



VIRGIN ISLANDS

## **DRUG TRAFFICKING OFFENCES ACT**

### **Revised Edition**

showing the law as at 1 January 2020

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

This edition contains a consolidation of the following laws—

	Page
<b>DRUG TRAFFICKING OFFENCES ACT</b>	3
Act 5 of 1992 .. in force 16 July 1992 (S.I. 10/1992)	
Amended by Acts: 8 of 1993 .. in force 22 October 1993 (S.I. 29/1993)	
5 of 2000 .. in force 19 June 2000	
17 of 2006 .. in force 1 December 2006	
2 of 2008 .. in force 7 February 2008	
12 of 2017 .. in force 10 June 2017	

**SEE STATUTORY INSTRUMENTS BOOKLET**





VIRGIN ISLANDS

## **DRUG TRAFFICKING OFFENCES ACT**

### **Revised Edition**

showing the law as at 1 January 2020

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

This edition contains a consolidation of the following laws—

	Page
<b>DRUG TRAFFICKING OFFENCES ACT</b>	3
Act 5 of 1992 .. in force 16 July 1992 (S.I. 10/1992)	
Amended by Acts: 8 of 1993 .. in force 22 October 1993 (S.I. 29/1993)	
5 of 2000 .. in force 19 June 2000	
17 of 2006 .. in force 1 December 2006	
2 of 2008 .. in force 7 February 2008	
12 of 2017 .. in force 10 June 2017	

**SEE STATUTORY INSTRUMENTS BOOKLET**

Published in 2021  
On the authority and on behalf of the Government of The Virgin Islands  
by  
The Regional Law Revision Centre Inc.

For information contact—

Attorney General's Chambers  
Government of the Virgin Islands  
P.O. Box 242  
Road Town  
Tortola, VG1110  
British Virgin Islands

Tel: (284) 468 - 2960  
Email: [agc@gov.vg](mailto:agc@gov.vg)

Printed on the authority and on behalf of the Government of The Virgin Islands  
by  
The Regional Law Revision Centre Inc.  
P.O. Box 1626, 5 Mar Building,  
The Valley, AI-2640, Anguilla  
Authorised Printers for this Revised Edition

## **DRUG TRAFFICKING OFFENCES ACT**

### **ARRANGEMENT OF SECTIONS**

#### **SECTION**

1. Short title
2. Interpretation
3. Meaning of “corresponding law”
4. Provisions as to profit
5. Confiscation orders
6. Postponed determinations
7. Assessing the proceeds of drug trafficking
8. Statements relating to drug trafficking
9. Provision of information by defendant
10. Amount to be recovered under confiscation order
11. Powers to be exercised where defendant has died or absconded
12. Effect of conviction where Court has acted under section 11
13. Reconsideration of case where Court has not proceeded under section 5
14. Re-assessment of whether defendant has benefitted from drug trafficking
15. Revision of assessment of proceeds of drug trafficking
16. Application of procedure for enforcing fines
17. Cases in which restraint orders and charging orders may be made
18. Restraint orders
19. Charging orders in respect of land, securities etc.
20. Charging orders: supplementary provisions
21. Realisation of property
22. Application of proceeds of realisation and other sums
23. Exercise of powers by court or receiver
24. Variation of confiscation orders
25. Bankruptcy of defendant, etc.
26. Winding up of company holding realisable property
27. Receivers and liquidators dealing with property subject to restraint order
28. Receivers: supplementary provisions
29. Compensation
30. Compensation, etc. where absconder is acquitted
31. Power to discharge confiscation order and order compensation where absconder returns
32. Variation of confiscation order made by virtue of section 11
33. Assisting another to retain the benefit of drug trafficking
34. Acquisition, possession or use of property representing proceeds of drug trafficking
35. Concealing or transferring property representing proceeds of drug trafficking
36. Failure to disclose knowledge or suspicion of money laundering
37. Tipping-off

38. Enforcement of external confiscation orders
39. Registration of external confiscation orders
40. Orders to make material available
41. Authority for search
42. Meaning of “items subject to legal privilege”
43. Meaning of “excluded material”
44. Meaning of “personal records”
45. Meaning of “journalistic material”
46. Disclosure of information held by government departments
47. Prejudicing an investigation
48. Seizure and detention of cash
49. Forfeiture
50. Forfeiture: general
51. Interest
52. Procedure
53. Interpretation of certain expressions in sections 48 to 51
54. Regulations

## DRUG TRAFFICKING OFFENCES ACT

(*Acts 5 of 1992, 8 of 1993, 5 of 2000, 17 of 2006, 2 of 2008 and 12 of 2017*)

AN ACT TO MAKE PROVISION FOR THE RECOVERY OF THE PROCEEDS OF DRUG TRAFFICKING AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

### Commencement

[16 July 1992]

### Short title

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

### Interpretation

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

“Agency” means the Financial Investigation Agency established under section 3(1) of the Financial Investigation Agency Act; (*Inserted by Act 2 of 2008*)

“confiscation order” means an order made under section 5 and includes, in particular, an order under that section which is made by virtue of section 11, 13 or 14; (*Inserted by Act 5 of 2000*)

“corresponding law” has the meaning assigned there to by section 3;

“country” includes territory; (*Inserted by Act 2 of 2008*)

“court” means the High Court or the Magistrate’s Court; (*Substituted by Act 2 of 2008*)

“defendant” means a person against whom proceedings have been instituted for a drug trafficking offence, whether or not he has been convicted; (*Inserted by Act 5 of 2000*)

“drug money laundering” means doing any act which constitutes an offence under section 33, 34 or 35 or, in the case of an act done otherwise than in the Territory, would constitute such an offence if done in the Territory; (*Inserted by Act 2 of 2008*)

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

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

- (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 or would be such an offence if it took place in the Territory; *(Inserted by Act 8 of 1993 and amended by Act 5 of 2000)*
- (e) entering into or being otherwise concerned in an arrangement whereby—
  - (i) the retention or control by or on behalf of another of the proceeds of drug trafficking by him or her is facilitated; or
  - (ii) the proceeds of drug trafficking by another are used to secure that funds are placed at his or her disposal or are used for his or her benefit to acquire property by way of investment;
- (f) acquiring, having possession of or using property in circumstances which amount to the commission of an offence under section 34, or which would be such an offence if it took place in the Territory; *(Inserted by Act 5 of 2000)*
- (g) conduct which is an offence under section 13 of the Criminal Justice (International Co-operation) Act, or which would be such an offence if it took place in the Territory; *(Inserted by Act 5 of 2000)*
- (h) using a ship for illicit traffic in controlled drugs in circumstances which amount to the commission of an offence under section 17 of the Criminal Justice (International Co-operation) Act; *(Inserted by Act 5 of 2000)*

“drug trafficking offence” means—

- (a) an offence under section 5, 6(2) or 6(3) or 7(2) (where subsection (4) applies) or 7(3) of the Drugs (Prevention of Misuse) Act, (import, export, production, supply and possession for supply of controlled drugs);
- (b) an offence under section 20 of the Drugs (Prevention of Misuse) Act, (assisting in or inducing commission outside the Territory of an offence punishable under a corresponding law);
- (c) an offence under section 33 of this Act;
- (d) an offence under section 34; *(Inserted by Act 5 of 2000)*
- (e) an offence under section 11, 13 or 17 of the Criminal Justice (International Cooperation) Act; *(Inserted by Act 8 of 1993)*
- (f) a conspiracy to commit any of those offences in paragraphs (a) to (e); *(Amended by Act 8 of 1993)*
- (g) an offence of attempting to commit any of those offences in paragraphs (a) to (e); *(Amended by Act 8 of 1993)*
- (h) an offence of inciting another to commit any of those offences in paragraphs (a) to (c);

(i) aiding, abetting, counselling or procuring the commission of those offences in paragraphs (a) to (c);

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

“police officer” includes, in relation to drug trafficking or drug trafficking offences, the Director or an investigating officer of the Agency; (*Inserted by Act 2 of 2008*)

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

“Steering Committee” means the Steering Committee established under section 3(3) of the Financial Investigation Agency Act; (*Inserted by Act 2 of 2008*)

(2) Where in this Act provision is made—

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

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

(*Inserted by Act 2 of 2008*)

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

COLUMN ONE

COLUMN TWO

Benefitted from drug trafficking .....	Section 5(2)
Charging order .....	Section 19(2)
Dealing with property .....	Section 18(8)
Gift caught by this Act .....	Section 4(8)
Making a gift .....	Section 4(9)
Proceeds of drug trafficking .....	Section 7(1)
Realisable property .....	Section 4(1)
Restraint order .....	Section 18(1)
Value of gift, payment or reward .....	Section 4(5)
Value of proceeds of drug trafficking .....	Section 7(1), (5)
Value of property .....	Section 4(4)

(*Amended by Act 5 of 2000*)

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

(5) References in this Act to offences include a reference to offences committed before the coming into operation of this Act, but nothing in this Act imposes any duty or confers any power on the court in or in connection with proceedings against a person for a drug trafficking offence instituted before the coming into operation of this Act. (*Amended by Act 2 of 2008*)

(6) 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.

(7) The following provisions shall have effect for the interpretation of this Act—

- (a) property is held by any person if he or she holds or obtains any interest in it; (*Amended by Act 2 of 2008*)
- (b) references to property held by a person include a reference to property vested in his or her trustee in bankruptcy or liquidator;
- (c) references to an interest held by a person beneficially in property include a reference to an interest which would be held by him or her beneficially if the property were not so vested;
- (d) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property;
- (e) proceedings are instituted in the Territory—
  - (i) when a summons or warrant is issued in respect of the offence;
  - (ii) when a person is charged with the offence after being taken into custody without a warrant;
  - (iii) when an indictment is preferred,and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times;
- (f) Proceedings for a drug trafficking offence are concluded—
  - (i) when the defendant is acquitted on all counts or, as the case may be, every charge against him or her is dismissed;
  - (ii) if he or she is convicted on one or more counts but the court decides not to make a confiscation order against him or her, when the court makes that decision;
  - (iii) if he or she is sentenced without the court having considered whether or not to proceed under section 5 in his or her case, when he or she is sentenced; or
  - (iv) if a confiscation order is made against him or her in those proceedings when the order is satisfied.

*(Substituted by Act 5 of 2000)*

- (g) an application under section 11, 13 or 14 is concluded—
  - (i) if the court decides not to make a confiscation order against the defendant, when it makes that decision;
  - (ii) if a confiscation order is made against the defendant as a result of that application, when the order is satisfied; or
  - (iii) if the application is withdrawn, when the prosecutor notifies the withdrawal of the application to the court to which it was made; (*Inserted by Act 5 of 2000*)
- (h) an application under section 15 of the Criminal Justice (International Co-operation) Act, or section 15 is concluded—

(i) if the court decides not to vary the confiscation order in question, when it makes that decision; or

(ii) if the court varies the confiscation order as a result of the application, when the order is satisfied;

*(Inserted by Act 5 of 2000)*

(i) a confiscation order is satisfied when no amount is due under it;  
*(Inserted by Act 5 of 2000)*

(j) for the purposes of section 25, a confiscation order is also satisfied when the defendant in respect of whom it was made has served a term of imprisonment in default of payment of the amount due under the order. *(Inserted by Act 5 of 2000)*

(8) A proceeding referred to in paragraph (f) or an application referred to in paragraph (g) or (h) shall not be treated as concluded, until there is no further possibility of an appeal in respect of the proceeding or the application. *(Inserted by Act 2 of 2008)*

(9) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order would be varied or set aside.

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

### **Meaning of “corresponding law”**

3. (1) In this Act the expression “corresponding law” means a law stated in a certificate purporting to be issued by or on behalf of the Government of a country outside the Territory to be a law providing for the control and regulation in that country of the production, supply, use, export and import of drugs and other substances in accordance with the provisions of the Single Convention on Narcotic Drugs signed at New York on 30 March 1961 or a law providing for the control and regulation in that country of the production, supply, use, export and import of dangerous or otherwise harmful drugs in pursuance of any treaty, convention or other agreement or arrangement to which the Government of the country and the Government of the United Kingdom of Great Britain and Northern Ireland including the Territory are for the time being parties.

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

### **Provisions as to profit**

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

(a) 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—

(a) under section 29 of the Drugs (Prevention of Misuse) Act;

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

is in force in respect of the property.

*(Substituted by Act 2 of 2008)*

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

together with the total of the values at that time of all gifts caught by this Act.  
*(Amended by Act 5 of 2000)*

(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 an incumbrance (other than a charging order under this Act, the Proceeds of Criminal Conduct Act or any other enactment) on that interest; and*(Amended by Act 2 of 2008)*
- (b) in any other case, is its market value.

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

- (a) the value of the gift, payment or reward to the recipient when he or she received it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (6) applies, the value there mentioned,

whichever is the greater.

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

- (a) the property which he or she received (not being cash);
- (b) property which, in whole or in part, directly or indirectly represents in his or her hands the property which he or she received,

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

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

- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
- (b) pay any sum which, if the defendant had been adjudged bankrupt or was being wound up, would be among the preferential debts.

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

- (a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him or her; 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 her or another; or
  - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him or her 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 or she transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
- (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

## Confiscation orders

5. (1) For the purposes of this Act, a confiscation order may be made by a Magistrate or a Judge of the High Court. *(Inserted by Act 2 of 2008)*

(2) Where a confiscation order is made pursuant to subsection (1) by a Magistrate, it shall relate in monetary terms to a sum not exceeding \$100,000. *(Inserted by Act 2 of 2008)*

(3) Where on the evidence before him or her, a Magistrate concludes that a confiscation order to be made by him or her will, or is likely to exceed the sum allowable under subsection (2), he or she shall, notwithstanding anything to the contrary contained in any enactment—

- (a) proceed to sentence the defendant, if the defendant is not already sentenced; and

(b) commit the defendant to a Judge of the High Court for a confiscation order to be made in respect of the defendant.

*(Inserted by Act 2 of 2008)*

(4) Where a person appears before a court, whether on committal under subsection (3) or otherwise, to be sentenced in respect of one or more drug trafficking offences, the court shall act as follows—

(a) the court shall first determine whether he or she has benefitted from drug trafficking and for the purposes of this Act, a person who has at any time (whether before or after the coming into operation of this Act) received any payment or other pecuniary or other quantifiable advantage in connection with drug trafficking carried on by him, her, or another has benefitted from drug trafficking;

(b) if the court determines that he or she has so benefitted, the court shall, before sentencing or otherwise dealing with him or her in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 10 the amount to be recovered in his or her case by virtue of this section;

(c) with respect to paragraph (b), the court shall exclude in the determination any property that is subject to a cash forfeiture order or a forfeiture order under the Drugs (Prevention of Misuse) Act, Drug Trafficking Offences Act, the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order or any other enactment; and *(Inserted by Act 2 of 2008)*

*(Amended by Act 2 of 2008)*

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

(i) order him or her to pay that amount;

(ii) take account of the order before—

(A) imposing any fine on him or her;

(B) making an order involving any payment by him or her, other than an order under section 27 of the Criminal Code; or *(Inserted by Act 5 of 2000)*

(C) making any order under section 29 of the Drugs (Prevention of Misuse) Act; and

(iii) subject to sub-paragraph (ii), leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

(5) No law restricting the power of a court dealing with an offender in a particular way from dealing with him or her 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.

(6) In determining any question arising under this Act as to whether a person has benefitted from drug trafficking or the amount to be recovered in his

or her case, proof shall be established on a balance of probabilities. (*Substituted by Act 2 of 2008*)

### **Postponed determinations**

**6.** (1) Where the court is acting under section 5 but considers that it requires further information before determining—

- (a) whether the defendant has benefitted from drug trafficking; or
- (b) the amount to be recovered in the defendant's case,

it may, for the purpose of enabling that information to be obtained, postpone making that determination for such period as it may specify.

(2) More than one postponement may be made under subsection (1) in relation to the same case.

(3) Unless it is satisfied that there are exceptional circumstances, the court shall not specify a period under subsection (1) which by itself or, where there have been one or more previous postponements under subsection (1) or (4), when taken together with the earlier specified period or periods, exceeds 18 months beginning with the date of conviction. (*Amended by Act 2 of 2008*)

(4) Where the defendant appeals against his or her conviction, the court may, on that account—

- (a) postpone making any of the determinations mentioned in subsection (1) for such period as it may specify; or
- (b) where it has already exercised its powers under this section to postpone, extend the specified period.

(5) A postponement or extension under subsection (1) or (4) may be made—

- (a) on application by the defendant or the prosecutor; or
- (b) by the court of its own motion.

(6) Unless the court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (4) shall not exceed the period ending 3 months after the date on which the appeal is determined or otherwise disposed of.

(7) Where the court exercises its power under subsection (1) or (4), it may nevertheless proceed to sentence, or otherwise deal with the defendant in respect of the offence or any of the offences concerned.

(8) Where the court proceeds under subsection (7), section 5 shall have effect as if—

- (a) in subsection (4)(b) thereof, the words from “before sentencing” to “offences concerned,” were omitted; and
- (b) in subsection (4)(a)(iii) thereof, after “determining” there were inserted the words “in relation to any offence in respect of which he or she has not been sentenced or otherwise dealt with”.

(9) In sentencing, or otherwise dealing with the defendant in respect of the offence, or any of the offences concerned at any time during the specified period, the court shall not—

- (a) impose any fine on him or her; or
- (b) make any such order as is mentioned in section 5(4)(c)(ii)(B) or (C).

(10) In this section, a reference to—

- (a) an appeal includes a reference to an application under section 167 of the Magistrate's Code of Procedure Act;
- (b) the date of conviction means—
  - (i) the date on which the defendant was convicted; or
  - (ii) where the defendant appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.

*(Inserted by Act 5 of 2000)*

### **Assessing the proceeds of drug trafficking**

7. (1) For the purposes of this Act—

- (a) any payments or other pecuniary or quantifiable advantage received by a person at any time (whether before or after the coming into operation of this Act) in connection with drug trafficking carried on by him, her or another are his or her proceeds of drug trafficking; and
- (b) the value of his or her proceeds of drug trafficking is the aggregate of the values of the payments or other pecuniary or quantifiable advantage.

*(Amended by Act 2 of 2008)*

(2) The court shall, for the purpose of determining whether the defendant has benefitted from drug trafficking and, if he or she has, of assessing the value of his or her proceeds of drug trafficking, make the required assumption.  
*(Amended by Act 5 of 2000)*

(3) The court shall not make any required assumption if—

- (a) that assumption is shown to be incorrect in the defendant's case; or
- (b) the court is satisfied that there would be a serious risk of injustice in his or her case if the assumption were to be made.

*(Inserted by Act 5 of 2000)*

(4) Where the court does not apply one or more of the required assumptions, it shall state its reasons. *(Inserted by Act 5 of 2000)*

(5) The required assumptions are—

- (a) that any property appearing to the court
  - (i) to have been held by the defendant at any time since his or her conviction; or

- (ii) to have been transferred to him or her at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him or her,

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

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

*(Amended by Act 5 of 2000)*

(6) Subsection (2) does not apply if the only drug trafficking offence in respect of which the defendant appears before the court to be sentenced is an offence under section 33 or 34 or section 13 of the Criminal Justice (International Co-operation) Act. *(Amended by Acts 8 of 1993 and 5 of 2000)*

(7) 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 or her, the court shall leave out of account any of his or her 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**

8. (1) Where the prosecutor asks the court to proceed under section 5 or applies to the court under section 11, 13, 14 or 15 he or she shall give the court, within such period as it may direct, a statement of matters which he or she considers relevant in connection with—

- (a) determining whether the defendant has benefitted from drug trafficking; or
- (b) assessing the value of the defendant's proceeds of drug trafficking.

(2) In this section such a statement is referred to as a "prosecutor's statement".

(3) Where the court proceeds under section 5 without the prosecutor having asked it to do so, it may require him or her to give it a prosecutor's statement, within such period as it may direct.

(4) Where the prosecutor has given a prosecutor's statement—

- (a) he or she may at any time give the court a further such statement; and
- (b) the court may at any time require him or her to give it a further such statement, within such period as it may direct.

(5) Where any prosecutor's statement has been given and the court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant—

- (a) to indicate to it, within such period as it may direct, the extent to which he or she accepts each allegation in the statement; and
- (b) so far as he or she does not accept any such allegation, to give particulars of any matters on which he or she proposes to rely.

(6) Where the court has given a direction under this section, it may at any time vary it by giving a further direction.

(7) Where the defendant accepts to any extent any allegation in any prosecutor's statement, the court may, for the purposes of—

- (a) determining whether the defendant has benefitted from drug trafficking; or
- (b) assessing the value of the defendant's proceeds of drug trafficking,

treat his or her acceptance as conclusive of the matters to which it relates.

*(Substituted by Act 5 of 2000)*

(8) If the defendant fails in any respect to comply with a requirement under subsection (5), he or she may be treated for the purposes of this section as accepting every allegation in the prosecutor's statement in question apart from—

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

*(Amended by Act 5 of 2000)*

(9) 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.

(10) An allegation may be accepted, or particulars of any matter may be given, for the purposes of this section in such manner as may be prescribed by the rules of court or as the court may direct. *(Substituted by Act 5 of 2000)*

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

### **Provision of information by defendant**

9. (1) This section applies where—

- (a) the prosecutor has asked the court to proceed under section 5 or has applied to the court under section 13, 14 or 15; or

(b) no such request has been made, but the court is nevertheless proceeding, or considering, whether to proceed, under section 5.

(2) For the purpose of obtaining information to assist it in carrying out its functions, the court may at any time order the defendant to give it such information as may be specified in the order.

(3) An order under subsection (2) may require all, or any specified part, of the required information to be given to the court in such manner, and before such date, as may be specified in the order.

(4) Rules of court may make provision as to the maximum or minimum period that may be allowed under subsection (3).

(5) If the defendant fails, without reasonable excuse, to comply with any order under this section, the court may draw such inference from that failure as it considers appropriate.

(6) Where the prosecutor accepts to any extent any allegation made by the defendant in giving to the court information required by an order under this section, the court may treat that acceptance as conclusive of the matters to which it relates.

(7) For the purpose of this section, an allegation may be accepted in such manner as may be prescribed by rules of court or as the court may direct.

*(Inserted by Act 5 of 2000)*

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

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

(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 8 or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3).

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

(a) the amount appearing to the court to be the amount that might be so realised; or *(Inserted by Act 5 of 2000)*

(b) a nominal amount, where it appears to the court, (on the information available to it at the time), that the amount that might be so realised is *nil*. *(Inserted by Act 5 of 2000)*

### **Powers to be exercised where defendant has died or absconded**

**11.** (1) Subsection (2) applies where a person has been convicted of one or more drug trafficking offences.

(2) If the prosecutor asks it to proceed under this section, the court may make a confiscation order against the defendant if satisfied that the defendant has died or absconded.

(3) Subsection (4) applies where proceedings for one or more drug trafficking offences have been instituted against a person but have not been concluded.

(4) If the prosecutor asks it to proceed under this section, the court may make a confiscation order against the defendant if satisfied that the defendant has absconded.

(5) The power conferred by subsection (4) may not be exercised at any time before the end of the period of 2 years beginning with the date which is, in the opinion of the court, the date on which the defendant absconded.

(6) In any proceedings on an application under this section—

- (a) sections 7(2) and 8(5), (7) and (8) shall not apply;
- (b) the court shall not make a confiscation order against a person who has absconded unless it is satisfied that the prosecutor has taken reasonable steps to contact him or her; and
- (c) any person appearing to the court to be likely to be affected by the making of a confiscation order by the court shall be entitled to appear before the court and make representations.

*(Inserted by Act 5 of 2000)*

### **Effect of conviction where the court has acted under section 11**

**12.** (1) Where the court has made a confiscation order by virtue of section 11, it shall, in respect to the offence or any of the offences concerned—

- (a) take account of the order before—
  - (i) imposing any fine on him or her;
  - (ii) making any order involving any payment by him or her; or
  - (iii) making any order under section 29 of the Drugs (Prevention of Misuse) Act; and
- (b) subject to paragraph (a), leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

(2) Where the court has made a confiscation order by virtue of section 11 and the defendant subsequently appears before the court to be sentenced in respect of one or more of the offences concerned, section 5(1) shall not apply so far as his or her appearance is in respect of that offence or those offences.

*(Inserted by Act 5 of 2000)*

### **Reconsideration of case where court has not proceeded under section 5**

**13.** (1) This section applies where the defendant has appeared before the court to be sentenced in respect of one or more drug trafficking offences but the court has not proceeded under section 5. *(Amended by Act 2 of 2008)*

(2) If the prosecutor has evidence—

- (a) which was not available to him or her when the defendant appeared to be sentenced (and accordingly was not considered by the court); but (*Amended by Act 2 of 2008*)
- (b) which the prosecutor believes would have led the court to determine that the defendant had benefitted from drug trafficking if—
  - (i) the prosecutor had asked the court to proceed under section 5; and (*Amended by Act 2 of 2008*)
  - (ii) the evidence been considered by the court,

he or she may apply to the court for it to consider the evidence.

(3) The court shall proceed under section 5 if, having considered the evidence, it is satisfied that it is appropriate to do so.

(4) In considering whether it is appropriate to proceed under section 5, the court shall have regard to all the circumstances of the case.

(5) Where, having decided to proceed under section 5, the court proposes to make a confiscation order against the defendant, it shall order the payment of such amount as it thinks just in all the circumstances of the case.

(6) In considering the circumstances of any case the court shall have regard, in particular, to the amount of any fine imposed on the defendant in respect of the offence or offences in question.

(7) Where the court is proceeding under section 5, by virtue of this section, subsection (4)(b) of that section shall have effect as if the words “before sentencing or otherwise dealing with him or her in respect of the offence or, as the case may be, any of the offences concerned,” were omitted.

(8) The court may take into account any payment or other reward received by the defendant on or after the date of conviction, but only if the prosecutor shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another on or before that date.

(9) In considering any evidence under this section which relates to any payment or reward to which subsection (8) applies, the court shall not make the assumptions which would otherwise be required by section 7.

(10) No application shall be entertained by the court under this section if it is made after the end of the period of 6 years beginning with the date of conviction.

(11) In this section “the date of conviction” means—

- (a) the date on which the defendant was convicted; or
- (b) where he or she appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.

*(Inserted by Act 5 of 2000)*

**Re-assessment of whether defendant has benefitted from drug trafficking**

**14.** (1) This section applies where the court has made a determination (referred to in this section as “the original determination”) under section 5(4)(a) that the defendant has not benefitted from drug trafficking.

(2) If the prosecutor has evidence—

- (a) which was not considered by the court in making the original determination; but
- (b) which the prosecutor believes would have led the court to determine that the defendant had benefitted from drug trafficking if it had been considered by the court,

he or she may apply to the court for it to consider that evidence.

(3) If, having considered the evidence, the court is satisfied that it would have determined that the defendant had benefitted from drug trafficking if that evidence had been available to it, the court—

(a) shall—

- (i) make a fresh determination under section 5(4)(a);
- (ii) make a determination under subsection (4)(b) of that section of the amount to be recovered by virtue of that section; and

(b) may make an order under that section.

(4) Where the court is proceeding under section 5, by virtue of this section, subsection (4)(b) of that section shall have effect as if the words “before sentencing or otherwise dealing with him or her in respect of the offence or, as the case may be, any of the offences concerned” were omitted.

(5) The court may take into account any payment or other reward received by the defendant on or after the date of the original determination, but only if the prosecutor shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another on or before that date.

(6) In considering any evidence under this section which relates to any payment or reward to which subsection (5) applies, the court shall not make the assumptions which would otherwise be required by section 7.

(7) Where the court—

(a) has been asked to proceed under section 11 in relation to a defendant who has absconded; but

(b) has decided not to make a confiscation order against him or her,  
this section shall not apply at any time while he or she remains an absconder.

(8) No application shall be entertained by the court under this section if it is made after the end of the period of 6 years beginning with—

(a) the date on which the defendant was convicted; or

- (b) where he or she appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.

*(Inserted by Act 5 of 2000)*

### Revision of assessment of proceeds of drug trafficking

**15.** (1) This section applies where the court has made a determination (referred to in this section as “the current determination”) under section 5(4)(b) of the amount to be recovered in a particular case by virtue of that section.

(2) Where the prosecutor is of the opinion that the real value of the defendant’s proceeds of drug trafficking was greater than their assessed value, the prosecutor may apply to the court for the evidence on which the prosecutor has formed his or her opinion to be considered by the court.

(3) In subsection (2)—

“assessed value” means the value of the defendant’s proceeds of drug trafficking as assessed by the court under section 10(1); and

“real value” means the value of the defendant’s proceeds of drug trafficking which took place—

(a) in the period by reference to which the current determination was made; or

(b) in any earlier period.

(4) If, having considered the evidence, the court is satisfied that the real value of the defendant’s proceeds of drug trafficking is greater than their assessed value (whether because the real value was higher at the time of the current determination than was thought or because the value of the proceeds in question has subsequently increased), the court shall make a fresh determination under section 5(4)(b) of the amount to be recovered by virtue of that section.

(5) Where the court is proceeding under section 5, by virtue of this section, subsection (4)(b) of that section shall have effect as if the words “before sentencing or otherwise dealing with him or her in respect of the offence or, as the case may be, any of the offences concerned” were omitted.

(6) Any determination under section 5(4)(b), by virtue of this section, shall be by reference to the amount that might be realised at the time when the determination is made.

(7) For any determination under section 5(4)(b), by virtue of this section, section 7(5) shall not apply in relation to any of the defendant’s proceeds of drug trafficking taken into account in respect of the current determination.

(8) In relation to any such determination—

(a) section 4(7), 8(9)(a) and 10(2) shall have effect as if for “confiscation order” there were substituted “determination”;

(b) section 10(3) shall have effect as if for “confiscation order is made” there were substituted “determination is made”; and

(c) section 4(3) shall have effect as if for “a confiscation order is made against the defendant” there were substituted “of the determination”.

(9) The court may take into account any payment or other reward received by the defendant on or after the date of the current determination, but only if the prosecutor shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another on or before that date.

(10) In considering any evidence under this section which relates to any payment or reward to which subsection (9) applies, the court shall not make the assumptions which would otherwise be required by section 7.

(11) If, as a result of making the fresh determination required by subsection (4), the amount to be recovered exceeds the amount set by the current determination, the court may substitute for the amount to be recovered under the confiscation order which was made by reference to the current determination, such greater amount as it thinks just in all the circumstances of the case.

(12) Where a confiscation order has been made in relation to the defendant by virtue of section 11, this section shall not apply at any time while he or she is an absconder.

(13) No application shall be entertained by the court under this section if it is made after the end of the period of 6 years beginning with—

- (a) the date on which the defendant was convicted; or
- (b) where he or she appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.

*(Inserted by Act 5 of 2000)*

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

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

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

Where the amount does not exceed \$10,000.....	6 months
Where the amount exceeds \$10,000 but does not exceed \$20,000.....	12 months
Where the amount exceeds \$20,000 but does not exceed \$200,000.....	18 months
Where the amount exceeds \$200,000 but does not exceed \$400,000.....	2 years
Where the amount exceeds \$400,000 but does not exceed \$1,000,000.....	3 years
Where the amount exceeds \$1,000,000 but does not exceed \$4,000,000.....	5 years
Where the amount exceeds \$4,000,000.....	10 years.

(3) Where—

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

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

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

(5) Where the defendant serves a term of imprisonment in default of paying any amount due under a confiscation order, his or her serving of that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned. *(Inserted by Act 5 of 2000)*

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

17. (1) The powers conferred on the court by sections 18 and 19 are exercisable where—

- (a) proceedings have been instituted in the Territory against the defendant for a drug trafficking offence or an application has been made by the prosecutor in respect of the defendant under section 15 of the Criminal Justice (International Co-operation) Act, or section 11, 13, 14, or 15;
- (b) the proceedings have not, or the application has not, been concluded; and
- (c) the court is satisfied that there is reasonable cause to believe;
  - (i) in the case of an application under section 15 or section 15 of the Criminal Justice (International Co-operation) Act, that the court will be satisfied as mentioned in section 15 or, as the case may be, section 15(2) of that Act; or
  - (ii) in any other case, that the defendant has benefitted from drug trafficking.

*(Substituted by Act 5 of 2000)*

(2) The powers conferred on the court by sections 18 and 19 are also exercisable where—

- (a) the court is satisfied that, whether by the laying of an information or otherwise, a person is to be charged with a drug trafficking offence or that an application of a kind mentioned in subsection (1)(a) is to be made in respect of the defendant; and
- (b) the court is also satisfied as mentioned in subsection (1)(c);  
*(Substituted by Act 5 of 2000)*

(3) For the purposes of sections 18 and 19, at any time when those powers are exercisable before proceedings have been instituted—

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

(4) Where the court has made an order under section 18 or 19 by virtue of subsection (2), the court shall discharge the order if the proposed proceedings are not instituted within such time as the court considers reasonable.

(5) Where the court has made an order under section 18(1) or 19(1) in relation to a proposed application by virtue of subsection (2) herein, the court shall discharge the order if the application is not made within such time as the court considers reasonable. (*Inserted by Act 5 of 2000*)

(6) The court shall not exercise the powers under section 18(1) or 19(1) by virtue of subsection (1) herein, if it is satisfied that—

- (a) there has been undue delay in continuing the proceedings or application in question; or
- (b) the prosecutor does not intend to proceed.

*(Inserted by Act 5 of 2000)*

## **Restraint orders**

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

(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 or her after 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 19.

(4) A restraint order—

- (a) may be made only on an application by the prosecutor; (*Amended by Act 2 of 2008*)
- (b) may be made on an *ex parte* application to a Judge or Magistrate in chambers; and (*Amended by Act 2 of 2008*)
- (c) shall provide for notice to be given to persons affected by the order.

(5) A restraint order—

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged on the conclusion of the proceedings or of the application in question. (*Substituted by Act 5 of 2000*)

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

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

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

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

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

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

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

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

(11) The Title by Registration Act and the Registered Land Ordinance, shall apply—

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

(12) The prosecutor shall be treated for the purposes of section 124 of the Registered Land Ordinance (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.**

**19.** (1) The 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 have been specified in the order a charge for securing the payment of money to the Crown.

(3) A charging order—

- (a) may be made only on an application by the prosecutor; (*Amended by Act 2 of 2008*)
- (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 it thinks fit as to the time when the charge is to become effective.

(4) Subject to subsection (6), a charge may be imposed by a charging order only on—

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

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

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

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

(7) In relation to a charging order, the court—

- (a) may make an order discharging or varying it; and

- (b) shall make an order discharging it—
- (i) on the conclusion of the proceedings or of the application in question; or
  - (ii) on payment into court of the amount payment of which is secured by the charge. *(Substituted by Act 5 of 2000)*

(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

**20.** Subject to any provision made under section 21 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.

### Realisation of property

**21.** (1) Where a confiscation order—

- (a) has been made under this Act;
- (b) is not satisfied; and
- (c) is not subject to appeal,

the court may, on application by the prosecutor, exercise the powers conferred by subsections (2) to (6).

*(Substituted by Act 5 of 2000)*

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

(3) The court may empower a receiver appointed under subsection (2), under section 18 or in pursuance of a charging order—

- (a) to enforce any charge imposed under section 19 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 19, to take possession of the property subject to such conditions or exceptions as may be specified by the court.

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

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

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

(7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 19.

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

### **Application of proceeds of realisation and other sums**

**22.** (1) Subject to subsection (2), the following sums in the hands of a receiver appointed under section 18 or 19 or in pursuance of a charging order, that is—

- (a) the proceeds of the enforcement of any charge imposed under section 19;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 18 or 21; and
- (c) any other sums, being property held by the defendant,

shall, first be applied in payment of such expenses incurred by a person acting as a receiver or a liquidator as are payable under section 27(2) and then shall after such payments (if any) as the court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

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

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

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

(4) The Registrar of the court shall first pay any expenses incurred by a person acting as a receiver or a liquidator and payable under section 27(2) but not already paid under subsection (1).

(5) If the money was paid to the Registrar of the court by a receiver appointed under section 18 or 21 or in pursuance of a charging order, the Registrar of the court shall next pay the receiver's remuneration and expenses.

(6) After making—

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

the Registrar of the court shall reimburse any amount paid under section 27(2).

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

(8) The receipt, payment or reimbursement by the Registrar of the court of any sums or expenses under this section shall, in relation to the Magistrate's Court, be construed to refer to the Magistrate or to such other person of his or her staff as may be appointed in that regard to assist the Magistrate. (*Inserted by Act 2 of 2008*)

### **Exercise of powers by court or receiver**

**23.** (1) The following provisions apply to the powers conferred on the court by sections 18 to 22, or on a receiver appointed under section 18 or 21 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 or her.

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

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

### **Variation of confiscation orders**

**24.** (1) If, on an application by the defendant or a receiver appointed under section 18 or 21, or in pursuance of a charging order, made in respect of a confiscation order, the court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order the court shall issue a certificate to that effect, giving the court's reasons. (*Amended by Act 5 of 2000*)

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

(a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated, the court shall take into account the extent to which any property held by him or her may be distributed among the creditors; and

(b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or

indirectly made a gift caught by this Act from any risk of realisation under this Act.

(3) Where a certificate has been issued under subsection (1), the person who applied for it may apply to the court for the amount to be recovered under the order to be reduced. (*Amended by Act 5 of 2000*)

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

- (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and
- (b) substitute, if necessary, the appropriate term of imprisonment in accordance with the provisions of section 16.

(5) Rules of court may make provision—

- (a) for the giving of notice of any application under this section; and (*Inserted by Act 5 of 2000*)
- (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the court. (*Inserted by Act 5 of 2000*)

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

**25.** (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 or her bankrupt; and
- (b) any proceeds of property realised by virtue of section 18(6) or 21(5) or (6) for the time being in the hands of a receiver appointed under section 18 or 21,

is excluded from the property of the bankrupt for the purposes of the Insolvency Act. (*Amended by Act 2 of 2008*)

(2) Where a person has been adjudged bankrupt, the powers conferred on the court by sections 18 to 22 or on a receiver so appointed shall not be exercised in relation to—

- (a) property of the bankrupt for the time being for the purposes of the Insolvency Act; and (*Amended by Act 2 of 2008*)
- (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed pursuant to the Insolvency Act. (*Amended by Act 2 of 2008*)

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

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

(4) Where, in the case of a debtor, a receiver or liquidator is appointed in his or her case or in relation to him or her under the Insolvency Act and any property of the debtor is subject to a restraint order, the powers conferred on the

receiver or liquidator by virtue of that Act shall not apply to property for the time being subject to the restraint order. (*Substituted by Act 2 of 2008*)

(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 the Insolvency Act in respect of the making of the gift at any time when—
  - (i) proceedings for a drug trafficking offence have been instituted against him or her and have not been concluded;
  - (ii) an application has been made in respect of the defendant under section 11, 13, 14 or 15 or section 15 of the Criminal Justice (International Cooperation) Act and has not been concluded; or
- (b) any order made under the Insolvency Act after the conclusion of the proceedings or of the application shall take into account any realisation under this Act of property held by the person to whom the gift was made.

(Amended by Acts 5 of 2000 and 2 of 2008)

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

**26.** (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 18(6) or 21(5) or (6) for the time being in the hands of a receiver appointed under section 18 or 21.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the court by sections 18 to 22 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 or her from exercising those functions for the purpose of distributing any property held by the company to the company creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

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

(4) In this section—

“company” means any company which may be wound up under the BVI Business Companies Act; and (*Amended by Act 2 of 2008*)

“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 and liquidators dealing with property subject to restraint order**

**27.** (1) Without prejudice to the generality of any provisions contained in the Insolvency Act or any other enactment, where—

- (a) a person acting as a receiver or liquidator seizes or disposes of any property in relation to which his or her 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 or she believes, and has reasonable grounds for believing, that he or she is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

he or she 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 or her 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 or her expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his or her remuneration as may reasonably be assigned for his or her acting in connection with those proceedings.

*(Amended by Act 2 of 2008)*

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

- (a) in respect of such property as is mentioned in subsection 1(a) 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 realising the property,

shall be entitled (whether or not he or she has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 22.

(3) In this Act, the expression “acting as a receiver or liquidator” shall be construed in accordance with the provisions of the Insolvency Act, and the BVI Business Companies Act. (*Substituted by Act 2 of 2008*)

### Receivers: supplementary provisions

**28.** (1) Where a receiver appointed under section 18 or 21 or in pursuance of a charging order takes any action—

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

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

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

### Compensation

**29.** (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 or her conviction for any drug trafficking offence; or
- (b) where he or she is convicted of one or more drug trafficking offences—
  - (i) the conviction or convictions concerned are quashed (and no conviction for any drug trafficking offence is substituted); or
  - (ii) he or she is pardoned by the Governor in respect of the conviction or convictions concerned,

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

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

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned; and (*Amended by Act 5 of 2000*)
- (b) that the applicant has suffered substantial loss in consequence of anything done in relation to the property by or in pursuance of an order of the court under sections 18 to 21.

(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. (*Inserted by Act 5 of 2000*)

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

**Compensation, etc. where absconder is acquitted**

**30.** (1) This section applies where—

- (a) the court has made a confiscation order by virtue of section 11(4); and
- (b) the defendant is subsequently tried for the offence or offences concerned and acquitted on all counts.

(2) The court acquitting the defendant shall cancel the confiscation order.

(3) The court may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

(4) The amount of compensation to be paid under this section shall be such as the court considers just in all the circumstances of the case.

(5) Rules of court may make provision—

- (a) for the giving of notice of any application under this section; and
- (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the court.

(6) Any compensation under this section shall be paid out of the Consolidated Fund.

(7) Where the court cancels a confiscation order under this section, it may make such a consequential or incidental order as it considers appropriate in connection with the cancellation.

*(Inserted by Act 5 of 2000)*

**Power to discharge confiscation order and order compensation where absconder returns**

**31.** (1) This section applies where—

- (a) the court has made a confiscation order by virtue of section 11(4) in relation to an absconder; and
- (b) the defendant has ceased to be an absconder.

(2) The court may, on the application of the defendant, cancel the confiscation order if it is satisfied that—

- (a) there has been undue delay in continuing the proceedings in respect of which the power under section 11(4) was exercised; or
- (b) the prosecutor does not intend to proceed with the prosecution.

(3) Where the court cancels a confiscation order under this section it may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

(4) The amount of compensation to be paid under this section shall be such as the court considers just in all the circumstances of the case.

(5) Rules of court may make provision—

- (a) for the giving of notice of any application under this section; and
- (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the court.

(6) Any compensation under this section shall be paid out of the Consolidated Fund.

(7) Where the court cancels a confiscation order under this section, it may make such consequential or incidental order it considers appropriate in connection with the cancellation.

*(Inserted by Act 5 of 2000)*

### Variation of confiscation orders made by virtue of section 11

32. (1) This section applies where—

- (a) the court has made a confiscation order by virtue of section 11(4); and
- (b) the defendant has ceased to be an absconder.

(2) If the defendant alleges that—

- (a) the value of his or her proceeds of drug trafficking in the period by reference to which the determination in question was made (“the original value”); or
- (b) the amount that might have been realised at the time the confiscation order was made,

was less than the amount ordered to be paid under the confiscation order, he or she may apply to the court for it to consider his or her evidence.

(3) If, having considered that evidence, the court is satisfied that the defendant’s allegation is correct, it—

- (a) shall make a fresh determination under section 5(4); and
- (b) may, if it considers it just in all the circumstances, vary the amount to be recovered under the confiscation order.

(4) For any determination under section 5 by virtue of this section, section 7(5) shall not apply in relation to any of the defendant’s proceeds of drug trafficking taken into account in determining the original value.

(5) Where the court varies a confiscation order under this section—

- (a) it shall (if necessary) substitute the appropriate term of imprisonment in accordance with the provisions of section 16; and
- (b) on the application of a person who held property which was realisable property, it may order compensation to be paid to the applicant if—

- (i) it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order; and
- (ii) having regard to all the circumstances of the case, the court considers it to be appropriate.

(6) The amount of compensation to be paid under this section shall be such as the court considers just in all the circumstances of the case.

(7) Rules of court may make provision—

- (a) for the giving of notice of any application under this section; and
- (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the court.

(8) Any compensation under this section shall be paid out of the Consolidated Fund.

(9) No application shall be entertained by the court under this section if it is made after the end of the period of 6 years beginning with the date on which the confiscation order was made.

*(Inserted by Act 5 of 2000)*

### **Assisting another to retain the benefit of drug trafficking**

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

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

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

*(Amended by Act 2 of 2008)*

(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 or her hands his or her proceeds of drug trafficking.

(3) Where a person discloses to a police officer a suspicion or belief that any funds, investments or other property 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 restriction upon the disclosure of information imposed by statute or otherwise; and
- (b) if he or she does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he or she 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 or she does the act concerned, being an act done with the consent of the police officer in aid of a law enforcement function; or
  - (ii) it is made after he or she does the act, but is made on his or her initiative and as soon as it is reasonable for him or her to make it; and
  - (iii) he or she had good reason for his or her failure to make the disclosure before he or she did the act concerned. *(Inserted by Act 2 of 2008)*  
*(Amended by Act 2 of 2008)*

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

- (a) that he or she did not know or suspect that the arrangement related to any person's proceeds of drug trafficking; or
- (b) that he or she did not know or suspect that by the arrangement the acquisition, retention, use or control by or on behalf of the other person mentioned in subsection (1) of any property was facilitated as mentioned in that subsection; or *(Substituted by Act 2 of 2008)*
- (c) that—
  - (i) he or she intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement; but
  - (ii) there is reasonable excuse for his or her failure to make disclosure in accordance with subsection (3)(b).

(5) In the case of a person who was in employment at the relevant time, subsections (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his or her employer for the making of such disclosures, and intended disclosures, to a police officer. *(Inserted by Act 5 of 2000)*

(6) A police officer may disclose any information received under this section in relation to drug trafficking—

- (a) to any law enforcement agency in the Territory;
- (b) to the Steering Committee in connection with any offence that may be committed under this Act, the Proceeds of Criminal Conduct Act, or any other enactment or for the purpose of facilitating an investigation under this Act, the Proceeds of Criminal Conduct Act or other enactment; *(Substituted by Act 2 of 2008)*

- (c) to any law enforcement agency in any other country, in order—
  - (i) to report the possible commission of an offence;
  - (ii) to initiate a criminal investigation respecting the matter disclosed;
  - (iii) to assist with any investigation or criminal proceedings respecting the matter disclosed; or
  - (iv) to generally give effect to the purposes of this Act.

*(Inserted by Act 5 of 2000)*

(7) Before any disclosure is made pursuant to subsection (6), the interests of third parties shall be considered. *(Inserted by Act 2 of 2008)*

(8) No member of the Steering Committee or the Agency or a police officer or other person concerned in law enforcement commits an offence under this section in respect of anything done by him or her in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to drug trafficking or the proceeds of such drug trafficking. *(Inserted by Act 2 of 2008)*

- (9) Any person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 15 years; and
  - (b) on summary conviction, to a fine of \$100,000 or where there is evidence of the street value of the controlled drug, three times the value of the controlled drug, whichever is the greater and to imprisonment for a term not exceeding 10 years but which shall not be less than 5 years.

### **Acquisition, possession or use of property representing proceeds of drug trafficking**

**34.** (1) A person commits an offence if—

- (a) he or she acquires, transfers or uses any property or has possession of it, which, in whole or in part, directly or indirectly represents his or her proceeds of drug trafficking; or *(Substituted by Act 2 of 2008)*
- (b) knowing or suspecting that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he or she acquires, transfers or uses that property or has possession of it. *(Substituted by Act 2 of 2008)*

(2) It is a defence to a charge of committing an offence under this section, save under subsection (1)(a), that the person charged acquired, transferred or used the property or had possession of it for adequate consideration. *(Substituted by Act 2 of 2008)*

(3) For the purposes of subsection (2)—

- (a) a person acquires or transfers property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and *(Amended by Act 2 of 2008)*

(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his or her use or possession of the property.

(4) The provision for any person of services or goods which are of assistance to him or her in drug trafficking shall not be treated as consideration for the purposes of subsection (2).

(5) Where a person discloses to a police officer a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, or discloses to a police officer any matter on which such a suspicion or belief is based—

(a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and

(b) if he or she does any act in relation to the property in contravention of subsection (1), he or she does not commit an offence under this section if—

(i) the disclosure is made before he or she does the act concerned and the act is done with the consent of the police officer in aid of a law enforcement function; or (*Amended by Act 2 of 2008*)

(ii) the disclosure is made after he or she does the act, but on his or her initiative and as soon as it is reasonable for him or her to make it; and (*Amended by Act 2 of 2008*)

(iii) he or she had good reason for his or her failure to make the disclosure before he or she did the act concerned. (*Inserted by Act 2 of 2008*)

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

(7) In proceedings against a person for an offence under this section save under subsection (1)(a), it is a defence to prove that—

(a) he or she intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (5); but

(b) there is reasonable excuse for his or her failure to make the disclosure in accordance with paragraph (b) of that subsection. (*Amended by Act 2 of 2008*)

(8) In the case of a person who was in employment at the relevant time, subsections (5) and (7) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his or her employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.

(9) A police officer may disclose any information received under this section in relation to drug trafficking—

(a) to any law enforcement agency in the Territory;

(b) to the Steering Committee in connection with any offence that may be committed under this Act, the Proceeds of Criminal

Conduct Act, or any other enactment or for the purpose of facilitating an investigation under this Act, the Proceeds of Criminal Conduct Act or other enactment; (*Substituted by Act 2 of 2008*)

- (c) to any law enforcement agency in another country, in order—
  - (i) to report the possible commission of an offence;
  - (ii) to initiate a criminal investigation respecting the matter disclosed;
  - (iii) to assist with any investigation or criminal proceedings respecting the matter disclosed; or
  - (iv) to generally give effect to the purposes of this Act.

(10) Before any disclosure is made pursuant to subsection (9), the interests of third parties shall be considered. (*Inserted by Act 2 of 2008*)

- (11) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 5 years; and
  - (b) on conviction on indictment, to a fine not exceeding \$100,000 or imprisonment for a term not exceeding 15 years or both.

(12) No member of the Steering Committee or the Agency or a police officer or other person concerned in law enforcement commits an offence under this section in respect of anything done by him or her in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to drug trafficking or the proceeds of such trafficking. (*Amended by Act 2 of 2008*)  
(*Inserted by Act 5 of 2000*)

### **Concealing or transferring property representing proceeds of drug trafficking**

**35.** (1) A person commits an offence if he or she—

- (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, the proceeds of drug trafficking; or
- (b) converts or transfers that property or removes that property from the Territory. (*Substituted by Act 2 of 2008*)

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

- (a) conceals or disguises that property; or
- (b) converts or transfers that property or removes it from the Territory. (*Substituted by Act 2 of 2008*)

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

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

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

*(Inserted by Act 2 of 2008)*

(5) No member of the Steering Committee or the Agency or a police officer or other person concerned in law enforcement commits an offence under this section in respect of anything done by him or her in the due discharge of the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to drug trafficking or the proceeds of drug trafficking.  
*(Inserted by Act 2 of 2008)*

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

- (a) on summary conviction, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 6 months or both; or
- (b) on conviction on indictment, to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 14 years or both.

*(Inserted by Act 5 of 2000)*

### **Failure to disclose knowledge or suspicion of money laundering**

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

- (a) he or she knows, or suspects or has reasonable grounds for knowing or suspecting, that another person is engaged in drug money laundering; *(Amended by Act 2 of 2008)*
- (b) the information, or other matter, on which that knowledge or suspicion is based came to his or her attention in the course of his or her trade, profession, business or employment; and
- (c) he or she does not disclose the information or other matter to a police officer as soon as is reasonably practicable after it comes to his or her attention.

(2) Subsection (1) does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him or her in privileged circumstances.

(3) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.

(4) Where a person discloses to a police officer—

- (a) his or her suspicion or belief that another person is engaged in drug money laundering; or

- (b) any information or other matter on which that suspicion or belief is based,

that disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

(5) Without prejudice to subsection (3) or (4), in the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under this section that he or she disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by his or her employer for the making of such disclosures.

(6) A disclosure to which subsection (5) applies shall not be treated as a breach of any restriction imposed by statute or otherwise.

(7) For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it. (*Substituted by Act 2 of 2008*)

(8) 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 or her—

- (a) by, or by a representative of, a client of his or hers in connection with the giving by the adviser of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the adviser; or
- (c) by any person—
  - (i) in contemplation of, or in connection with legal proceedings; and
  - (ii) for the purpose of those proceedings.

(9) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

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

- (a) on summary conviction, to a fine not exceeding \$10,000 or imprisonment not exceeding 3 years or both; or
- (b) on conviction on indictment, to a fine not exceeding \$25,000 or imprisonment for a term not exceeding 5 years or both.

*(Inserted by Act 5 of 2000)*

## Tipping-off

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

- (a) he or she knows or suspects that a police officer or other person is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into drug money laundering or any action in relation to or arising from drug money laundering; and (*Amended by Act 2 of 2008*)
- (b) he or she discloses to any other person information or any other matter which is likely to prejudice that investigation, or proposed investigation.

(2) A person is guilty of an offence if—

- (a) he or she knows or suspects that a disclosure (“the disclosure”) has been made to a police officer under section 33, 34 or 35; and
- (b) he or she discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following disclosure.

(3) A person is guilty of an offence if—

- (a) he or she knows or suspects that a disclosure (“the disclosure”) of a kind mentioned in section 33(5), 34(8) or 35(4) has been made; and
- (b) he or she 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 professional legal adviser to disclose any information or other matter—

- (a) to, or to a representative of, a client of his or hers in connection with the giving by the adviser of legal advice to the client; *(Amended by Act 2 of 2008)*
- (b) by, or by a representative of, a person seeking legal advice from the adviser; or *(Inserted by Act 2 of 2008)*
- (c) to any person—
  - (i) in contemplation of, or in connection with, legal proceedings; and
  - (ii) for the purpose of those proceedings. *(Amended by Act 2 of 2008)*

(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 or she did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.

(7) In this section “drug money laundering” has the same meaning as in section 36 or, in the case of an act done otherwise than in the Territory, would constitute such an offence if done in the Territory.

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

- (a) on summary conviction, to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 5 years or both; or
- (b) on conviction on indictment, to a fine not exceeding \$100,000 or imprisonment for a term not exceeding 15 years or both.

(9) No member of the Steering Committee or the Agency or a police officer or other person concerned in law enforcement commits an offence under this section in respect of anything done by him or her in the course of acting in connection with the enforcement, or intended enforcement, of any provision of

this Act or of any other enactment relating to drug trafficking or the proceeds of such trafficking. (*Amended by Act 2 of 2008*)

(*Inserted by Act 5 of 2000*)

### **Enforcement of external confiscation orders**

**38.** (1) The Cabinet may by Order published in the *Gazette*—

- (a) direct in relation to a country or territory outside the Territory (referred to in this section and section 33 as a “requesting 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 requesting 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 requesting country with a view to satisfying a confiscation order;
  - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 39; and
  - (iii) such incidental, consequential and transitional provision, as appears to the Cabinet to be expedient; and
- (c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceed which arise out of action taken in the requesting country with a view to satisfying a confiscation order and which are retained there shall nevertheless be treated as reducing the amount payable under the order to such extent as may be specified.

(*Amended by Acts 2 of 2008 and 12 of 2017*)

(2) In this Act—

“external confiscation order” means an order made by a court in a requesting country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value; and (*Amended by Act 12 of 2017*)

“modifications” includes additions, alterations and omissions.

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

(4) The power to make an Order under this section includes the power to modify (whether by additions, alterations, omissions or otherwise) this Act in such a way as to confer power on a person to exercise a discretion. (*Inserted by Act 5 of 2000*)

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

(*Amended by Act 2 of 2008*)

## Registration of external confiscation orders

**39.** (1) On an application made by or on behalf of the Government of a requesting country, the 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 or she received notice of the proceedings in sufficient time to enable him or her to defend them; and
- (c) it is of the opinion that enforcing the order in the Territory would not be contrary to the interests of justice.

*(Amended by Act 12 of 2017)*

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

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

(3) The court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it. *(Amended by Act 5 of 2000)*

## Orders to make material available

**40.** (1) A police officer may, for the purpose of an investigation into drug trafficking or drug money laundering, apply to the court for an order under subsection (2) in relation to particular material or material of a particular description. *(Substituted by Act 2 of 2008)*

(2) Subject to section 46(10), if on such an application the court is satisfied that the conditions in subsection (4) are fulfilled, it may make an order that the person who appears to it to be in possession of the material to which the application relates shall—

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

within such period as the order may specify.

*(Amended by Act 2 of 2008)*

(3) The period to be specified in an order under subsection (2) shall be 7 days unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances of the application. *(Amended by Act 2 of 2008)*

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

- (a) that there are reasonable grounds for suspecting that a specified person is involved in drug trafficking or drug money laundering or has carried on or has benefitted from drug trafficking or drug money laundering; *(Substituted by Act 2 of 2008)*

- (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 court makes an order under subsection (2)(b) in relation to material on any premises he or she may, on the application of a police officer, order any person who appears to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material. *(Amended by Act 2 of 2008)*

(6) Provision may be made by rules of court as to the discharge and variation of orders under this section, and proceedings relating to such orders; and until such rules are made the procedure with respect to the discharge and variation of orders under this section, and the proceedings relating to such orders shall be determined by the Judge or Magistrate, as the case may be. *(Amended by Act 2 of 2008)*

(7) Where the material to which an application under subsection (1) relates consists of information contained in a computer—

- (a) an order under subsection (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
- (b) an order under subsection (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible. *(Amended by Act 5 of 2000)*

(8) An order under subsection (2)—

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

(9) An application under subsection (1) or (5) may be made *ex parte* to a Judge or Magistrate in chambers. *(Inserted by Act 5 of 2000 and amended by Act 2 of 2008)*

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

- (a) a police officer or the Agency may make a copy of the material; and
- (b) the material may—
  - (i) be retained for as long as it is necessary for the purposes of completing an investigation; and
  - (ii) where it is required for legal proceedings, be retained until those proceedings are concluded. *(Inserted by Act 2 of 2008)*

### Authority for search

**41.** (1) A police officer may, for the purposes of an investigation into drug trafficking or drug money laundering, apply to a court for a warrant under this section in relation to specified premises. *(Substituted by Act 2 of 2008)*

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

- (a) that an order under section 40 in relation to material on the premises has not been complied with;
- (b) that the conditions in subsection (3) are fulfilled; or
- (c) that the conditions in subsection (4) are fulfilled.

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

- (a) that there are reasonable grounds for suspecting that a specified person is involved in or may be related to an act of drug trafficking or drug money laundering or has carried on or has benefitted from drug trafficking or drug money laundering; *(Substituted by Act 2 of 2008)*
- (b) that the conditions in section 40(4)(b) and (c) are fulfilled in relation to any material on the premises; and
- (c) that it would not be appropriate to make an order under that section in relation to the material because—
  - (i) it is not practicable to communicate with any person entitled to produce the material;
  - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
  - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the material.

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

- (a) that there are reasonable grounds for suspecting that a specified person is involved in or may be related to an act of drug trafficking or drug money laundering or has carried on or has benefitted from drug trafficking or drug money laundering; *(Substituted by Act 2 of 2008)*

- (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking or drug money laundering 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 (*Amended by Act 2 of 2008*)
- (c) that—
  - (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
  - (ii) entry to the premises will not be granted unless a warrant is produced; or
  - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a police officer arriving at the premises could secure immediate entry to them.

(5) Where a police officer has entered any premises in the execution of a warrant issued under this section, he or she 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) Where any material is seized pursuant to subsection (5)—

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

*(Inserted by Act 2 of 2008)*

### **Meaning of “items subject to legal privilege”**

**42.** (1) Subject to subsection (2), in sections 40 and 41 “items subject to legal privilege” means—

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

- (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

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

#### **Meaning of “excluded material”**

**43.** (1) Subject to the following provisions of this section, in sections 40 and 41 “excluded material” means—

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

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

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

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

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

#### **Meaning of “personal records”**

**44.** In section 43, “personal records” means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating—

- (a) to his or her physical or mental health;
- (b) to spiritual counselling or assistance given or to be given to him or her; or

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

### **Meaning of “journalistic material”**

**45.** (1) Subject to subsection (2), in section 43 “journalistic material” means material acquired or created for the purposes of journalism.

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

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

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

**46.** (1) Subject to subsection (4), a police officer may apply to a court for an order that any material mentioned in subsection (3) which is in the possession of a government department be produced to the police officer and the court may, upon such application, make such order and specify the period within which such material should be produced to the police officer. (*Substituted by Act 2 of 2008*)

- (2) The power to make an order under subsection (1) is exercisable if—
  - (a) the powers conferred on the court by sections 18(1) and 19(1) are exercisable by virtue of section 17(1); or
  - (b) those powers are exercisable by virtue of section 17(2) and the court has made a restraint or charging order which has not been discharged; but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b) of this subsection, section 17(3) shall apply for the purposes of this section as it applies for the purposes of sections 18 and 19.

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

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

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

(4) An order under subsection (1) shall not require the production of any material unless it appears to the court that the material is likely to contain information that would facilitate—

- (a) the exercise of the powers conferred on the court by sections 18 to 21 or on a receiver appointed under section 18 or 21 or in pursuance of a charging order;
- (b) the conduct of investigations into drug trafficking or drug money laundering; or
- (c) the conduct of proceedings before the court. (*Substituted by Act 2 of 2008*)

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

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

(7) Material disclosed in pursuance of an order under this section may, subject to any conditions contained in the order, be further disclosed by a police officer or the Agency for the purposes of functions relating to drug trafficking or drug money laundering. (*Substituted by Act 2 of 2008*)

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

(9) An order under subsection (1) and, in the case of material in the possession of a government department, an order under section 40(2) may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the department.

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

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

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

### Prejudicing an investigation

**47.** (1) For the purposes of this section—

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

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

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

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

*(Substituted by Act 2 of 2008)*

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

- (a) he or she does not know or suspect that the disclosure is likely to prejudice the investigation;
- (b) the disclosure is made in the exercise of a function under this Act or any other enactment relating to drug trafficking or drug money laundering or benefit from drug trafficking or drug money laundering or in compliance with a requirement imposed under or by virtue of this Act; or

If he or she is a professional legal adviser and the disclosure is made—

- (i) to, or to a representative of, a client of his or hers in connection with the giving by the legal adviser of legal advice to the client; or
- (ii) to any person in contemplation of, or in connection with, legal proceedings and for the purpose of those proceedings.

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

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

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

- (a) on summary conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 3 years, or both; or
- (b) on conviction on indictment to a fine not exceeding \$25,000 or imprisonment for a term not exceeding 5 years, or both.

*(Substituted by Act 2 of 2008)*

## **Seizure and detention of cash**

**48.** (1) The Commissioner for Customs or a police officer may seize and, in accordance with this section, detain any cash which is found in the Territory or is

being imported into or exported from the Territory if its amount is not less than \$10,000 and he or she has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking or drug money laundering. *(Amended by Acts 2 of 2008 and 6 of 2010)*

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

- (a) is intended by any person for use in drug trafficking or drug money laundering; or
- (b) directly or indirectly represents any person's proceeds of drug trafficking or drug money laundering.

*(Inserted by Acts 2 of 2008 and 6 of 2010)*

(3) Cash seized by virtue of this section shall not be detained for more than 72 hours unless its continued detention is authorised by order of a Magistrate upon an application made by the Commissioner for Customs or a police officer; and no such order shall be made unless the Magistrate is satisfied—

- (a) that there are reasonable grounds for the suspicion mentioned in subsection (1);
- (b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the Territory or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected; and
- (c) that proceedings against any person for an offence with which the cash is connected have been started but have not been concluded.

*(Amended by Act 2 of 2008 and 6 of 2010)*

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

- (a) no period of detention specified in such an order shall exceed 3 months beginning with the date of the order; and
- (b) the total period of detention shall not exceed 2 years from the date of the order under subsection (2).

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

- (a) the Magistrate may direct its release if satisfied—
  - (i) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer, any such grounds for its detention as are mentioned in subsection (3); or

- (ii) on an application made by any other person, that detention of the cash is not for that or any other reason justified; and
- (b) the Comptroller of Customs or a police officer may release the cash if satisfied that its detention is no longer justified but shall first notify the Magistrate under whose order it is being detained or another Magistrate in the absence of the one under whose order it is being detained. *(Amended by Act 2 of 2008)*

(6) Where on an application under subsection (5) for the release of cash that is being detained the Magistrate finds that only a part of the cash, if it relates to liquid currency, is intended for use by a person for drug trafficking or drug money laundering; or directly or indirectly represents any person's proceeds of drug trafficking or drug money laundering, the Magistrate may order the release of that part of the cash as does not relate to the intended drug trafficking or drug money laundering or directly or indirectly represent the proceeds of drug trafficking or drug money laundering. *(Inserted by Act 2 of 2008)*

(7) Subsection (6) does not apply to cash that is in the form of bearer negotiable or other monetary instrument. *(Inserted by Act 2 of 2008)*

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

- (a) an application for its forfeiture is made under section 49; or
- (b) proceedings are instituted (whether in the Territory or elsewhere) against any person for an offence with which the cash is connected,

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

## **Forfeiture**

### **49. In sections 48, 49, 50 and 51—**

- (a) The Magistrate may order the forfeiture of any cash which has been seized under section 48 if satisfied, on an application made by the Commissioner for Customs or a police officer while the cash is detained under that section, that the cash directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking or drug money laundering. *(Amended by Acts 2 of 2008 and 6 of 2010)*
- (b) The standard of proof in proceedings on an application under subsection (1) shall be on a balance of probabilities. *(Substituted by Act 2 of 2008)*
- (c) An order may be made under subsection (1) irrespective of whether proceedings are brought against a person for an offence with which the cash in question is connected. *(Inserted by Act 2 of 2008)*
- (d) Where an application for the forfeiture of any cash is made under subsection (1), the cash is to be detained (and may not be released under any power conferred by this section or section 48) until any

proceedings in pursuance of the application, including any proceedings on appeal, are concluded. *(Inserted by Act 2 of 2008)*

- (e) Any party to proceedings under this section who is aggrieved by an order of the Magistrate may, within 30 days from the date on which the order is made, appeal to the Court of Appeal which may make such order as it thinks appropriate. *(Inserted by Act 2 of 2008)*

### **Forfeiture: general**

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

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

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

(3) The court shall not order anything to be forfeited under subsection (1) or (2) unless an opportunity has been given to the person claiming to be the owner or other person interested in it to show cause within 30 days from the date of conviction why the order should not be made.

(4) Forfeiture under subsection (1) shall extend—

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

*(Inserted by Act 2 of 2008)*

### **Interest**

**51.** Cash seized under section 48 and detained for more than 48 hours shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.

**Procedure**

**52.** (1) An order under section 48(2) shall provide for notice to be given to persons affected by the order.

(2) Until provision is made by rules under the Magistrate's Code of Procedure Act, the procedure with respect to applications to a Magistrate, for the giving of notice of such applications to persons affected, for the joinder of such persons as parties and generally with respect to the procedure under sections 48 and 49, shall be determined by the Magistrate.

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

**Interpretation of certain expressions in sections 48 to 51**

**53.** In sections 48, 49 and 51—

“cash” includes coins and notes in any currency and any other monetary type of bearer negotiable or monetary instrument; (*Substituted by Act 2 of 2008*)

“Commissioner for Customs” means a public officer appointed pursuant to section 4 of the Customs Management and Duties Act to be in charge of Customs; (*Substituted by Act 6 of 2010*)

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

**Regulations**

**54.** The Cabinet may make Regulations for the effective carrying out of the provisions of this Act. (*Inserted by Act 5 of 2000*)

---