

Drug Trafficking Offences

1995-06

**DRUG TRAFFICKING OFFENCES ORDINANCE, 1995
(DESIGNATED COUNTRIES AND TERRITORIES) ORDER, 1999**

**Subsidiary
1999/111**

Order made under s. 46.

**DRUG TRAFFICKING OFFENCES ACT, 1995
(DESIGNATED COUNTRIES AND TERRITORIES)
ORDER, 1999**

(LN. 1999/111)

26.8.1999

Amending enactments	Relevant current provisions	Commencement date
Act. 2007-17	Para. 7, 8(1) & (2), Schedule 2	14.6.2007

ARRANGEMENT OF PARAGRAPHS.

Paragraph

1. Title and application.
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9. Currency conversion.
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Title and application.

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1.(1) This Order may be cited as the Drug Trafficking Offences Act 1995 (Designated Countries and Territories) Order, 1999.

(2) This Order –

- (a) shall apply in relation to any proceedings for, or in respect of, an offence committed or alleged to have been committed or an offence in respect of which the person accused (or, as the case may be convicted of that offence) was charged with that offence (whether by the laying of an information or otherwise) on or after the 20th day of March 1995,
- (b) shall not apply in relation to any proceedings not within (a) instituted before that date,

and references in this subparagraph to proceedings include a reference to any order made by a court in the proceedings.

(3) Without prejudice to Part IV of the Interpretation and General Clauses Act, the Drug Trafficking Offences Act 1995 (Designated Countries and Territories) Order, 1995 and any instrument made under it shall continue to apply in relation to any proceedings within subparagraph (1)(b) (and, in particular, in relation to any external confiscation order, within the meaning of that Order, made in any such proceedings) as if this Order had not been brought into effect.

(4) The provisions of subparagraph (2) shall be without prejudice to section 2(13A) of the Act.

(5) Any reference (express or implied) in any enactment, or in any instrument or document, to a provision revoked by this Order is (so far as the context permits) to be read as being (or, according to the context) including in relation to times, circumstances and purposes after the coming into force of this Order, a reference to the corresponding provision in this Order.

Interpretation.

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

“appropriate authority of a designated country” means –

- (a) an authority specified opposite the entry in respect of that country in Schedule 1, or

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- (b) where no authority is so specified, the authority appearing to the court to be the appropriate authority of that country for the purposes of sections 46 and 47 of the Act, and of the other provisions of the Act as applied under paragraph 3(2) of this Order;

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

“designated country” means a country or territory designated under paragraph 3(1);

“the Act” means the Drugs Trafficking Offences Act, 1995.

Designation of, and application of, the Act to countries and territories.

3.(1) Each of the countries and territories specified in Schedule 1 is hereby designated for the purposes of sections 46 and 47 of the Act.

(2) In relation to a designated country the Act shall apply, subject to the modifications specified in Schedule 2, to External Confiscation Orders and to proceedings which may have been or are to be instituted in a designated country and which may result in an External Confiscation Order being made there and, accordingly, in relation to such orders and such proceedings, the Act shall have effect as set out in Schedule 3.

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

4.(1) For the purposes of sections 46 and 47 of the Act and of the other provisions of the Act as applied under paragraph 3(2)–

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

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

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his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of a designated country.

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

5.(1) For the purposes of sections 46 and 47 of the Act and of the other provisions of the Act as applied under paragraph 3(2), a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating that –

- (a) proceedings have been instituted and have not been concluded or that proceedings are to be instituted there;
- (b) an External Confiscation Order is in force and is not subject to appeal;
- (c) all or a certain amount of the sums payable under an External Confiscation Order remain unpaid in a designated country, or that other property recoverable under an External Confiscation Order remains unrecovered there;
- (d) any person has been notified of any proceedings in accordance with the law of a designated country; or
- (e) an order (however described) made by a court of a designated country has the purpose of recovering payments and other rewards received in connection with drug trafficking or their value,

shall, in any proceedings in a court in Gibraltar, be admissible as evidence of the facts so stated.

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

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

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

Certificate as to appropriate authority of a designated country.

6. Where, in relation to any designated country, no authority is specified in Schedule 1 to this Order, a certificate made by the Governor to the effect that the authority specified therein is the appropriate authority for the purposes of sections 46 and 47 of the Act, and of the other provisions of the Act as applied by paragraph 3(2) of this Order shall be sufficient evidence of that fact.

Representation of Government of a designated country.

7. A request for assistance sent to the Minister responsible for justice by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of the Government of that country for the Attorney General to act on its behalf in any proceedings in a court in Gibraltar under Section 47 of the Act or any other provision of the Act as applied by paragraph 3(2).

Satisfaction of confiscation order in a designated country.

8.(1) Where—

- (a) a confiscation order has been made under section 3 of the Act; and
- (b) a request has been sent by the Minister responsible for justice to the appropriate authority of the designated country for assistance in enforcing that order; and
- (c) in execution of that request, property is recovered in that country,

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

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

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Currency conversion.

9.(1) Where the value of property recovered as described in paragraph 8(1) is expressed in a currency other than sterling, the extent to which the amount payable under the confiscation order is to be reduced under that paragraph, shall be calculated on the basis of the rate of exchange prevailing on the date on which the property was recovered in the designated country concerned.

(2) Where an amount of money payable or remaining to be paid under an External Confiscation Order registered under section 47 of the Act is expressed in a currency other than sterling, for the purposes of any action taken in relation to that order under the Act as applied under paragraph 3(2), the amount shall be converted into sterling on the basis of the rate of exchange prevailing on the date of registration of the order.

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

Revocation of the Drug Trafficking Offences Act,1995 (Designated Countries and Territories) Order, 1995.

10 (1). For the avoidance of doubt, the Drug Trafficking Offences Act, 1988 (Designated Countries and Territories) Order, 1990 is hereby revoked.

(2) The Drug Trafficking Offences Act, 1995 (Designated Countries and Territories) Order, 1995 and the Drug Trafficking Offences Act, 1995 (Designated Countries and Territories) (Amendment) Order, 1997 are hereby revoked.

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SCHEDULE 1**

Paragraph 3(1)

DESIGNATED COUNTRIES AND APPROPRIATE AUTHORITIES

Designated Country	Appropriate Authority
Anguilla	The Attorney-General of Anguilla
Australia	The Attorney-General's Department
the Bahamas	The Attorney-General of the Bahamas
Bahrain	The Ministry of the Interior
Barbados	The Attorney-General
Bermuda	The Attorney-General of Bermuda
Canada	The Minister of Justice or officials designated by that Minister
The Cayman Islands	The Attorney-General of the Cayman Islands
Denmark	The Minister of Justice
Guernsey	Her Majesty's Attorney-General for the Bailiwick of Guernsey
Hong Kong	The Attorney-General of Hong Kong
India	The Ministry of Home Affairs
Isle of Man	Her Majesty's Attorney-General for the Isle of Man
Italy	Ministry of Justice
Jersey	Her Majesty's Attorney-General for the Bailiwick of Jersey
Malaysia	The Inspector General of Police
Montserrat	The Attorney-General of Montserrat
Netherlands	Afdeling Internationale Rechtshulp

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Nigeria	The Attorney-General of the Federation of the Republic of Nigeria
Saudi Arabia	The Ministry of the Interior
South Africa	The Department of Foreign Affairs
Spain	The Ministerio de Justicia, Madrid
Sweden	The Ministry for Foreign Affairs
Switzerland	The Eidgenossisches Justiz und Polizeidepartment
United Kingdom of Great Britain and Northern Ireland:	
- England & Wales	The Home Office
- Scotland	The Lord Advocate
- Northern Ireland	The Home Office
United Mexican States	The Office of the Attorney-General
United States of America	The Attorney-General of the United States of America

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SCHEDULE 2

Paragraph 3(2)

MODIFICATIONS TO THE DRUG TRAFFICKING OFFENCES ACT,
1995

1. Section 1 is omitted.
2. In section 2–
 - (a) in subsection (1)–
 - (i) the following definitions are omitted–
 - “benefitted from drug trafficking”;
 - “confiscation order”;
 - “Convention state”;
 - “modifications”;
 - “proceeds of drug trafficking”;
 - “satisfied”;
 - “Scheduled Substance”;
 - “value of proceeds of drug trafficking”; and
 - “Vienna Convention”;
 - (ii) in the definition of “defendant” the words “proceedings have been instituted for a drug trafficking offence (whether or not he has been convicted)” are omitted and replaced by the words “an External Confiscation Order has been made or a person against whom proceedings which may result in an External Confiscation Order being made have been or are to be instituted in the court of a designated country”;
 - (iii) after the definition of “defendant” the following definition is inserted –
 - ““External Confiscation Order” means any order falling within section 3;”;
 - (b) subsections (4)-(12) are omitted;
 - (c) subsection (13) is omitted and replaced by the following subsection–
 - “(13) Proceedings are instituted in a designated country when–

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- (a) under the law of a designated country concerned one of the steps specified in relation to that country in column 2 of the Appendix hereto has been taken there in respect of alleged drug trafficking by the defendant; or
- (b) where no steps have been specified in relation thereto as mentioned in paragraph (a) the defendant has been notified in writing in accordance with the laws of the designated country that the competent authorities of that country have begun proceedings against him in respect of an offence; or
- (c) an application has been made to a court of a designated country for an External Confiscation Order,

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

- (d) subsections (15) and (16) are omitted;
- (e) subsection (22) is omitted and replaced by the following subsection—

“(22) References in this Act to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection and whether received in connection with drug trafficking carried on by the recipient or some other person and whether received before or after the commencement of the Drug Trafficking Offences Act 1995 (Designated Countries and Territories) Order 1999.”.

3. Section 3 is omitted and the following section is substituted therefor –

“External Confiscation Orders.

3.(1) An order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value is referred to in this Act as an “External Confiscation Order”.

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

4. Sections 4, 5 and 6 are omitted.
5. In section 7–
 - (a) subsection (1) is omitted;
 - (b) subsection (2) is omitted and replaced by the following subsection–

“(2) In this Act “realisable property” means, subject to subsection (3),–

 - (a) in relation to an External Confiscation Order made in respect of specified property, the property which is specified in the order;
 - (b) in any other case–
 - (i) any property held by the defendant; and
 - (ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act.”;
 - (c) subsections(4) and (5) are omitted.
6. In section 9(1) the words “this Part” are omitted and replaced by the words “the Drug Trafficking Offences Act 1995 (Designated Countries and Territories) Order, 1999”.
7. Sections 10-25 inclusive are omitted.
8. In section 26–
 - (a) in subsection (1)–
 - (i) paragraph (a) is omitted and replaced by the following paragraph–

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

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- (ii) paragraph (b) is omitted and replaced by the following paragraph–

“(b) the proceedings have not been concluded; and”;

- (iii) paragraph (c) is omitted and replaced by the following paragraph–

“(c) either an External Confiscation Order has been made in the proceedings or it appears to the court that there are reasonable grounds for believing that such an order may be made in them.”;

(b) subsection (2) is omitted;

- (c) subsection (3) is omitted and replaced by the following subsection–

“(3) Those powers are also exercisable where it appears to the court that proceedings are to be instituted against the defendant in a designated country and that there are reasonable grounds for believing that an External Confiscation Order may be made in them.”;

- (d) subsection (4) is omitted;

- (e) in subsection (5) the words “proceedings in respect of the offence are not instituted, whether by the laying of an information or otherwise, or (as the case may be) if the application is not made,” are replaced by the words “the proposed proceedings are not instituted”.

9. In Section 27–

- (a) subsection (2) is omitted and replaced by the following subsection–

“(2) A restraint order may apply–

(a) where an application under subsection (4) relates to an External Confiscation Order in respect of specified property, to property which is specified in the order; and

(b) in any other case–

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- (i) to all realisable property held by a specified person, whether the property is described in the restraint order or not, and
 - (ii) to realisable property held by a specified person, being property transferred to him after the making of the restraint order.”;
- (b) in subsection (4)(a) the words “the prosecutor” are omitted and replaced by the words “or on behalf of the government of a designated country or, in the case where an External Confiscation Order has been registered under section 47, by a receiver appointed under section 30”;
- (c) in subsection (5) paragraph (b) is omitted and replaced by the following paragraph—
 - “(b) shall be discharged when the proceedings in relation to which the order was made are concluded.”.

10. In section 28—

- (a) in subsection (1) paragraphs (a) and (b) are omitted and replaced by the following paragraphs—
 - “(a) where a fixed amount is payable under an External Confiscation Order, of an amount not exceeding the amount so payable;
 - (b) in any other case, of an amount equal to the value from time to time of the property charged.”;
- (b) in subsection (3)(a) the words “the prosecutor” are omitted and replaced by the words “or on behalf of the government of a designated country or, in the case where an External Confiscation Order has been registered under section 47, by a receiver appointed under section 30”;
- (c) subsection (7)(b)(i) is omitted and replaced by the following paragraph—
 - “(i) if the proceedings against the defendant in the designated country are concluded; or”.

11. In section 29 subsection (2) is omitted.

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12. After section 29 the following new section 29A is inserted—

“Applications for restraint and charging orders.

29A. An application under section 27(4) or 28(3) shall be supported by an affidavit which shall –

- (a) state, where applicable, the grounds for believing that an External Confiscation Order may be made in the proceedings instituted or to be instituted in the designated country concerned;
- (b) to the best of the deponent’s ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;
- (c) in a case to which section 26(3) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned,

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

13. In section 30—

- (a) subsection (1) is omitted and replaced by the following subsections—

“(1) Where an External Confiscation Order has been registered in the court under section 47, the court may, on the application of the Minister responsible for justice, exercise the powers conferred by subsections (1A)-(6).

(1A) In respect of any sum of money payable under the External Confiscation Order, the court may make a garnishee order as if the sum were due to the Crown in pursuance of a judgment or order of the court, but any such order shall direct the sum payable to be paid to the court.”;

- (b) in subsection (7) the figure “9” is omitted and replaced by the figure “11”.

14. In section 31—

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- (a) in subsection (1) the words “shall be applied, subject to subsection (2), on the defendant’s behalf towards the satisfaction of the confiscation order.” are omitted and replaced by the words “shall, subject to subsection (2), be paid to the court and applied for the purposes specified in subsections (4)-(6) and in the order so specified.”;
- (b) in subsection (3) the words “If after the amount payable under the confiscation order” are omitted and replaced by the words “Where a fixed amount is payable under the External Confiscation Order and, after that amount”;
- (c) subsection (4) is omitted;
- (d) in subsection (5) the words “The clerk of the magistrates’ court shall first” are omitted and replaced with the words “Any sum paid to the court under subsection (1) or under an order made under section 30(1A) or otherwise in satisfaction of an External Confiscation Order shall first be applied to”;
- (e) subsections (6) and (7) are omitted and replaced by the following subsections—
- “(6) If the money was paid to the court by a receiver appointed under section 27 or 30 or in pursuance of a charging order, the receiver’s remuneration and expenses shall next be paid.
- (7) After there has been made—
- (a) any payment required by subsection (5); and
- (b) in a case to which subsection (6) applies, any payment required by that subsection,
- any amount paid under section 35(3) shall be reimbursed.”;
- (f) in subsection (8) the words “Any balance in the hands of the clerk to the magistrates’ court after he has made all payments required by the preceding provisions of this section” are omitted and replaced by the words “Any sums remaining after all payments required to be made by the preceding provisions of this section have been made”.

15. In section 32—

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- (a) subsection (2) is omitted and replaced by the following subsection—

“(2) Subject to the following provisions of this section, the power shall be exercised with a view to recovering property which is liable to be recovered under an External Confiscation Order registered in the court under section 47 or, as the case may be, with a view to making available for recovery of property which may become liable to be recovered under any External Confiscation Order which may be made in the defendant’s case.”;

- (b) in subsection (5) the words “confiscation order” are omitted and replaced by the words “External Confiscation Order”.

16. In section 33—

- (a) subsection (1)(b) is omitted and replaced by the following subparagraph —

“(b) any proceeds of property realised by virtue of section 27(7) or 30(5) or (6) for the time being in the hands of a receiver appointed under section 27 or 30,”;

- (b) in subsection (5)—

(i) in paragraph (a) subparagraphs (i) and (ii) are omitted;

(ii) in paragraph (b) the words “conclusion of the proceedings or of the application” are omitted and replaced by the words “discharge of the restraint or charging order”;

- (c) subsection (6) is omitted and replaced by the following subsection—

“(6) For the purposes of this section 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 the amount due under the order.”;

- (d) in subsection (7) the words “a confiscation order” are omitted and replaced by the words “an External Confiscation Order”.

17. Sections 37-69 are omitted.

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18. After section 36 there shall be inserted the Appendix set out at the end of Schedule 3 to this Order.

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SCHEDULE 3**

**Subsidiary
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Paragraph 3(2)

DRUG TRAFFICKING OFFENCES ACT, 1995

PART I. PRELIMINARY.

Interpretation and application.

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

“acting as an insolvency practitioner” includes a trustee in bankruptcy or interim receiver of an insolvent person, a trustee under a deed of arrangement made for the benefit of the creditors, a liquidator, administrator or receiver in the winding up of a company and any other person acting in a similar capacity;

“amount that might be realised” has the meaning given to it in section 7(1);

“charging order” is an order made under section 28, imposing on any realisable property as may be specified in the order a charge for securing the payment of money to the Crown;

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

“the court” means the Supreme Court;

“defendant” means a person against whom an External Confiscation Order has been made or a person against whom proceedings which may result in an External Confiscation Order being made have been or are to be instituted in the court of a designated country;

“External Confiscation Order” means any order falling within section 3;

“gift caught by this Act” has the meaning given to it in section 9;

“premises” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation; and
- (c) any tent or moveable structure;

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“realisable property” has the meaning given to it in section 7(2) and (3);

“restraint order” has the meaning given to it in section 27(1);

“satisfied”, in relation to a confiscation order, has the meaning given to it in subsection (14) and in section 33;

an order is “subject to appeal” until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside;

“value of gift, payment or reward” has the meaning given to it in section 8(1);

(2) In this Act, “drug trafficking” means, subject to subsection (3), doing or being concerned in any of the following, whether in Gibraltar or elsewhere—

- (a) producing or supplying a controlled drug where the production or supply contravenes section 6(1) of the Drugs (Misuse) Act or a corresponding law;
- (b) transporting or storing a controlled drug where possession of the drug contravenes section 7(1) of that Act or a corresponding law;
- (c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 5(1) of that Act or a corresponding law;
- (d) manufacturing or supplying a Scheduled Substance within the meaning of section 11 of the Criminal Justice Act 1995 where the manufacture or supply is an offence under that section or would be such an offence if it took place in Gibraltar;
- (e) using any ship for illicit trafficking of a controlled drug in circumstances which amount to the commission of an offence under section 14 of the Criminal Justice Act, 1995;
- (f) conduct which is an offence under section 54 or which would be such an offence if it took place in Gibraltar;
- (g) acquiring, having possession of or using property in circumstances which amount to the commission of an offence under section 56 or would be such an offence if it took place in Gibraltar.

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(3) “Drug trafficking” also includes a person doing the following whether in Gibraltar or elsewhere, that is to say, entering into or being otherwise concerned in an arrangement whereby—

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

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

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

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

(14) Proceedings for a drug trafficking offence are concluded—

- (a) when the defendant is acquitted on all counts;
- (b) if he is convicted on one or more counts, but the court decides not to make a confiscation order against him, when it makes that decision; or
- (c) if a confiscation order is made against him in those proceedings, when the order is satisfied.

(17) In this Act, “property” includes money and all other property, real or personal, hereditary or moveable, including things in action and other intangible and incorporeal property.

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(18) This Act applies to property whether it is situated in Gibraltar or elsewhere.

(19) In this Act, “interest” in relation to property includes right.

(20) In this Act–

(a) references to property held by a person include a reference to property vested in his trustee in bankruptcy, permanent or interim receiver within the meaning of the Bankruptcy Act or a liquidator; and

(b) references to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.

(21) For the purposes of this Act–

(a) property is held by any person if he holds an interest in it; and

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

(22) References in this Act to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection and whether received in connection with drug trafficking carried on by the recipient or some other person and whether received before or after the commencement of the Drug Trafficking Offences Act, 1995 (Designated Countries and Territories) Order, 1999.

**PART II.
CONFISCATION ORDERS.**

External Confiscation Orders.

3.(1) An order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value is referred to in this Act as an “External Confiscation Order”.

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

Meaning of “amount that might be realised” and “realisable property”.

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- 7.(2) In this Act, “realisable property” means, subject to subsection (3),—
- (a) in relation to an External Confiscation Order made in respect of specified property, the property which is specified in the order; and
 - (b) in any other case—
 - (i) any property held by the defendant; and
 - (ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act.
- (3) Property is not realisable property if there is in force in respect of it an order under any of the following enactments, namely—
- (a) section 28 of the Drugs (Misuse) Act;
 - (b) section 248 of the Criminal Procedure Act.

Value of Property etc.

- 8.(1) Subject to the following provisions of this section and to section 9, for the purposes of this Act the value of property (other than cash) in relation to any person holding the property is the market value of the property, except that, where any other person holds an interest in the property, the value is—
- (a) the market value of the first-mentioned person’s beneficial interest in the property, less
 - (b) the amount required to discharge any encumbrance (other than a charging order) on that interest.
- (2) Subject to section 9(2), references in this Act to the value at any time (referred to in subsection (3) as “the material time”) of a gift caught by this Act or of any payment or reward are references to—
- (a) the value of the gift, payment or reward to the recipient when he received it, adjusted to take account of subsequent changes in the value of money, or
 - (b) where subsection (3) applies, the value there mentioned,

whichever is the greater.

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- (3) Subject to section 9(2), if at the material time the recipient holds—
- (a) the property which he received (not being cash), or
 - (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (2)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be of the property mentioned in paragraph (b) so far as it represents the property which he received but disregarding in either case any charging order.

(4) References in this section to a charging order include a reference to a charging order within the meaning of the Drug Trafficking Offences Act, 1988.

Gifts caught by this Act.

9.(1) A gift (including a gift made before the commencement of the Drug Trafficking Offences Act, 1995 (Designated Countries and Territories) Order, 1999 is caught by this Act if—

- (a) it was made by the defendant at any time since the beginning of the period of six years ending when the proceedings were instituted against him, or
 - (b) it was made by the defendant at any time and was a gift of property—
 - (i) received by the defendant in connection with drug trafficking carried on by him or another person; or
 - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.
- (2) For the purposes of this Act—
- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
 - (b) in those circumstances, the provisions of subsection (1) and of sections 7 and 8 shall apply as if the defendant had made a gift of such a share in the property as bears to the whole property

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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.

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

26.(1) The powers conferred on the court by sections 27(1) and 28(1) are exercisable where—

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

(3) Those powers are also exercisable where it appears to the court that proceedings are to be instituted against the defendant in a designated country and that there are reasonable grounds for believing that an External Confiscation Order may be made in them.

(5) Where the court has made an order under section 27(1) or 28(1) by virtue of subsection (3), the court shall discharge the order if the proposed proceedings are not instituted within such time as the court considers reasonable.

Restraint orders.

27.(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) where an application under subsection (4) relates to an External Confiscation Order in respect of specified property, to property which is specified in that order; and
 - (b) in any other case –
 - (i) to all realisable property held by a specified person, whether the property is described in the order or not; and
 - (ii) to realisable property held by a specified person, being property transferred to him after the making of the order.

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(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 28 or section 11 of the Drug Trafficking Offences Act, 1988.

(4) A restraint order—

- (a) may be made only on an application by or on behalf of the government of a designated country, or, in the case where an External Confiscation Order has been registered under section 47, by a receiver appointed under section 30;
- (b) may be made on an ex parte application to a judge in chambers; and
- (c) shall provide for notice to be given to persons affected by the order.

(5) A restraint order—

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

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

(7) Where the court has made a restraint order, the court—

- (a) may at any time appoint a receiver—
 - (i) to take possession of any realisable property, and
 - (ii) in accordance with the court's directions, to manage or otherwise deal with any property in respect of which he is appointed; subject to such exceptions and conditions as may be specified by the court; and
- (b) may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.

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

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

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

(10) Property seized under subsection (9) shall be dealt with in accordance with the directions of the court which made the order.

Charging orders in respect of land, securities etc.

28 (1) The court may make a charging order on realisable property for securing the payment to the Crown—

- (a) where a fixed amount is payable under an External Confiscation Order, of an amount not exceeding the amount so payable, and
- (b) in any other case, of an amount equal to the value from time to time of the property charged.

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

(3) A charging order—

- (a) may be made only on an application by or on behalf of the government of a designated country, or, in the case where an External Confiscation Order has been registered under section 47, by a receiver appointed under section 30;
- (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 including, but without prejudice to the generality of this paragraph, such conditions as it thinks fit as to when the charge is to become effective.

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

(a) any interest in realisable property, which is 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 and is an interest—

(i) in any asset of a kind mentioned in subsection (5); or

(ii) under any trust; or

(b) any interest in realisable property held by a person as trustee of a trust (“the relevant trust”) if the interest is in such an asset or is an interest under another trust and a charge made by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the relevant trust.

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

(a) land in Gibraltar; or

(b) securities of any of the following kinds—

(i) government stock;

(ii) stock of any body (other than a building society) incorporated within Gibraltar;

(iii) stock of any body incorporated outside Gibraltar or of any country or territory outside Gibraltar, being stock registered in a register kept at any place within Gibraltar;

(iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within Gibraltar.

(6) In any case where a charge is imposed by a charging order or 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 the 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 –

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- (i) if the proceedings against the defendant in the designated country are concluded; or
- (ii) on payment into court of the amount, payment of which is secured by the charge.

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

(9) In this section “building society”, “dividend”, “government stock”, “stock” and “unit trust” have the same meaning as in the Charging Orders Act, 1988.

Charging orders: supplementary provisions.

29.(1) Subject to any provision made under section 30 or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same court 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.

Applications for restraint and charging orders.

29A. An application under section 27(1) or 28(3) shall be supported by an affidavit which shall—

- (a) state, where applicable, the grounds for believing that an External Confiscation Order may be made in the proceedings instituted or to be instituted in the designated country concerned;
- (b) to the best of the deponent's ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;
- (c) in a case to which section 26(3) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned,

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

Realisation of property.

30.(1) Where an External Confiscation Order has been registered in the court under section 47, the court may, on the application of the Minister

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responsible for justice, exercise the powers conferred by subsections (1A) to (6).

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

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

(3) The court may empower a receiver appointed under subsection (2), under section 27 or in pursuance of a charging order—

(a) to enforce any charge imposed under section 28 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 28, 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—

(a) order any person holding an interest in realisable property to make to the receiver such payment as it may direct 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; and

(b) 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 28 or section 11 of the Drug Trafficking Offences Act, 1988.

(8) The court shall not in respect of any property exercise the powers conferred by subsection (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.

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31.(1) The following sums in the hands of a receiver appointed under section 27 or 30 or in pursuance of a charging order, that is—

- (a) the proceeds of the enforcement of any charge imposed under section 28,
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 27 or 30, and
- (c) any other sums, being property held by the defendant,

shall, subject to subsection (2), be paid to the court and applied for the purposes specified in subsections (4) to (6) and in the order so specified.

(2) Before any such sums are so applied they shall be applied—

- (a) first, in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 35(3); and
- (b) second, in making such payments (if any) as the court may direct.

(3) 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 as is mentioned in subsection (1), the receiver shall distribute those sums—

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

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

(5) Any sums paid to the court under subsection (1) or under an order made under section 30(1A) or otherwise in satisfaction of an External Confiscation Order shall be first applied to pay any expenses incurred by a person acting as an insolvency practitioner and payable under section 35(3) but not already paid under subsection (2).

(6) If the money was paid to the court by a receiver appointed under section 27 or 30 or in pursuance of a charging order, the receiver's remuneration and expenses shall next be paid.

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(7) After there has been made—

- (a) any payment required by subsection (5); and
- (b) in a case to which subsection (6) applies, any payment required by that subsection,

any amount paid under section 35(3) shall be reimbursed;

(8) Any sums remaining after all payments required to be made by the preceding provisions of this section have been made shall be paid into any special fund established under the Public Finance (Control and Audit) Act having as prescribed income such sums, and in the absence of such a fund shall be paid into the Consolidated Fund.

Exercise by the court or receiver of power for the realisation of property.

32.(1) The following provisions apply to the powers conferred—

- (a) on the court by sections 27 to 31; or
- (b) on a receiver appointed under section 27 or 30 or in pursuance of a charging order.

(2) Subject to the following provisions of this section the power shall be exercised with a view to recovering property which is liable to be recovered under an External Confiscation Order registered in the court under section 47 or, as the case may be, with a view to making available for recovery property which may become liable to be recovered under any External Confiscation order which may be made in the defendant's case.

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

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

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

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

Bankruptcy of defendant, etc.

33.(1) Where a person who holds realisable property is adjudged bankrupt—

- (a) the property for the time being subject to a restraint order made before the order adjudging him bankrupt, and
- (b) any proceeds of property realised by virtue of section 27(7) or 30(5) or (6) for the time being in the hands of a receiver appointed under section 27 or 30,

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

(2) Where a person has been adjudged bankrupt, the powers conferred on the court by sections 27 to 31 or on a receiver so appointed shall not be exercised in relation to—

- (a) property for the time being comprised in the bankrupt's estate for the purpose of the Bankruptcy Act;
- (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 25(2) of the Bankruptcy Act,

but, otherwise, nothing in that Act shall be taken as restricting or enabling the restriction of, the exercise of those powers.

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

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

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

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

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- (a) no order shall be made under section 26 or 42 of the Bankruptcy Act, in respect of the making of the gift, at any time when the property of the person to whom the gift was made is subject to a restraint order or charging order, and
- (b) any order under section 26 or 42 of the Bankruptcy Act after the discharge of the restraint or charging order shall take into account any realisation under this Act of property held by the person to whom the gift was made.

(6) In addition to the provisions of section 2(16), for the purposes of this section 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.

(7) Section 27 of the Bankruptcy Act shall have effect as if amounts payable under an External Confiscation Order were a debt excepted under subsection (1)(a) of that section.

Winding up of company holding realisable property.

34.(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 of the company, the functions of a liquidator (or any provisional liquidator) shall not be exercisable in relation to—

- (a) the 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 27(7) or 30(5) or (6) for the time being in the hands of a receiver appointed under section 27 or 30.

(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 27 to 31 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 a liquidator are exercisable—

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

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liquidator) properly incurred in the winding up in respect of the
property,

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but otherwise nothing in the Companies Act shall be taken as restricting or enabling the restriction of, the exercise of those powers.

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

(4) In this section—

“company” means any company which may be wound up under the Companies Act; and

“the relevant time” means—

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

Persons acting as insolvency practitioners.

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

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

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

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(2) A person acting as an insolvency practitioner shall, in the circumstances mentioned in subsection (1)(a) and (b), have a lien on the property or the proceeds of its sale for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(3) Where a person acting as an insolvency practitioner—

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

that person shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under subsection (2)) to payment of those expenses under section 31(2) or (5).

Receivers: supplementary provisions.

36.(1) Where a receiver appointed under section 27 or 30 or in pursuance of a charging order—

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

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 31(6), 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.

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Section 2(13)

INSTITUTION OF PROCEEDINGS

Designated Country	Point at which proceedings are instituted
Anguilla	(a) when a summons or warrant is issued in respect of the offence; (b) when a person is charged with an offence after being taken into custody without a warrant; (c) when a bill of indictment is preferred.
Australia	(a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence after having been taken into custody without a warrant; (c) when a bill of indictment is preferred.
the Bahamas	(a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence after having been taken into custody without a warrant; (c) when a bill of indictment is preferred.
Bahrain	when a bill of indictment is lodged in court against any person for an offence.
Barbados	(a) when an information has been laid before a magistrate; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred.
Bermuda	when an information is laid charging a person with an offence.
the Cayman Islands	(a) when a charge has been signed under subsection (3) or (4) of section 13 of the Criminal Procedure

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Code in respect of the offence;

(b) when a person is charged with the offence after being arrested without a warrant under subsection (5) of that section.

Denmark

when a person is charged with an offence.

Guernsey

when a person is charged with an offence.

Hong Kong

(a) when a magistrate issued a warrant or summons;

(b) when a person is charged with an offence;

(c) when an indictment is preferred.

India

(a) when information relating to the commission of any crime is received by any law enforcement agency empowered to investigate such crime under the law for the time being in force and laid before a court of law;

(b) when any allegation is made orally or in writing to a court of law that a person has committed an offence;

(c) when a person is charged with an offence;

(d) when any investigation or inquiry into the commission of any offence is directed by a court of law.

Isle of Man

(a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act, 1989, when the complaint in relation to the offence is made to him;

(b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him;

(c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody;

(d) where an information is preferred by the Attorney General in a case where there has been no committal proceedings, when the information is lodged in the

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General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917.

- Italy
- (a) when a person is notified, in accordance with article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in progress;
 - (b) when a proposal for the application of a preventive measure (“misura di prevenzione”) is laid before a court.
- Jersey
- (a) when the Bailiff issues a warrant in respect of an offence for the arrest of a person who is out of the island;
 - (b) when a person is arrested and charged with an offence;
 - (c) when a summons in respect of an offence is served on a person at the instance of the Attorney General;
 - (d) when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the Police Court (Miscellaneous Provisions) (Jersey) Law 1949.
- Malaysia
- when a person is charged with an offence.
- Montserrat
- (a) when a judge issues a summons or warrant in respect of an offence;
 - (b) when a person is charged with an offence after being taken into custody without a warrant.
- Netherlands
- (a) when a pre-trial financial investigation has been initiated;
 - (b) when the provisional measure has been ordered by an investigating magistrate;
 - (c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted;
 - (d) when a public prosecutor has laid an indictment.

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Saudi Arabia	when a person has been charged with an offence.
South Africa	(a) when a summons is issued in respect of an offence; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred.
Spain	when by virtue of a judicial resolution it is decided to proceed against a person for an offence.
Sweden	where a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion.
Switzerland	when proceedings for an offence are brought before an examining magistrate.
United Kingdom: -England and Wales	(a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Court Act 1980 in respect of the offence; (b) when a person is charged with the offence after being taken into custody without a warrant; (c) when a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section.
-Scotland	(a) when a summons or warrant of apprehension to arrest and commit a suspect is granted; (b) when a person is charged with an offence after having been arrested without a warrant.
-Northern Ireland	(a) when a summons or warrant is issued under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 in respect of that offence; (b) when a person is charged with an offence after being taken into custody without a warrant;

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(c) when an indictment is presented under section 2(2)(c), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969.

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

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