitute such an offence if done in Montserrat;

*(Inserted by Act 3 of 2004)*

“**drug trafficking**” means doing or being concerned in any of the following, whether in Montserrat or elsewhere—

- (a) producing or supplying a controlled drug where the production or supply contravenes section 6 of the Drugs (Prevention of Misuse) Act or a corresponding law;
- (b) transporting or storing a controlled drug where possession of the drug contravenes section 7 of the aforesaid Act or a corresponding law;

- (c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 5 of the aforesaid Act or a corresponding law; and includes a person doing the following, whether in Montserrat or elsewhere, that is entering into or being otherwise concerned in an arrangement whereby—
  - (i) the retention or control by or on behalf of another person of the other person's proceeds of drug trafficking is facilitated; or
  - (ii) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person's disposal or are used for the other person's benefit to acquire property by way of investment;
- (d) manufacturing or supplying a scheduled substance within the meaning of section 11 of the Criminal Justice (International Co-operation) Act where the manufacture or supply is an offence under that section;
- (e) doing any act which constitutes an offence under section 13(1), (2) or (3) of the Criminal Justice (International Co-operation) Act or, in the case of an act done outside Montserrat, which would be such an offence if done in Montserrat; (*Inserted by Act 3 of 2004*)

**“drug trafficking offence”** means any of the following—

- (a) an offence under section 5(3) or 6(3) or 7(3) of the Drugs (Prevention of Misuse) Act (importation and exportation, production, supply and possession for supply of controlled drugs);
- (b) an offence under section 21 of that Act (assisting in or inducing commission outside Montserrat of offence punishable under a corresponding law);
- (c) an offence under the Customs (Control and Management) Act relating to improper importation or exportation of controlled drugs;
- (d) an offence under section 21 of this Act;
- (e) an offence under section 11, 13 or 17 of the Criminal Justice (International Co-operation) Act;
- (f) an offence of attempting to commit any of those offences whether under section 20 of the Drugs (Prevention of Misuse) Act or at Common Law; (*Inserted by Act 3 of 2004*)
- (g) an offence under section 20 of the Drugs (Prevention of Misuse) Act (attempting to commit any offences);



(h) an offence of inciting another to commit any of those offences, whether under section 21 of the Drugs (Prevention of Misuse) Act or at Common Law;

(i) aiding, abetting, counselling or procuring the commission of any of those offences;

“**interest**”, in relation to property, includes right;

“**a nominated officer**” means a person designated by his employer to receive disclosures of suspicious transactions; *(Inserted by Act 3 of 2004)*

“**police officer**” includes an officer from the Customs and Excise Department;

“**a professional legal adviser**” means a person who has obtained qualifications prescribed under the Supreme Court Act or any subsequent or related legislation entitling him to practice before the Eastern Caribbean Supreme Court; *(Inserted by Act 3 of 2004)*

“**property**” includes money and all other property, real or personal, hereditary or moveable, including things in action and other intangible or incorporeal property;

*(Amended by Acts 9 of 1991 and 3 of 2004)*

“**relevant financial business**” means a business prescribed as a relevant financial business by the Anti-Money Laundering Regulations; *(Inserted by Act 3 of 2004)*

“**Reporting Authority**” means the Reporting Authority appointed by the Governor in Council under section 30 of the Proceeds of Crime Act; *(Inserted by Act 3 of 2004)*

(1A) For the purposes of the definition of drug money laundering in subsection (1), having possession of any property shall be taken to be doing an act in relation to it. *(Inserted by Act 3 of 2004)*

(2) The expression listed in the left hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Act listed in the right hand column in relation to those expressions.

Expressions	Relevant Provision
Benefited from drug trafficking	Section 3(3)
Charging Order	Section 11(2)
Confiscation Order	Section 3(7)
Dealing with property	Section 10(7)
Defendant	Section 3(7)(b)
Gift caught by this Act	Section 7(8)

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Making a gift	Section 7(9)
Proceeds of drug trafficking	Section 4(1)(a)
Realisable property	Section 7(1)
Restraint Order	Section 10(1)
Value of gift, payment or reward	Section 7
Value of proceeds of drug trafficking	Section 4(1)(b)
Value of property	Section 7(4)

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

(4) References in this Act to offences include a reference to offences committed before the commencement of section 3 of this Act; but nothing in this Act imposes any duty or confers any power on any court in or in connection with proceedings against a person for a drug trafficking offence instituted before the commencement of that section.

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

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

(7) Property is held by any person if he holds any interest in it.

(8) References to property held by a person include a reference to property vested in his trustee in bankruptcy, permanent or interim trustee within the meaning of the Bankruptcy Act.

(9) 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.

(10) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(11) Proceedings for an offence are instituted in Montserrat—

(a) when a Judge issues a summons or warrant under this Act in respect of the offence; or

(b) when a person is charged with the offence after being taken into custody without a warrant,

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

(12) Proceedings for an offence are concluded—

- (a) 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;
- (b) on the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

(13) 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 could be varied or set aside.

### Confiscation Orders

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

(2) The Court shall first determine whether he has benefited from drug trafficking.

(3) For the purposes of this Act, a person who has at any time (whether before or after the commencement of this section) received any payment or other reward in connection with drug trafficking carried on by him or another has benefited from drug trafficking.

(4) If the court determines that he has so benefited, the court shall, before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 6 of this Act the amount to be recovered in his case by virtue of this section.

(5) The court shall then, in respect of the offence or offences concerned—

- (a) order him to pay that amount;
- (b) take account of the order before—
  - (i) imposing any fine on him; or
  - (ii) making any order involving any payment by him; or
  - (iii) making any forfeiture order under the provisions of the Drugs (Prevention of Misuse) Act; and
- (c) subject to paragraph (b) above, leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

(6) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the making of an order under this section restrict the

Court from dealing with an offender in any way the court considers appropriate in respect of a drug trafficking offence.

(7) In this Act—

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

### Assessing the proceeds of drug trafficking

4. (1) For the purposes of this Act—

- (a) any payments or other rewards received by a person at any time (whether before or after the commencement of section 3 of this Act in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking; and
- (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

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

(3) Those assumptions are—

- (a) that any property appearing to the court—
  - (i) to have been held by him at any time since his conviction; or
  - (ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,was received by him, at the earliest time at which he appears to the court to have held it, as a payment or reward in connection with drug trafficking carried on by him;
- (b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him; and
- (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.

(4) Subsection (2) above does not apply if the only drug trafficking offence in respect of which the defendant appears before the court to be

sentenced is an offence under section 21 of this Act or section 13 of the Criminal Justice (International Co-operation) Act. (*Amended by Act 9 of 1991*)

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

### **Statements relating to drug trafficking**

#### **5. (1) Where—**

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

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

#### **(2) Where—**

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

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

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

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

#### **(4) Where—**

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

(b) the prosecutor accepts to any extent any allegation in the statement,

the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which it relates.

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

(a) orally before the court; or

(b) in writing in accordance with Court Rules.

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

### **Amount to be recovered under confiscation order**

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

(2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under section 5 of this Act or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3) below.

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

### **Definition of principal terms used**

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

(a) any property held by the defendant; and

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

(2) Property is not realisable property if an order for deprivation or forfeiture is in force in respect of that property under an Order of a court under any other written law.

(3) For the purposes of sections 5 and 6 of this Act the amount that might be realised at the time a confiscation order is made against the defendant is—

(a) the total of the values at that time of all the realisable property held by the defendant; less

(b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations,

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

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

- (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 encumbrance (other than a charging order) on that interest; and
- (b) in any other case, is its market value.

(5) Subject to subsection (9) below, references in this Act to the value at any time (referred to in subsection (6) below 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) below applies, the value there mentioned whichever is greater.

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

- (a) the property which he received (not being cash); or
- (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) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property mentioned in paragraph (b) above so far as it so represents the property which he received, but disregarding in either case any charging order.

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

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

(b) pay any sum which would be included among the preferential debts (within the meaning given in the Bankruptcy Act) in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date in terms of any provision in the Companies Act.

(8) A gift (including a gift made before the commencement of section 3 of this Act) is caught by this Act if—

(a) it was made by the defendant at any time since the beginning of the period of six years ending when the proceedings were instituted against him; or

(b) it was made by the defendant at any time and was a gift of property—

(i) received by the defendant in connection with drug trafficking carried on by him or another; or

(ii) which in whole or in part directly or indirectly represented in the defendant's 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 1(a) above bears to the value of the Consideration provided by the defendant.

### **Application of procedure for enforcing fines**

8. (1) (a) Where the Court orders the defendant to pay any amount under section 3 of this Act, such orders shall have effect as if that amount was a fine imposed on the defendant by the Court and shall be recovered accordingly.

(b) Where the amount payable under paragraph (a) above is not paid by the defendant within such period as the court may grant for the payment thereof the defendant shall be sentenced to such period of imprisonment for his default in



accordance with the table set out below—

<i>Amount ordered to be paid</i>	<i>Term of imprisonment in default</i>
Does not exceed \$50,000	6 months
Exceeding \$50,000 but not exceeding \$100,000	12 months
Exceeding \$100,000 but not exceeding \$250,000	18 months
Exceeding \$250,000 but not exceeding \$500,000	2 years
Exceeding \$500,000 but not exceeding \$800,000	3 years
Exceeding \$800,000 but not exceeding \$1,000,000	5 years
Exceeding \$1,000,000	10 years

**(2) Where—**

- (a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under section 3 of this Act in respect of an offence or offences; and
- (b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence or offences,

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

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

**9. (1)** The powers conferred on the High Court by sections 10(1) and 11(1) of this Act are exercisable where—

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

**(2)** Those powers are also exercisable where the court is satisfied—

- (a) that whether by the laying of an information or otherwise, a person is to be charged with a drug trafficking offence; and
- (b) that there is reasonable cause to believe that he has benefited from drug trafficking.

**(3)** For the purposes of sections 10 and 11 of this Act, at any time when those powers are exercisable before proceedings have been instituted—

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

(4) Where the court has made an order under section 10(1) or 11(1) of this Act by virtue of subsection (2) above, the court shall discharge the order if proceedings in respect of the offence are not instituted (whether by the laying of an information or otherwise) within such time as the court considers reasonable.

### Restraint orders

**10. (1)** The High 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.

(2) A restraint order may apply—

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

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 11 of this Act.

(4) A restraint order—

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

(5) A restraint order—

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

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

(7) Where the High 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 any property in respect of which he is appointed,

subject to such exceptions and conditions 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 the property from Montserrat.

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

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

(11) The Registered Land Act shall apply—

- (a) in relation to restraint orders, as they appear 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) The prosecutor shall be treated for the purposes of the provisions relating to inhibitions in the Registered Land Act as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.

### **Charging orders in respect of land, securities, etc.**

**11. (1)** The High Court may make a charging order on realisable property for securing the payment to the Crown—

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

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

(3) A charging order—

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

(4) Subject to subsection (6) below, 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—
  - (i) in any asset of a kind mentioned in subsection (5) below; or
  - (ii) under any trust; 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) above be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

(5) The assets referred to in subsection (4) above are—

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

(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) above, the court may provide for the charge to extend to any interest or dividend payable in respect of the asset.

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

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

### **Charging orders: supplementary provisions**

12. (1) The Registered Land Act shall apply in relation to charging orders as they apply in relation to orders or writs issued or made for the purpose of enforcing judgements.

(2) Subject to any provisions made under section 13 of this Act 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.

(3) Where a charging order has been protected by an entry registered under the Registered Land Act as a caveat or an inhibition an order under section 11(7) of this Act discharging the charging order may direct that the entry be cancelled.

(4) The Governor in Council may by order made by Statutory Rules and Orders amend section 11 of this Act by adding to or removing from the kinds of asset for the time being referred to there any asset of a kind which in his opinion ought to be so added or removed.

An order under this subsection shall be subject to annulment in pursuance of a resolution of the Legislative Council.

### **Realisation of property**

13. (1) Where—

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

the High Court may, on an application by the prosecutor, exercise the powers conferred by subsections (2) to (6) below.

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

(3) The court may empower a receiver appointed under subsection (2) above, under section 10 of this Act or in pursuance of a charging order—

(a) to enforce any charge imposed under section 11 of this Act 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 11 of this Act, 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 any 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) above do not apply to property for the time being subject to a charge under section 11 of this Act.

(8) The court shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) above, 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**

14. (1) Subject to subsection (2) below, the following sums in the hands of a receiver appointed under section 10 or 13 of this Act or in pursuance of a charging order, that is—

(a) the proceeds of the enforcement of any charge imposed under section 11 of this Act;

(b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 10 or 13 of this Act; and

(c) any other sums, being property held by the defendant,

shall after such payments (if any) as the High Court may direct have been made out of those sums, be applied on the defendants behalf towards the satisfaction of the confiscation order.

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

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

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

(3) The receipt of any sum by the Court on account of an amount payable under a confiscation order shall reduce the amount so payable, but the sum shall be applied as follows—

- (a) if paid by a receiver under subsection (1) above, it shall first be applied in payment of his remuneration and expenses;
- (b) subject to paragraph (a) above, it shall be applied in reimbursement of any sums paid by the prosecutor under section 19(2) of this Act,

and the balance shall be treated as a fine imposed by the court.

### **Exercise of powers by High Court or receiver**

**15. (1)** The following provisions apply to the powers conferred on the High Court by sections 10 to 14 of this Act, or on a receiver appointed under section 10 or 13 of this Act or in pursuance of a charging order.

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

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

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

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

### **Variation of confiscation orders**

**16. (1)** If, on an application by the defendant in respect of a confiscation order, the High Court is satisfied that the realisable property is inadequate

for the payment of any amount remaining to be recovered under the order the court shall issue a certificate to that effect, giving the court's reasons.

(2) For the purposes of subsection (1) above—

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

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

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

- (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and
- (b) substitute for the term of imprisonment in respect of the amount to be recovered under the order a shorter term determined in accordance with section 8 in respect of the lesser amount.

### **Bankruptcy of defendant, etc.**

17. (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 10(7) or 13(5) or (6) of this Act for the time being in the hands of the receiver appointed under section 10 or 13 of this Act,

is excluded from the estate of the bankrupt for the purposes of the Bankruptcy Act.

(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 10 to 14 of this Act or on a receiver so appointed shall not be exercised in relation to—

- (a) property for the time being comprised in the bankrupt's estate for the purposes of the Bankruptcy Act;



- (b) property in respect of which his trustee in bankruptcy may (without leave of court) serve a notice; and
  - (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under that Act.
- (3) Nothing in that Act shall be taken as restricting or enabling the restriction of, the exercise of those powers.
- (4) Subsection (2) above 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.
- (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 that Act (avoidance of certain transactions) in respect of the making of the gift at any time when proceedings for a drug trafficking offence have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or charging order; and
  - (b) any order made under the Bankruptcy Act after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.

### **Winding up of company holding realisable property**

**18. (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—

- (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 10(7) or 13(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 10 or 13 of this Act.
- (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 High Court by sections 10 to 14 of this Act or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—

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

(3) Nothing in the Companies Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Subsection (2) above 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.

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

### **Receivers: supplementary provision**

19. (1) Where a receiver appointed under section 10 or 13 of this Act or in pursuance of a charging order takes any action—

- (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, if no sum is available to be applied in payment of it under section 14(3)(a) of this Act, be paid by the prosecutor or, in a case where proceedings for a drug trafficking offence are not instituted, by the person on whose application the receiver was appointed.

## Compensation

**20. (1)** If proceedings are instituted against a person for a drug trafficking offence or offences and either—

- (a) the proceedings do not result in his conviction for any drug trafficking offence; or
- (b) where he is convicted of one or more drug trafficking offences—
  - (i) the conviction or convictions concerned are quashed; or
  - (ii) he is pardoned in respect of the conviction or convictions concerned,

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

**(2)** The High Court shall not order compensation to be paid in any case unless the court is satisfied—

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned; and
- (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order of the High Court under sections 10 to 13 of this Act.

**(3)** The Court shall not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued if the serious default had not occurred.

**(4)** The amount of compensation to be paid under this section shall be such as the High Court thinks just in all the circumstances of the case and shall be paid from the funds of the Government.

## Assisting another to retain the benefit of drug trafficking

**21. (1)** Subject to subsection (3) below, if a person enters into or is otherwise concerned in an arrangement whereby—

- (a) the retention or control by or on behalf of another (call him “A”) of A’s proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
- (b) A’s proceeds of drug trafficking—
  - (i) are used to secure that funds are placed at A’s disposal;
  - or

- (ii) are used for A's benefit to acquire property by way of investment,

knowing, suspecting or having reasonable grounds to suspect that A is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking, he is guilty of an offence.

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

(3) Where a person discloses to the Reporting Authority a suspicion or belief that any funds or investments are derived from or used in connection with drug trafficking or any matter on which such a suspicion or belief is based—

- (a) the disclosure shall not be treated as a breach of any enactment, rule of law or agreement restricting the disclosure of information;
- (b) if he does any act in contravention of subsection (1) above and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if the disclosure is made in accordance with this paragraph, that is—
  - (i) it is made before he does the act concerned, being an act done with the consent of the Reporting Authority; or
  - (ii) it is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

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

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

**(4A)** A person makes a disclosure to a nominated officer under subsection (1) if he makes the disclosure—

- (a) to an individual nominated by his employer to receive disclosures under this section; and
- (b) in the course of his employment and in accordance with the procedures established by his employer for the purpose.

**(5)** A person guilty of an offence under this section shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or to both; and
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

*(Amended by Act 3 of 2004)*

### **Requirement to disclose knowledge or suspicion of drug money laundering**

**21A. (1)** Where a person—

- (a) knows, or suspects, or has reasonable grounds for suspecting, that another person is engaged in drug money laundering; and
- (b) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such suspicion, comes to him in the course of a relevant financial business;

he shall disclose the information or other matter as soon as is practicable after it comes to him to a nominated officer or to the Reporting Authority.

**(2)** A disclosure under subsection (1) to the Reporting Authority shall be in the form and manner, if any, that may be prescribed in the Anti-Money Laundering Regulations.

**(3)** A person who does not disclose any information or other matter as required by subsection (1) is guilty of an offence.

**(4)** A person does not commit an offence under subsection (3) if—

- (a) he has a reasonable excuse for not disclosing the information or other matter; or
- (b) he is a professional legal adviser and the information or other matter came to him in privileged circumstances.

**(5)** Without limiting subsection (4)(a), a person has a reasonable excuse for not disclosing information or another matter under subsection (1) if—

- (a) he does not know or suspect that another person is engaged in drug money laundering; and
- (b) he has not been provided by his employer with anti-money laundering training as required by the Anti-Money Laundering Regulations.

(6) Subject to subsection (7), for the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him—

- (a) by, or by a representative of, a client of his in connection with the giving by the advisor of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the advisor; or
- (c) by a person in connection with legal proceedings or contemplated legal proceedings.

(7) Subsection (6) does not apply to any information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(8) A person makes a disclosure to a nominated officer under section 21 and subsection (1) of this section if he make the disclosure—

- (a) to an individual nominated to receive disclosures under this section by his employer; and
- (b) is made by in the course of his employment and in accordance with the procedures established by his employer for the purpose.

*(Inserted by Act 3 of 2004)*

## **Tipping off**

**21B. (1)** A person is guilty of an offence if—

- (a) he knows or suspects that the Reporting Authority, a police officer or other authorised person is acting, or is proposing to act, in connection with an investigation that that is being or is about to be conducted into drug money laundering; and
- (b) he discloses to any other person information or any other matter that is likely to prejudice that investigation or proposed investigation.

**(2)** A person commits an offence if—

- (a) he knows or suspects that a disclosure (“the disclosure”) has been made to a police officer and or the Reporting Authority under section 21 or 21A of this Act or under section 13 of the Criminal Justice (International Co-operation) Act; and

- (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (3) A person commits an offence if—
  - (a) he knows or suspects or has reasonable grounds for suspecting that a disclosure (“the disclosure”) has been made—
    - (i) of a kind mentioned in 21(4A) of this Act or section 13(5E) of the Criminal Justice (International Co-operation) Act, or
    - (ii) to a nominated officer under section 21A(1) of this Act; and
  - (b) he discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (4) Nothing in subsections (1) to (3) makes it an offence for a person to disclose any information or other matter to a professional legal adviser for the purposes of legal advice or for a professional legal adviser to disclose any information or other matter—
  - (a) 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
  - (b) to any person—
    - (i) in contemplation of, or in connection with, legal proceedings; and
    - (ii) for the purpose of those proceedings.
- (5) Subsection (4) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (6) In proceedings against a person for an offence under subsection (1), (2) or (3), it is a defence to prove that he did not know or suspect, or have reasonable grounds for suspecting, that the disclosure was likely to be prejudicial in the way specified in the relevant paragraph.
- (7) A person who commits an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding three years or a fine not exceeding ten thousand dollars or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine not exceeding fifty thousand dollars or to both.
- (8) No member of the Reporting Authority, police officer or other person shall be guilty of an offence under this section in respect of

reasonable measures taken 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 an offence to which this Act applies.

*(Inserted by Act 3 of 2004)*

## Enforcement of other external orders

22. (1) The Governor in Council may by Order—

- (a) direct in relation to a country or territory outside Montserrat designated by the Order (a “designated country”) that subject to such modifications as may be specified, this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
- (b) make—
  - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order; and
  - (ii) such provision as to evidence or proof or any matter for the purposes of this section and section 23 below; and
  - (iii) such incidental, consequential and transitional provision; as appears to the Governor in Council to be expedient; and
- (c) without prejudice to the generality of this subsection direct that in such circumstances as may be specified proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.

(2) In this Act—

“**external confiscation order**” is the means of recovering payments or other rewards received in connection with drug trafficking or their value; and

“**modification**” includes additions, alterations and omissions.

(3) An Order under this section may make different provisions for different cases or classes of cases.

(4) The power to make an Order under this section includes power to modify this Act in such a way as to confer power on a person to exercise a discretion.

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



### **Registration of external confiscation orders**

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

- (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 Montserrat would not be contrary to the interest of justice.

**(2)** In subsection (1) above “**appeal**” includes—

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

**(3)** The High 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.

### **Orders to make material available**

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

**(2)** If on such an application the Judge is satisfied that the conditions in subsection (4) below are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—

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

within such period as the order may specify.

This subsection is subject to section 26(11) of this Act.

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

**(4)** The conditions referred to in subsection (2) above are—

- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
- (b) that there are reasonable grounds for suspecting that the material to which the application relates—
  - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and
  - (ii) does not consist of or include items subject to legal privilege or excluded material; and
- (c) that there are reasonable grounds for believing that it is in the public interest, having regard —
  - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
  - (ii) to the circumstances under which the person in possession of the material holds it,that the material should be produced or that access to it should be given.

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

(6) Provision may be made by Court Rules or, rules of court as to—

- (a) the discharge and variation of orders under this section; and
- (b) proceedings relating to such orders.

(7) An order of a Judge under this section shall have effect as if it were an order of the Court.

(8) Where the material to which an application under this section relates consists of information contained in or accessible by means of a computer—

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

(9) An order under subsection (2) above—

- (a) shall not confer any right to production of, or access to, items subject to legal privilege or excluded material;

- (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and
  - (c) may be made in relation to material in the possession of an authorised government department.
- (10) An application under subsection (1) or (5) may be made *ex parte* to the judge in Chambers.

(11) A police officer may take copies of any material which is produced, or to which access is given, in compliance with an order under this section.

*(Amended by Act 3 of 2004)*

### Authority for search

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

(2) On such application the Judge or a Magistrate may issue a warrant authorising a police officer to enter and search the premises if he is satisfied—

- (a) that an order made under section 24 of this Act in relation to material on the premises has not been compiled with; or
  - (b) that the conditions in subsection (3) below are fulfilled; or
  - (c) that the conditions in subsection (4) below are fulfilled.
- (3) The conditions referred to in subsection (2)(b) above are—
- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking; and
  - (b) that the conditions in section 24(4)(b) and (c) of this Act are fulfilled in relation to any material on the premises; and
  - (c) that it would not be appropriate to make an order under that section in relation to the material because—
    - (i) it is not practicable to communicate with any person entitled to produce the material; or
    - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
    - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless

a police officer could secure immediate access to the material.

- (4) The condition referred to in subsection (2)(c) above are—
- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking; and
  - (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised; and
  - (c) that—
    - (i) it is not practicable to communicate with any person entitled to grant entry to the premises; or
    - (ii) entry to the premises will not be granted unless a warrant is produced; or
    - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a police officer arriving at the premises could secure immediate entry to them.

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

(6) A police officer may take copies of any material seized under this section.

*(Amended by Act 3 of 2004)*

### **Disclosure of information held by government departments**

**26. (1)** Subject to subsection (4) below, the High Court may on application by the prosecutor order any material mentioned in subsection (3) below which is in the possession of an authorised government department to be produced to the court within such period as the court may specify.

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

- (a) the powers conferred on the court by sections 10(1) and 11(1) of this Act are exercisable by virtue of subsection (1) of section 9 of this Act; or
- (b) those powers are exercisable by virtue of subsection (2) of that section and the court has made a restraint or charging order which has not been discharged,

but where the power to make an order under subsection (1) above is exercisable by virtue only of paragraph (b) above, subsection (3) of section 9 of this Act shall apply for the purposes of this section as it applied for the purposes of sections 10 and 11 of this Act.

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

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

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

(4) An Order under subsection (1) above shall not require the production of any material unless it appears to the High Court that the material is likely to contain information that would facilitate the exercise of the powers conferred on the court by sections 10 to 13 of this Act or on a receiver appointed under section 10 or 13 of this Act or in pursuance of a charging order.

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

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

(7) The court may by order authorise the disclosure to a person mentioned in subsection (8) below of any material produced under subsection (1) above or any part of such material; but the court shall not make an order under this subsection unless—

- (a) a reasonable opportunity has been given for an officer of the department to make representations to the court; and
- (b) it appears to court that the material is likely to be of substantial value in exercising functions relating to drug trafficking.

(8) The persons referred to in subsection (7) above are—

- (a) any member of a police force;
- (b) any member of the Attorney General's Chambers; and
- (c) any officer within the meaning of the Customs (Control and Management) Act.

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

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

(11) An order under subsection (1) above and, in the case of material in the possession of an authorised government department, an order under section 24(2) of this Act may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the department.

(12) The person on whom such an order is served—

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

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

### **Account monitoring orders**

**26A. (1)** A police officer or the Attorney General may, for the purpose of an investigation into drug trafficking, apply to a judge for an account monitoring order under subsection (2).

(2) If on an application under subsection (1), the judge is satisfied that the conditions specified in subsection (5) are fulfilled, he may make an order that the financial institution specified in the application must, for the period stated in the order, which shall not exceed 90 days, provide account information of the description specified in the order to a police officer in the manner, and at or by the time or times, stated in the order.

(3) For the purposes of subsection (2), “account information” is information relating to an account or accounts held at the financial institution specified in the order by the person specified in the order, whether solely or jointly with one or more other persons.

(4) An order under subsection (2) may specify account information relating to—

- (a) all accounts held by the person and at the financial institution specified in the order;
- (b) a particular description, or particular descriptions, of accounts so held; or
- (c) a particular account, or particular accounts, so held.

(5) The conditions referred to in subsection (2) are—

- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
- (b) that there are reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value, whether by itself or with other information or material, to the investigation for the purpose of which the application is made; and
- (c) that there are reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

(6) Provision may be made by Court Rules or, rules of court as to—

- (a) the discharge and variation of orders under this section; and
- (b) proceedings relating to such orders.

(7) An order of a Judge under this section shall have effect as if it were an order of the Court.

(8) An application under subsection (1) may be made *ex parte* to the judge in Chambers.

*(Inserted by Act 3 of 2004)*

### **Offence of prejudicing investigation**

27. (1) Where in relation to an investigation into drug trafficking, an order under section 24 of this Act has been made or has been applied for and has not been refused or a warrant under section 25 of this Act has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation is guilty of an offence.

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

- (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation; or
  - (b) that he had lawful authority or reasonable excuse for making the disclosure.
- (3) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
-



**DESIGNATED COUNTRIES AND TERRITORIES ORDER**

ARRANGEMENT OF ARTICLES

ARTICLE

1. Short title
2. Interpretation
3. Designation of and application of the Act to countries and territories
4. Proof of Orders and Judgment of Court in a designated country
5. Evidence in relation to proceedings and orders in a designated country
6. Certificate as to appropriate Authority of a designated country
7. Representation of government of a designated country
8. Satisfaction of confiscation order in a designated country
9. Currency conversion

SCHEDULE 1: Designated countries

SCHEDULE 2: Modifications of the Drug Trafficking Offences Act

SCHEDULE 3: Drug Trafficking Offences Act as modified

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**DESIGNATED COUNTRIES AND TERRITORIES ORDER –  
SECTION 22**

*(S.R.O. 47/1996)*

**Commencement**

*[9 July 1996]*

**Short title**

1. This Order may be cited as the Designated Countries and Territories Order.

**Interpretation**

2. In this Order—

“**a court of a designated country**” includes a court of any state or territory of a designated country;

“**Act**” means the Drug Trafficking Offences Act;

“**appropriate authority of a designated country**” means—

- (a) the authority specified opposite that country in Schedule 1 to this Order; 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 22 and 23 of the Act, and of the other provisions of the Act as applied under Article 3(2) of this Order;

**“designated country”** means a country or territory designated under Article 3(1) of this Order;

**“Governor”** means the person for the time being holding the office of Governor and includes a person acting in the office of Governor.

### **Designation of and application of the Act to countries and territories**

**3. (1)** Each of the countries and territories specified in Schedule 1 to this Order is hereby designated for the purpose of sections 22 and 23 of the Act.

**(2)** In relation to a designated country, the Act shall apply subject to the modifications specified in Schedule 2 to this Order, 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 accordingly in relation to such orders and such proceedings, the Act shall have effect as set out in Schedule 3 to this Order.

### **Proof of orders and judgment of court in a designated country**

**4. (1)** For the purposes of sections 22 and 23 of the Act and of the other provisions of the Act as applied under Article 3(2) of this Order—

- (a)* any order made or judgment given by a court in a designated country purporting to bear the seal of that court or to be signed by any 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 judgment given by a court in a designated country shall be deemed without further proof to be a true copy.

**(2)** A document purporting to be a copy of any order made or judgment given by a court in a designated country is duly authenticated for the purpose of paragraph (1)(b) above if it purports to be certified by any 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.

### **Evidence in relation to proceedings and orders in a designated country**

**5. (1)** For the purposes of sections 22 and 23 of the Act and of the other provisions of the Act as applied under Article 3(2) of this Order a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating—

- (a)* that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted there;
- (b)* that an external confiscation order is in force and is not subject to appeal;

- (c) 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;
- (d) that any person has been notified of any proceedings in accordance with the law of the designated country; or
- (e) that an order (however described) made by a court of the designated country has the purpose of recovering payments or other rewards 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 any 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 summarize evidence given in proceedings in a court in a designated country, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of paragraph (2) above if it purports to be certified by any person in his capacity as a Judge, Magistrate or officer of the court in the 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 summarizing the evidence or a true copy of that document.

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

#### **Certificate as to appropriate authority of a designated country**

6. Where in relation to any designated country no authority is specified in Schedule 1 to this Order, a certificate made by the Governor to the effect that the authority specified therein is the appropriate authority for the purposes of sections 22 and 23 and of the other provisions of the Act as applied by Article 3(2) of this Order 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 authority of the government of that country for the Attorney General or the Comptroller of Customs and Excise to act on its behalf in any proceedings in the High Court under section 23 of the Act or any other provision of the Act as applied by Article 3(2) of this Order.

#### **Satisfaction of confiscation order in a designated country**

8. (1) Where—

- (a) a confiscation order has been made under section 3 of the Act; and

- (b) a request has 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,

the amount payable under the confiscation order shall be treated as reduced by the value of the property so recovered.

(2) For the purposes of this Article, and without prejudice to the admissibility of any evidence which may be admissible apart from this paragraph, 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 Montserrat, be admissible as evidence of the facts so stated.

### Currency conversion

9. (1) Where the value of property recovered as described in Article 8(1) of this Order is expressed in a currency other than that of Montserrat, the extent to which the amount payable under the confiscation order is to be reduced under that paragraph 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.

(2) Where an amount of money payable or remaining to be paid under an external confiscation order registered in the High Court under section 23 of the Act is expressed in a currency other than that of Montserrat, for the purpose of any action taken in relation to that order under the Act as applied under Article 3(2) of this Order the amount shall be converted into the currency of Montserrat on the basis of the exchange rate prevailing on the date of registration of the order.

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

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**SCHEDULE 1**

*(Article 4)*

**DESIGNATED COUNTRIES**

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<i>Designated Country</i>	<i>Appropriate Authority</i>
Afghanistan	
Algeria	
Anguilla	the Attorney General of Anguilla
Antigua and Barbuda	
Argentina	the Ministry of Foreign Affairs
Armenia	
Australia	the Attorney General's Department
Azerbaijan	
Bahrain	the Ministry of Interior
Bangladesh	
Barbados	the Attorney General
Belarus	
Bermuda	the Attorney General of Bermuda
Bhutan	
Bolivia	
Bosnia & Herzegovina	
Brazil	
British Virgin Islands	the Attorney General of the British Virgin Island
Brunei Darussalam	
Bulgaria	
Burkina Faso	
Burundi	
Cameroon	
Canada	the Minister of Justice or officials designated by that Minister
Cape Verde	
Cayman Islands	the Attorney General of the Cayman Islands
Chad	
Chile	
China	
Colombia	the Fiscalia General de la Nacion
Costa Rica	
Cote d'Ivoire	
Croatia	
Cyprus	
the Czech Republic	
Denmark	

[Subsidiary]

Dominica  
Dominican Republic

Ecuador

Egypt

El Salvador

Ethiopia

England, Wales

the United Kingdom Central

Scotland,

Northern Ireland

Authority (for Mutual Legal  
Assistance in Criminal Matters)  
C7 Division, Home Office,  
50 Queen Anne's Gate, London  
SW1H 9A1

Fiji

Finland

France

Germany

Ghana

Gibraltar

the Attorney General of Gibraltar

Greece

Grenada

Guatemala

Guernsey

Her Majesty's Attorney General for the  
Bailiwick Guernsey

Guinea

Guyana

the Permanent Secretary, Ministry of Home  
Affairs

Honduras

Hong Kong

the Attorney General of Hong Kong

Hungary

India

the Ministry of Home Affairs

Iran, Islamic Republic of

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  
Mauritania  
Mexico  
Moldova  
Monaco  
Morocco  
Myanmar

the Inspector General of Police, Malaysia

Nepal  
Netherlands  
Nicaragua  
Niger  
Nigeria

Afdeling Internationale Rechtshulp

the Attorney General of the Federation of the  
Republic of Nigeria

Norway

Oman

Pakistan  
Panama  
Paraguay  
Peru  
Poland  
Portugal

the Ministry of Government and Justice

Qatar

Romania  
Russian Federation

St. Kitts and Nevis  
St. Lucia  
St. Vincent and the Grenadines

the Ministry of the Interior

Saudi Arabia  
Senegal  
Seychelles  
Sierra Leone  
Slovakia  
Slovenia  
South Africa  
Spain  
Sri Lanka

the Department of Foreign Affairs  
the Ministerio de Justicia, Madrid

[Subsidiary]

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Sudan	
Suriname	
Sweden	the Ministry for Foreign Affairs
Syrian Arab Republic	
Switzerland	Office federal de la police
Togo	
Trinidad and Tobago	
Tunisia	
Turks and Caicos Islands	
Uganda	
Ukraine	
Union of Soviet Socialist Republics (including the Byelorussian Soviet Socialist Republic)	
United Arab Emirates	
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 (Serbia and Montenegro), Federal Republic of	
Zambia	
Zimbabwe	

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**SCHEDULE 2**

**MODIFICATIONS OF THE DRUG TRAFFICKING OFFENCES ACT**

1. Section 1 shall be omitted.
2. In section 2—
  - (a) in subsection (1) the definitions of “authorised government department” and “drug trafficking offence” shall be omitted;
  - (b) in subsection (2) in the list of expressions and relevant provisions the entries for “Benefitted 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 Act (Designated Countries and Territories) Order and whether received in connection with drug trafficking carried on by the recipient or some other person.”;
  - (e) for subsection (11), there shall be substituted the following—

“(11) Proceedings are instituted in a designated country when—

    - (a) 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; or
    - (b) 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 12(b), 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. For section 3 there shall be substituted the following section—

**“External confiscation orders**

3. (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) above the reference to an order includes any order, decree, direction or judgment, 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”.

4. Sections 4 to 6 shall be omitted.

5. In section 7—

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

“(1) In this Act “**realisable property**” means, subject to subsection (2) below—

(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 “section 3 of this Act” there shall be substituted the words “the Drug Trafficking Offences Act (Designated Countries and Territories) Order”.

6. Section 8 shall be omitted.

7. In section 9—

(a) for subsection (1)(a) there shall be substituted—

“(a) proceedings have been instituted against the defendant in a designated country,”;

(b) for subsection (1)(c) there shall be substituted—

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

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

“(2) Those powers are also exercisable where it appears to the High 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 from “proceedings” to “otherwise”, there shall be substituted the words “the proposed proceedings are not instituted”.

8. In section 10—

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

“(a) where an application under subsection (4) below 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 transferred to him after the making of the restraint order.”;

(b) in subsection (4)(a) for the words “the prosecutor” 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 23 of the Act, by a receiver appointed under section 10 of the Act, the Attorney General or a person authorised in that behalf by the Comptroller of Customs and Excise”, and for paragraph (c) of that subsection there shall be substituted the following paragraph:

“(c) notwithstanding anything in any law the Supreme Court may provide for service on or the provision of notice to persons affected by the order in such manner as the Court may direct”.

(c) for subsection (5)(b) there shall be substituted—

“(b) shall be discharged when the proceedings in relation to which the order was made are concluded.”;

(d) 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) above”.

9. In section 11—

(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 so 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 prosecutor” 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 23 of this Act, by a receiver appointed under

section 10 of this Act, the Attorney General, or a person authorised in that behalf by the Comptroller of Customs and Excise”, and for paragraph (c) of that subsection, there shall be substituted the following paragraph—

“(c) notwithstanding anything in any Rules of Court the Supreme Court shall provide for service on, or the provision of notice to persons affected by the order in such manner as the High Court may direct”; and

(c) in subsection (7) for the words “for the offence” there shall be substituted the words “against the defendant in the designated country”.

10. In section 12, subsection (4) shall be omitted.

11. After section 12 there shall be inserted the following section—

### “Applications for restraint and charging orders

12A. Notwithstanding anything in the Rules of the Supreme Court, an application under section 10(4) or 11(3) of this Act 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 such property;
- (c) in a case to which section 9(2) of this Act 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.”.

12. In section 13, for subsection (1) there shall be substituted the following two subsections:

“(1) Where an external confiscation order has been registered in the High Court under section 23 of this Act, the High Court may, on the application of the Attorney General or a person authorised in that behalf by the Comptroller of Customs and Excise, exercise the powers conferred by subsections (1A) to (6) below.

(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 judgment or order of the High Court, but any such order shall direct that the sum payable be paid to the High Court.”

13. In section 14—

- (a) in subsection (1) after the word “shall” there shall be inserted the words “be paid to the High Court and applied for the purposes specified in subsections (3) to (6) below and in the order 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) the following subsections are inserted and shall have effect as subsections (4), (5), (6) and (7) respectively.
  - (4) Any sums paid to the High Court under subsection (1) above or under an order made under section 13(1A) of this Act or otherwise in satisfaction of an external confiscation order shall be first applied to pay any expenses incurred by a person acting as an insolvency practitioner but not already paid under subsection (1) above.
  - (5) If the money was paid to the High Court by a receiver appointed under section 10 or 13 of this Act 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) above; and
    - (b) in a case in which subsection (5) applies, any payment required by that subsection,any amount paid under section 19(2) of this Act shall be reimbursed.
  - (7) Any sums remaining after all the payments required to be made under the foregoing provisions of this section have been made shall be paid into the Consolidated Fund.

**14.** In section 15—

- (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 High Court under section 23 of this Act 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 (5) after the words “the” in the fourth place where it occurs, there shall be inserted the word “external”.

**15.** Section 16 shall be omitted.

**16.** In section 17—

- (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; and
- (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.”.

17. Section 20, section 21 and section 22 shall be omitted.

18. Section 24 to 27 shall be omitted.

### SCHEDULE 3

(Article 3(2))

#### DRUG TRAFFICKING OFFENCES ACT AS MODIFIED

2. (1) In this Act—

“**police officer**” includes an officer of the Customs and Excise Department;

“**corresponding law**” has the same meaning as in the Drugs (Prevention of Misuse) Act;

“**drug trafficking**” means doing or being concerned in any of the following, whether in Montserrat or elsewhere—

- (a) producing or supplying a controlled drug where the production or supply contravenes section 6(1) of the Drugs (Prevention of Misuse) Act or a corresponding law;
- (b) transporting or storing a controlled drug where possession of the drug contravenes section 7(1) of the aforesaid Act or a corresponding law;
- (c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 5(1) of the aforesaid Act or a corresponding law,

and includes a person doing the following, whether in Montserrat or elsewhere, that is entering into or being otherwise concerned in an arrangement whereby—

- (i) the retention or control by or on behalf of another person of the other person’s proceeds of drug trafficking is facilitated; or
- (ii) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person’s disposal or are used for the other person’s benefit to acquire property by way of investment;

“**interest**”, in relation to property, includes right;

“**property**” includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.

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

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<i>Expression</i>	<i>Relevant provision</i>
Charging order	Section 11(2)
External confiscation order	Section 3
Dealing with property	Section 10(8)
Defendant	Section 1
Gift caught by this Act	Section 7(9)
Making a gift	Section 7(10)
Realisable property	Section 7(1)
Restraint order	Section 10(1)
Value of gift, payment or reward	Section 7
Value of property	Section 7(4)

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

(5) References in this Act to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection, and whether received before or after the commencement of the Drug Trafficking Offences Act (Designated Countries and Territories) Order 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.

(7) Property is held by any person if he holds any interest in it.

(8) References to property held by a person include a reference to property vested in his trustee in bankruptcy, permanent or interim trustee.

(9) Reference 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.

(10) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(11) Proceedings are instituted in a designated country when—

(a) 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; or

(b) 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.

(12) Proceedings for an offence are concluded—

- (a) 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;
- (b) on the satisfaction of a confiscation order made in the proceedings (where by the recovery of all property liable to be recovered, or the payment of any amount due, or otherwise).

(13) 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 could be varied or set aside.

### External confiscation orders

6. (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) above 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”.

### Definition of principal terms used

7. (1) In this Act “**realisable property**” means, subject to subsection (2) below—

- (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.

(2) Property is not realisable property if an order under section 28 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) below, references in this Act to the value at any time (referred to in subsection (6) below 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) below applies, the value there mentioned, whichever is the greater.

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

- (a) the property which he received (not being cash); or
- (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) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property mentioned in paragraph (b) above so far as it so represents the property which he received, but disregarding in either case any charging order.

(7) A gift (including a gift made before the commencement of the Drug Trafficking Offences Act (Designated Countries and Territories) Order) 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 part directly or indirectly represented in the defendant’s hands property received by him in that connection.

(8) 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 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) above bears to the value of the consideration provided by the defendant.

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

9. (1) The powers conferred on the High Court by sections 10(1) and 11(1) of this Act 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 High Court that there are reasonable grounds for believing that such an order may be made in them.

(2) Those powers are also exercisable where it appears to the High 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.

(3) Where the court has made an order under section 10(1) or 11(1) of this Act by virtue of subsection (2) above, the court shall discharge the order if the proposed proceedings are not instituted within such time as the court considers reasonable.

### Restraint orders

10. (1) The High 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.

(2) A restraint order may apply—

- (a) where an application under subsection (4) below 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 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 11 of this Act.

(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 has been registered under section 23 of this Act, by a receiver appointed under section 13 of this Act, a Crown Prosecutor, or a person authorised in that behalf by the Comptroller of Customs and Excise;
- (b) may be made on an *ex parte* application to a Judge in chambers; and

- (c) notwithstanding anything in the Rules of the Supreme Court, may provide for service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct.
- (5) A restraint order—
- (a) may be discharged or varied 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 High 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 any property in respect of which he is appointed;
- subject to such exceptions and conditions 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 the property from Montserrat.
- (9) Where the High Court has made a restraint order, a constable may for the purpose of preventing any realisable property being removed from Montserrat, seize the property.
- (10) Property seized under subsection (9) above shall be dealt with in accordance with the court's directions.
- (11) The Registered Land Act shall apply—
- (a) in relation to restraint orders, as it applies apply in relation to orders affecting land made by the court for the purposes of enforcing judgments or recognisances; and
- (b) in relation to applications for restraint orders, as they apply in relation to other pending land actions.
- (12) A person applying for a restraint order under subsection (4)(a) above shall be treated for the purposes of section 124 of the Registered Land Act (inhibitions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.

### Charging orders in respect of land, securities etc

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

- (a) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount so 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 is an order made under this section imposing on any such realisable property as may be 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 23 of this Act, by a receiver appointed under section 10 of this Act, the Attorney General, or a person authorised in that behalf by the Comptroller of Customs and Excise;
- (b) may be made on an *ex parte* application to a Judge in chambers;
- (c) notwithstanding anything in the Rules of the Supreme Court, shall provide for service on, or the provision of notice to, persons affected by the order in such manner as the High 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) below, 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—
  - (i) in any asset of a kind mentioned in subsection (5) below; or
  - (ii) under any trust; 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) above be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

(5) The assets referred to in subsection (4) above are—

- (a) land in Montserrat; or
- (b) securities of any of the following kinds—
  - (i) Government stocks;

- (ii) stock of any body (other than a building society) incorporated within Montserrat;
- (iii) stock of any body incorporated outside Montserrat or of any country or territory outside Montserrat, being stock registered in a register kept at any place within Montserrat;
- (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within Montserrat.

(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) above, the court may provide for the charge to extend to any interest or dividend payable in respect of the 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 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.

#### **Charging orders – supplementary provisions**

12. (1) The Registered Land Act shall apply in relation to charging orders as it applies in relation to orders or writs issued or made for the purpose of enforcing judgments.

(2) Where a charging order has been registered under the Registered Land Act (effect of non-registration of writs and orders) shall not apply to an order appointing a receiver made in pursuance of the charging order.

(3) Subject to any provisions made under section 13 of this Act 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.

(4) Where a charging order has been protected by an entry registered under the Registered Land Act as a caveat or an inhibition, an order under section 11(7) of this Act discharging the charging order may direct that the entry be cancelled.

#### **Applications for restraint and charging orders**

12A. Notwithstanding anything in the Rules of the Supreme Court an application under section 10(4) or 11(3) of this Act 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 such property;

- (c) in a case to which section 9(2) of this Act 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.

### **Realisation of property**

**13. (1)** Where an external confiscation order has been registered in the High Court under section 23 of this Act, the High Court may, on the application of the Attorney General or a person authorised in that behalf by the Comptroller of Customs and Excise, exercise the powers conferred by subsections (1A) to (6) below.

**(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 judgment or order of the High Court, but any such order shall direct that the sum payable be paid to the High Court.

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

**(3)** The court may empower a receiver appointed under subsection (2) above, under section 10 of this Act or in pursuance of a charging order—

(a) to enforce any charge imposed under section 11 of this Act 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 11 of this Act, 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 realize 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) above do not apply to property for the time being subject to a charge under section 11 of this Act.

**(8)** The court shall not in respect of any property exercise the powers conferred by subsection 3(a), (5) or (6) above 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 realization and other sums**

**14. (1)** Subject to subsection (2) below, the following sums in the hands of a receiver appointed under section 10 or 13 of this Act or in pursuance of a charging order, that is—

- (a) the proceeds of the enforcement of any charge imposed under section 11 of this Act;
- (b) the proceeds of the realization, other than by the enforcement of such a charge, of any property under section 10 or 13 of this Act; 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 an insolvency practitioner and then shall, after such payments (if any) as the High Court may direct have been made out of those sums, be paid to the High Court and applied for the purposes specified in subsections (3) to (6) below, 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 such of those who held property which has been realized under this Act; and
- (b) in such proportions,

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

**(4)** Any sums paid to the High Court under subsection (1) above or under an order made under section 13 (1A) of this Act or otherwise in satisfaction of an external confiscation order shall be first applied to pay any expenses incurred by a person acting as an insolvency practitioner.

**(5)** If the money was paid to the High Court by a receiver appointed under section 10 or 13 of this Act, 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) above; and
- (b) in a case to which subsection (5) above applies, any payment required by that subsection,

any amount paid under section 19(2) of this Act shall be reimbursed.

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

**Exercise of powers by High Court or receiver**

**15. (1)** The following provisions apply to the powers conferred on the High Court by sections 10 to 14 of this Act, or on a receiver appointed under section 10 or 13 of this Act or in pursuance of a charging order.

**(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 High Court under section 23 of this Act 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 realizing 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 or any such gift which conflict with the obligation to satisfy the external confiscation order.

**Bankruptcy of defendant, etc.**

**17. (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 realized by virtue of section 10(7) or 13(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 10 or 13 of this Act,

is excluded from the bankrupt's estate for the purposes of the Bankruptcy Act.

**(2)** Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 10 to 14 of this Act or on a receiver so appointed shall not be exercised in relation to—

- (a)* property for the time being comprised in the bankrupt's estate;
- (b)* property in respect of which his trustee in bankruptcy may (without leave of court) serve a notice; and
- (c)* property which is to be applied for the benefit of creditors of the bankrupt by virtue of.

**(3)** Nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.



(4) Subsection (2) above 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.

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

(6) 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 that Act (avoidance of certain transactions) 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 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 realization under this Act of property held by the person to whom the gift was made.

### **Winding up of company holding realisable property**

**18. (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—

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property realized by virtue of section 10(7) or 13(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 10 or 13 of this Act.

(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 High Court by sections 10 to 14 of this Act or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—

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

(3) Nothing in the Companies Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Subsection (2) above 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.

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

#### **Insolvency officers dealing with property subject to restraint order**

**18A.** (1) Without prejudice to the generality of any enactment contained in the Bankruptcy Act or in any other Act, where—

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

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

- (a) in respect of such property as is mentioned in paragraph (a) of subsection (1) above 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 of and realizing the property;

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

### **Receivers: supplementary provisions**

**19. (1)** Where a receiver appointed under section 10 or 13 of this Act or in pursuance of a charging order takes any action—

- (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, if no sum is available to be applied in payment of it under section 14 of this Act, be paid by the person on whose application the receiver was appointed.

### **Registration of external confiscation order**

**23. (1)** On an application made by or on behalf of the government of a designated country, the High Court may register an external confiscation order made there if—

- (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 Montserrat would not be contrary to the interests of justice.

**(2)** In subsection (1) above “**appeal**” includes—

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

**(3)** The High 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.

### **Power to inspect land register**

**26A. (1)** The Registrar of Lands shall, on an application under subsection (4) below made in relation to a person specified in the application or to property so specified, provide the applicant with any information kept by the Registrar under the Registered Land Act or under any other law which relates to the person or property so specified.

(4) An application may be made by a receiver appointed under section 10 or 13 of this Act and on an application under this subsection there shall be given to the Registrar—

- (a) a document certified by the proper officer of the court to be a true copy of the order appointing the receiver; and
- (b) a certificate that there are reasonable grounds for suspecting that there is information kept by the Registrar which is likely to facilitate the exercise of the powers conferred on the receiver in respect of the person or property specified in the application.

(5) The reference in subsection (1) above to the provision of information is a reference to its provision in documentary form.

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### APPENDIX TO SCHEDULE 3

(Section 2(11))

#### INSTITUTION OF PROCEEDINGS

<i>Designated Country</i>	<i>Point at which proceedings are instituted</i>
Afghanistan	
Algeria	
Anguilla	<ul style="list-style-type: none"> <li>(a) when a summons or warrant is issued in respect of an offence;</li> <li>(b) when a person is charged with an offence after being taken into custody without a warrant;</li> <li>(c) when a bill of indictment is preferred.</li> </ul>
Antigua and Barbuda	
Argentina	when a Judge has ordered that a person be detained for the purpose of testifying in connection with the commission of an offence.
Armenia	
Australia	<ul style="list-style-type: none"> <li>(a) when an information has been laid before a justice of the peace;</li> <li>(b) when a person is charged with an offence after having been taken into custody without a warrant;</li> <li>(c) when a bill of indictment is preferred.</li> </ul>
Azerbaijan the Bahamas	<ul style="list-style-type: none"> <li>(a) when an information has been laid before a justice of the peace;</li> </ul>

- (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.
- Bangladesh
- Barbados
- (a) when an information has been laid before a Magistrate;
- (b) when a person is charged with an offence;
- (c) when a bill of indictment is preferred.
- Belarus
- Bermuda when an information is laid charging a person with an offence.
- Bhutan
- Bolivia
- Bosnia and Herzegovina
- Brazil
- British Virgin Islands
- (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 an indictment is preferred.
- Brunei Darussalam
- Bulgaria
- Burkina Faso
- Burundi
- Cameroon
- Canada
- Cape Verde
- 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; or
- (b) when a person is charged with the offence after being arrested without warrant under subsection (5) of that section.
- Chad
- Chile
- China
- Colombia
- Costa Rica
- Cote d'Ivoire

[Subsidiary]

Croatia  
Cyprus  
the Czech Republic

Denmark  
Dominica  
Dominican Republic

Ecuador when a writ is issued by a Judge initiating criminal proceedings.

Egypt  
El Salvador  
Ethiopia

England and Wales

- (a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act in respect of the offence;
- (b) when a person is charged with the offence after being taken into custody without a warrant;
- (c) when a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act in a case falling within paragraph (b) of subsection (2) of that section.

Fiji  
Finland  
France

Germany when a person is notified that he is accused of an offence and will be brought before a court.

Ghana  
Gibraltar when a person is charged with an offence, whether by the laying of an information or otherwise.

Greece  
Grenada  
Guatemala

Guernsey when a person is charged with an offence.

Guinea

Guyana when a charge has been laid against a person for an offence.

Honduras  
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.

Hungary

- India
- (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;
  - (b) when any allegation is made orally or in writing to a court of law that a person has committed an offence;
  - (c) when a person is charged with an offence;
  - (d) when any investigation or inquiry into the commission of any offence is directed by a court of law.
- Iran, Islamic Republic of  
Isle of Man
- (a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act, when the complaint in relation to the offence is made to him;
  - (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;
  - (c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody;
  - (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.
- Italy
- (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;
  - (b) when a proposal for the application of a preventative measure (“*misur di prevenzione*”) is laid before a court.
- Ivory Coast
- Japan
- Jersey
- (a) when the Bailiff issues a warrant in respect of an offence for the arrest of a person who is out of the island;

- (b) when a person is arrested and charged with an offence;
- (c) when a summons in respect of an offence is served on a person at the instance of the Attorney General;
- (d) when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the Magistrates Court (Miscellaneous Provisions)(Jersey) Law.

Jordan

Kenya

Kyrgyzstan

Latvia

Lesotho

Luxembourg

Macedonia

Madagascar

Malaysia

when a person is charged with an offence.

Mauritania

Mexico

Moldova

Monaco

Morocco

Myanmar

Nepal

Netherlands

- (a) when a pre-trial financial investigation has been initiated;
- (b) when the provisional measure has been ordered by an investigating Magistrate;
- (c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating Magistrate to be instituted.

Nicaragua

Niger

Nigeria

Norway

Oman

Pakistan

Panama

Paraguay

Peru

when a person has been charged with an offence.



Poland	
Portugal	
Qatar	
Romania	
Russian Federation	
St. Kitts and Nevis	
St. Lucia	
St. Vincent and the Grenadines	
Saudi Arabia	when an information has been laid before a judicial authority.
Scotland and Northern Ireland	when information has been laid before a Justice of the Peace or a person has been charged with an offence, or a bill of indictment has been preferred, or a petition warrant has been granted.
Senegal	
Seychelles	
Sierra Leone	
Slovakia	
Slovenia	
South Africa	(a) when a summons is issued in respect of an offence; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred.
Spain	when by virtue of a judicial resolution it is decided to proceed against a person for an offence.
Sri Lanka	
Sudan	
Suriname	
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.
Syrian Arab Republic	
Switzerland	when proceedings for an offence are brought before an examining Magistrate.
Togo	
Trinidad and Tobago	
Tunisia	
Turks and Caicos Islands	
Uganda	

[Subsidiary]

Ukraine

Union of Soviet Socialist  
Republics (including the  
Byelorussian Soviet  
Socialist Republic)

United Arab Emirates

United Mexican States      when criminal proceedings are instituted by a judicial  
authority.

United States of America      when an indictment, information or complaint has been  
filed against a person in respect of an offence.

Uruguay      when criminal proceedings are instituted by a judicial  
authority.

Uzbekistan

Venezuela

Yugoslavia  
(Serbia and  
Montenegro),  
Federal Republic of

Zambia

Zimbabwe

