

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4,381 of 7th July, 2017

B. 13/17

BILL

FOR

AN Act to amend the Proceeds of Crime Act 2015.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Proceeds of Crime (Amendment) Act 2017.

Commencement.

2. This Act and comes into operation on the day of publication.

Amendment of Act.

3.(1) The Proceeds of Crime Act 2015 (“the Act”) is amended in accordance with the provisions of this section.

(2) In section 1C(d) of the Act for “section 3A and section 3B” substitute “section 4A and 4B”.

(3) For sections 2 to 4 of the Act substitute-

“Interpretation of Part and Part III.

1T.(1) In this Part-

“authorised disclosure” means a disclosure made in accordance with section 4G;

“confiscation order” has the meaning given to it by section 35;

“criminal conduct” has the meaning given to it in section 182;

“criminal property” has the meaning given in section 182;

“property” has the meaning given to it by section 183.

(2) In this Part and in Part III–

“European Banking Authority” and “EBA” means the European Banking Authority established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC;

“European Insurance and Occupational Pensions Authority” and “EIOPA” mean the European Insurance and Occupational Pensions Authority established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC;

“European Securities and Markets Authority” and “ESMA” means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC;

“the Money Laundering Directive” means Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use

of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC; as the same may from time to time be amended.

Arrangements.

2.(1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

(2) But a person does not commit such an offence if-

- (a) he makes an authorised disclosure under section 4G and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
- (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
- (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

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

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or to both.

Acquisition, possession or use of criminal property.

3.(1) A person commits an offence if he-

- (a) acquires criminal property;
 - (b) uses criminal property;
 - (c) has possession of criminal property.
- (2) But a person does not commit such an offence if-
- (a) he makes an authorised disclosure under section 4G and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
 - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
 - (c) he acquired or used or had possession of the property for adequate consideration;
 - (d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.
- (3) For the purposes of this section-
- (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
 - (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 the use or possession;
 - (c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.
- (4) For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it.

- (5) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or to both.

Concealing, transferring etc. proceeds of criminal conduct.

- 4.(1) A person commits an offence if he—
- (a) conceals criminal property;
 - (b) disguises criminal property;
 - (c) converts criminal property;
 - (d) transfers criminal property;
 - (e) removes criminal property from Gibraltar.
- (2) But a person does not commit such an offence if—
- (a) he makes an authorised disclosure under section 4G and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
 - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
 - (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.
- (3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

- (4) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or to both.

Deemed consent of the GFIU to do a prohibited act.

- 4A.(1) Appropriate consent in sections 2(2)(a), 3(2)(a) and 4(2)(a) is the consent of the GFIU to do a prohibited act.
- (2) The GFIU must notify its consent or refusal of consent to the doing of a prospective prohibited act before the end of 14 working days (starting with the first working day after the person makes the disclosure).
 - (3) A person must be treated as having acted with consent to do the prospective prohibited act if that person makes a disclosure to the GFIU and the condition in subsection (4) or the condition in subsection (5) is satisfied.
 - (4) The condition is that the GFIU does not respond to a disclosure before the end of 14 working days (starting with the first working day after the person makes the disclosure).
 - (5) The condition is that the GFIU refused consent to do the prospective prohibited act pursuant to subsection (2) and 60 working days, known as the moratorium period, have expired (starting with the first working day after the GFIU notifies its refusal of consent).
 - (6) Subsection (5) is subject to –
 - (a) section 4B, which enables the moratorium period to be extended by court order in accordance with that section; and
 - (b) section 4D, which provides for an automatic extension of the moratorium period in certain cases (period

extended if it would otherwise end before determination of application or appeal proceedings etc).

- (7) A working day is a day other than a Saturday, a Sunday, or a day which is a bank or public holiday pursuant to an order made under the Banking and Financial Dealings Act or the Interpretation and General Clauses Act.
- (8) References to a prohibited act are to an act mentioned in section 2(1), 3(1) or 4(1).

Power of a court to extend the moratorium period.

4B.(1) The court may, on an application under this section, grant an extension of a moratorium period if satisfied that –

- (a) an investigation is being carried out in relation to a relevant disclosure (but has not been completed);
 - (b) the investigation is being conducted diligently and expeditiously;
 - (c) further time is needed for conducting the investigation; and
 - (d) it is reasonable in all the circumstances for the moratorium period to be extended.
- (2) An application under this section may be made only by the Head of GFIU.
 - (3) The application must be made before the moratorium period would otherwise end.
 - (4) An extension of a moratorium period must end no later than 60 working days beginning with the day after the day on which the period would otherwise end.
 - (5) Where a moratorium period is extended by the court under this section, it may be further extended by the court (on one or more occasions) on the making of another application.

- (6) A moratorium period extended in accordance with subsection (2) or (4) of section 4D may also be further extended by the court on the making of an application under this section.
- (7) But the court may not grant a further extension of a moratorium period if the effect would be to extend the period by more than 436 working days (in total) beginning with the day after the end of the 60 working day period mentioned in section 4A(5).
- (8) Subsections (1) to (4) apply to any further extension of a moratorium period as they apply to the first extension of the period under this section.

Proceedings under section 4B: supplementary.

- 4C.(1) This section applies to proceedings on an application under section 4B.
- (2) The court must determine the proceedings as soon as reasonably practicable.
 - (3) The court may exclude from any part of the hearing –
 - (a) an interested person;
 - (b) anyone representing that person.
 - (4) The person who made the application may apply to the court for an order that specified information upon which he or she intends to rely be withheld from–
 - (a) an interested person;
 - (b) anyone representing that person.
 - (5) The court may make such an order only if satisfied that there are reasonable grounds to believe that if the specified information were disclosed–
 - (a) evidence of an offence would be interfered with or harmed;

- (b) the gathering of information about the possible commission of an offence would be interfered with;
 - (c) a person would be interfered with or physically injured;
 - (d) the recovery of property under this Act would be hindered; or
 - (e) national security would be put at risk.
- (6) The court must direct that the following be excluded from the hearing of an application under subsection (4)–
- (a) the interested person to whom that application relates;
 - (b) anyone representing that person.
- (7) Subject to this section, rules of court may make provision as to the practice and procedure to be followed in connection with proceedings in relation to applications under section 4B.
- (8) An appeal lies to the Court of Appeal on a point of law arising from a decision made by the Supreme Court and the Court of Appeal on hearing an appeal may make any order that it considers appropriate (subject to the restriction mentioned in section 4B(7)).

Extension of moratorium period pending determination of proceedings etc.

- 4D.(1) A moratorium period is extended in accordance with subsection (2) where–
- (a) an application is made to the court under section 4B for the extension (or further extension) of the moratorium period; and
 - (b) the period would (apart from that subsection) end before the court determines the application or it is otherwise disposed of.

- (2) The moratorium period is extended from the time when it would otherwise end until the court determines the application or it is otherwise disposed of.
- (3) A moratorium period is extended in accordance with subsection (4) where—
 - (a) proceedings on an appeal in respect of a decision on an application under section 4B have been brought; and
 - (b) the period would (apart from that subsection) end before the proceedings are finally determined or otherwise disposed of.
- (4) The moratorium period is extended from the time when it would otherwise end until the proceedings are finally determined or otherwise disposed of.
- (5) But the maximum period by which the moratorium period is extended by virtue of subsection (2) or (4) is 60 working days beginning with the day after the day on which the period would otherwise have ended.
- (6) A moratorium period is extended in accordance with subsection (7) where—
 - (a) an application is made to the court under section 4B for an extension of the period;
 - (b) the court refuses to grant the application; and
 - (c) the period would (apart from that subsection) end before the end of the 5 day period.
- (7) The moratorium period is extended from the time when it would otherwise end until—
 - (a) the end of the 5 day period; or
 - (b) if proceedings on an appeal against the decision are brought before the end of the 5 day period, the time when those proceedings are brought.

- (8) The “5 day period” is the period of 5 working days beginning with the day on which the court refuses to grant the application.
- (9) This restriction on the overall extension of a moratorium period mentioned in section 4B(7) applies to an extension of a moratorium period in accordance with any provision of this section as it applies to an extension under an order of the court.

Sections 4B to 4D: interpretation.

4E.(1) In this section and in sections 4B to 4D-

“the court” means the Supreme Court of Gibraltar;

“GFIU” and “Head” have the meaning given in section 1A;

“interested person” means—

(a) the person who made the relevant disclosure, and

(b) any other person who appears to the person making the application under section 4B to have an interest in the relevant property;

“moratorium period” means the period of 60 working days mentioned in section 4A(5) or any such period as extended or further extended by virtue of an order under section 4B or in accordance with any provision of section 4D;

“relevant disclosure” means where the application under section 4B relates to the moratorium period mentioned in section 4A(5), the authorised disclosure mentioned in section 4A(3);

“relevant property” means any property that would be the subject of the prohibited act (within the meaning of section 2(1), 3(1) or 4(1)) in relation to which the moratorium period in question applies;

“working day” has the same meaning as in section 4A(7).

Suspension of a transaction.

- 4F.(1) Where there is a suspicion that a transaction is related to money laundering or terrorist financing, the GFIU may take urgent action in the form of a suspension order to suspend or withhold consent to a transaction that is proceeding.
- (2) The GFIU may issue a suspension order, including the information in subsection (3), on a relevant financial business for up to 14 working days in order to analyse the transaction, confirm the suspicion and disseminate the results of the analysis to a competent authority.
- (3) A suspension order must specify the following information-
- (a) the person or recipient suspected of money laundering or terrorist financing;
 - (b) the transaction that is to be suspended; or
 - (c) the property involved in the transaction that is to be suspended; and
 - (d) the number of days for which the suspension order is valid.
- (4) A relevant financial business must comply with the suspension order issued under subsection (2).
- (5) If a relevant financial business fails to comply with the suspension order issued under subsection (2) its respective supervisory authority may remove its license or where no supervisory authority exists the magistrates’ court may, following an application by GFIU, remove the relevant financial business’s license.
- (6) A person is guilty of an offence if-
- (a) he discloses the fact that a suspension order has been issued under this section; or

- (b) he takes or fails to take any action which results in the transaction not being suspended.
- (7) A person guilty of an offence under this section is liable-
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine, or to both.
- (8) An EU FIU may make a request to the GFIU to suspend a transaction in accordance with subsection (1).
- (9) In this section-

“EU FIU” has the meaning given in section 1A;

“supervisory authority” means each of the bodies listed in Part I of Schedule 2.

Authorised disclosures.

- 4G.(1) For the purposes of this Part a disclosure is authorised if-
- (a) it is a disclosure to the GFIU, a police officer, a customs officer or a nominated officer by the alleged offender that property is criminal property; and
 - (b) the first, second or third condition set out below is satisfied.
- (2) The first condition is that the disclosure is made before the alleged offender does the prohibited act.
 - (3) The second condition is that-
 - (a) the disclosure is made while the alleged offender is doing the prohibited act;

- (b) he began to do the act at a time when, because he did not then know or suspect that the property constituted or represented a person's benefit from criminal conduct, the act was not a prohibited act; and
 - (c) the disclosure is made on his own initiative and as soon as is practicable after he first knows or suspects that the property constitutes or represents a person's benefit from criminal conduct.
- (4) The third condition is that-
 - (a) the disclosure is made after the alleged offender does the prohibited act;
 - (b) he has a reasonable excuse for his failure to make the disclosure before he did the act; and
 - (c) the disclosure is made on his own initiative and as soon as it is practicable for him to make it.
- (5) An authorised disclosure is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (6) Where an authorised disclosure is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by or on whose behalf it is made.
- (7) A disclosure to a nominated officer is a disclosure which-
 - (a) is made to a person nominated by the alleged offender's employer to receive authorised disclosures; and
 - (b) is made in the course of the alleged offender's employment.
- (8) References to the prohibited act are to an act mentioned in section 2(1), 3(1) or 4(1) (as the case may be).

Protected disclosures.

4H.(1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).

(2) The first condition is that the information or other matter disclosed came to the person making the disclosure (the discloser) in the course of his trade, profession, business or employment.

(3) The second condition is that the information or other matter-

(a) causes the discloser to know or suspect, or

(b) gives him reasonable grounds for knowing or suspecting,

that another person is engaged in money laundering.

(4) The third condition is that the disclosure is made to the GFU, a police officer, a customs officer or a nominated officer as soon as is practicable after the information or other matter comes to the discloser.

(5) Where a disclosure consists of a disclosure protected under subsection (1) and a disclosure of either or both of-

(a) the identity of the other person mentioned in subsection (3), and

(b) the whereabouts of property forming the subject-matter of the money laundering that the discloser knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in,

the disclosure of the thing mentioned in paragraph (a) or (b) (as well as the disclosure protected under subsection (1)) is not to be taken to breach any restriction on the disclosure of information (however imposed).

(6) A disclosure to a nominated officer is a disclosure which-

- (a) is made to a person nominated by the discloser's employer to receive disclosures under this section, and
- (b) is made in the course of the discloser's employment.”.

(4) After section 6A of the Act insert-

“Failure to disclose: relevant financial business.

6B.(1) Where a person undertakes relevant financial business in accordance with section 9 and that person–

- (a) knows, suspects or has reasonable grounds to suspect that another person is engaged in money laundering, or is attempting to launder money;
- (b) the information or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and
- (c) he does not disclose the information or other matter to the GFIU as soon as is reasonably practicable after it comes to his attention,

he is guilty of an offence.

(2) A person is not guilty of an offence under subsection (1) if–

- (a) that person is a notary, independent legal professional, auditor, external accountant or tax advisor, and
- (b) the information has been obtained on or received from one of their clients–
 - (i) in the course of ascertaining the legal position for their client; or
 - (ii) whilst performing the task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings,

whether such information is received or obtained before, during or after such proceedings.

- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or to both.”.

(5) In section 35(1) of the Act for “before the court” substitute “before the Supreme Court”.

(6) After section 35 of the Act insert the following sections-

“Committal by magistrates’ court.

35A.(1) This section applies if –

- (a) a defendant is convicted of an offence by a magistrates’ court; and
- (b) the prosecutor asks the court to commit the defendant to the Supreme Court with a view to a confiscation order being considered under section 35.

(2) In such a case the magistrates’ court –

- (a) must commit the defendant to the Supreme Court in respect of the offence; and
- (b) may commit him to the Supreme Court in respect of any other offence falling within subsection (3).

(3) An offence falls within this subsection if –

- (a) the defendant has been convicted of it by the magistrates’ court or any other court; and

- (b) the magistrates' court has power to deal with him in respect of it.
- (4) If a committal is made under this section in respect of an offence or offences –
 - (a) section 35 applies accordingly; and
 - (b) the committal operates as a committal of the defendant to be dealt with by the Supreme Court in accordance with section 35B.
- (5) If a committal is made under this section in respect of an offence for which (apart from this section) the magistrates' court could have committed the defendant for sentence under sections 217 or 218 the court must state whether it would have done so.
- (6) A committal under this section may be in custody or bail.

Sentencing by Supreme Court.

- 35B.(1) If a defendant is committed to the Supreme Court under section 35A in respect of an offence or offences, this section applies (whether or not the court proceeds under section 35).
- (2) In the case of an offence in respect of which the magistrates' court has stated under section 35A(5) that it would have committed the defendant for sentence, the Supreme Court –
 - (a) must inquire into the circumstances of the case; and
 - (b) may deal with the defendant in any way in which it could deal with him if he had just been convicted of the offence on indictment before it.
 - (3) In the case of any other offence the Supreme Court –
 - (a) must inquire into the circumstances of the case; and
 - (b) may deal with the defendant in any way in which the magistrates' court could deal with him if it had just convicted him of the offence.”.

(7) In section 36 of the Act-

- (a) in subsection (1) for “Where the court” substitute “Where the Supreme Court”; and
- (b) in subsection (3) for “exceeds six months” substitute “exceeds 2 years”.

(8) Section 37(5) of the Act is repealed.

(9) In section 58 of the Act-

- (a) in subsection (1)(c) for “is reasonable cause to believe” substitute “are reasonable grounds to suspect”; and
- (b) after subsection (3) insert-
 - “(3A) The powers mentioned in subsection (1) are also exercisable if the following conditions are satisfied–
 - (a) a criminal investigation has been started in Gibraltar with regard to an offence; and
 - (b) there are reasonable grounds to suspect that the alleged offender has benefited from his criminal conduct.”.

(10) In section 59 of the Act-

- (a) in subsection (1) for “The court may” substitute “The Supreme Court may”
- (b) for subsection (3) substitute-
 - “(3) Without prejudice to the generality of subsection (1) a restraint order may make such provision as the court deems fit and in particular may-
 - (a) make provision for reasonable living expenses and reasonable legal expenses;

- (b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation.”; and
 - (c) after subsection (7) insert-
 - “(7A) Subsections (7B) and (7C) apply where the court makes a restraint order as a result of a criminal investigation having been started with regard to an offence.
 - (7B) The court-
 - (a) must include in the order a requirement for the applicant for the order to report to the court on the progress of the investigation at such times and in such manner as the order may specify (a "reporting requirement"); and
 - (b) must discharge the order if proceedings for the offence are not started within a reasonable time (and this duty applies whether or not an application to discharge the order is made).
 - (7C) The duty under subsection (7B)(a) does not apply if the court decides that, in the circumstances of the case, a reporting requirement should not be imposed, but the court-
 - (a) must give reasons for its decision; and
 - (b) may at any time vary the order so as to include a reporting requirement (and this power applies whether or not an application to vary the order is made).”.
- (11) After section 59 of the Act insert-
- “Enforcement abroad.**
- 59A.(1)This section applies if –
- (a) any of the conditions in section 58 is satisfied;

- (b) the prosecutor believes that realisable property is situated in a country or territory outside Gibraltar (the receiving country); and
 - (c) the prosecutor sends a request for assistance to the Supreme Court with a view to it being forwarded under this section.
 - (2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property.
 - (3) In a case where a confiscation order has been made and has not been satisfied, discharged or quashed, a request for assistance is a request to the government of the receiving country to secure that—
 - (a) any person is prohibited from dealing with realisable property;
 - (b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.
 - (4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or quashed.
 - (5) If the Supreme Court believes it is appropriate to do so it may forward the request for assistance to the government of the receiving country.”.
- (12) In section 60 of the Act-
- (a) in subsection (1) for “The court may” substitute “The Supreme Court may”; and
 - (b) after subsection (8) insert-
 - “(8A) Subsections (8B) and (8C) apply where the court makes a charging order as a result of a criminal

investigation having been started with regard to an offence.

(8B) The court-

- (a) must include in the order a requirement for the applicant for the order to report to the court on the progress of the investigation at such times and in such manner as the order may specify (a "reporting requirement"); and
- (b) must discharge the order if proceedings for the offence are not started within a reasonable time (and this duty applies whether or not an application to discharge the order is made).

(8C) The duty under subsection (8B)(a) does not apply if the court decides that, in the circumstances of the case, a reporting requirement should not be imposed, but the court-

- (a) must give reasons for its decision; and
- (b) may at any time vary the order so as to include a reporting requirement (and this power applies whether or not an application to vary the order is made).".

(13) In section 117 of the Act-

- (a) in subsections (2), (4) and (5)(b) for "judge" substitute "magistrate"; and
- (b) in subsection (3)(a) for "HM Customs Executive Officer" substitute "Senior Customs Officer".

(14) In section 120 of the Act-

- (a) in subsection (1) after "customs officer" insert "or police officer";
- (b) in subsection (4) for "by the court" substitute "by the magistrates' court"; and

- (c) in subsection (9) for “the judge may” substitute “the magistrates’ court or the Supreme Court may”.

(15) In section 122 of the Act-

- (a) in subsection (2) for “The court may” substitute “The magistrates’ court or the Supreme Court may”;
- (b) in subsection (4) for “the judge” substitute “the magistrates’ court or the Supreme Court”.

(16) In section 123 of the Act-

- (a) in subsection (1) for “section 120(4) made by the court” substitute “section 120(4) or (5) made by the magistrates’ court”;
- (b) in subsection (5) for “section 108(4)” substitute “section 120(10)” and
- (c) in subsection (6) for “HM Customs Higher Executive Officer” substitute “Senior Customs Officer”.

(17) In section 124(1)(c) of the Act for “section 111(2)” substitute “section 123(2)”.

(18) In section 127(2) of the Act for “the court” substitute “the magistrates’ court”.

(19) In section 128 of the Act-

- (a) in subsection (2) for “The judge” substitute “The magistrate or judge”; and
- (b) in subsection (3) for “the court” substitute “the magistrate or judge”.

(20) In sections 130(1), 131(1), 133(1), and 134(1) of the Act for “the court” substitute “the magistrates’ court”.

(21) In section 145(1) of the Act, in the definition “property obtained through unlawful conduct” for “section 59” substitute “section 71”.

(22) In section 161(3) of the Act the words “or a money laundering investigation” are deleted.

(23) In section 164(2)(b) of the Act for “section 151(1)” substitute “section 163(1)”.

(24) In section 167(3)(a) of the Act after “civil recovery investigation” insert “or a money laundering investigation”.

(25) In section 182 of the Act-

(a) in the section heading after “conduct” insert “and criminal property”;

(b) for subsection (1) substitute the following subsections-

“(1) In this Act “criminal conduct” is conduct which–

(a) if it occurs in Gibraltar constitutes an offence in Gibraltar; or

(b) if it does not occur in Gibraltar would constitute an indictable offence in Gibraltar if it occurred there.

(1A) Property is criminal property if-

(a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly); and

(b) the alleged offender knows or suspects that it constitutes or represents such a benefit.”.

(c) after subsection (2) insert-

“(2A) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.”;

(d) in subsection (5) immediately preceding paragraph (a) insert the following paragraphs-

“(za) who carried out the conduct;

(zb) who benefited from it.”.

Explanatory Memorandum

This Bill amends the Proceeds of Crime Act 2015 to-

- (a) update the 3 money laundering offences in sections 2, 3 and 4;
- (b) make provision in sections 4A and 4E for prohibited acts to be permitted with the consent of GFIU or in certain cases where the consent is not forthcoming but is deemed to have been given, in addition to the creation of a moratorium period of 60 working days, which may be extended by the court;
- (c) make provision in section 4F for the suspension of a suspicious transaction;
- (d) make further provision regarding disclosures in sections 4G and H;
- (e) provide for the recasting of the offence of failure to disclose (relevant financial businesses) previously embedded in section 2 as a substantive section;
- (f) provide for committals by the magistrates' court in connection with confiscation orders and the Supreme Courts powers (sections 35A and 35B);
- (g) make restraint and charging orders available at the investigation stage (section 58(3A)) subject to certain safeguards (section 59(7A) to (7C));
- (h) insert a new section 59A for the enforcement abroad of restraint orders;
- (i) correct cross references.

**Printed by the Gibraltar Chronicle Printing Limited
Unit 3, New Harbours
Government Printers for Gibraltar,
Copies may be purchased at 6, Convent Place, Price £1.45**