

## DRUG TRAFFICKING OFFENCES ACT

### Principal Act

<b>Act. No. 1995-06</b>	<i>Commencement</i>	
	<i>LN. 1995/029</i>	
	<i>LN. 1995/044 (Variation to notice 1995/029)</i>	
	ss.2, 68(1)(a), (d) and (e) and Part IV	9.3.1995
	<i>LN. 1995/039</i>	
	ss.3-36, 46-47, 54-67 and 69	20.3.1995
	<i>LN. 1997/046</i>	
	ss 37 to 45 and Schedule.	24.4.1997
	<i>LN. 1999/055</i>	
	s. 68(1)(c),(2) and (3).	13.5.1999
	<i>Assent</i>	9.3.1995

Amending Enactments	Relevant current provisions	Commencement date
LN. 1996/009 Act. 1998-49	<i>Corrigendum</i> ss. 2(1)(2), 26(1), 27(3), 30(3), (7), 60(5), (6), (7), (8), (9), (10), 68	10.12.1998

### English sources:

#### **Police and Criminal Evidence Act 1984 (c.60)**

(ss. 10, 11, 12 and 13 )

#### **Drug Trafficking Act 1994 (c. 37)**

( ss. 1(1), 1(2), 1(3), 1(4), 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 59 and 61)

### **EU Legislation/International Agreements involved:**

Directive 91/308/EEC.

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Gibraltar evidence for use overseas: proceedings of nominated court.

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AN ACT TO CONSOLIDATE AND AMEND THE DRUG TRAFFICKING OFFENCES ACT 1988 AND TO GIVE, IN PART, EFFECT TO THE CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES WHICH WAS SIGNED IN VIENNA ON THE 20TH OF DECEMBER, 1988 AND COUNCIL DIRECTIVE 91/308/EEC.

## **Title and commencement.**

1. (1) This Act may be cited as the Drug Trafficking Offences Act, 1995 and shall come into effect on such day as the Governor may, by notice in the Gazette, appoint and different days may be so appointed for different purposes and such notice may contain such transitional or other incidental and supplementary provisions as may appear to the Governor necessary or expedient.

(2) Without prejudice to any provision which applies “whether before or after the commencement of this Act” nothing in this Act applies to any offence committed, or alleged to have been committed, or any proceedings instituted before the coming into effect of this Act and notwithstanding that references in this Act to offences include references to offences committed before the commencement of section 3, nothing in this Act imposes any duty or confers any powers on any court in or in connection with any proceedings against a person for a drug trafficking offence instituted before the commencement of that section.

## **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);

“benefitted from drug trafficking” has the meaning given to it in section 3(3);

“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;

“confiscation order” means an order made under section 3 and includes, in particular, such an order made by virtue of section 12, 13 or 18;

“Convention state” means a state outside Gibraltar which is a party to the Vienna Convention;

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

“the court” means the Supreme Court;

“defendant” means a person against whom proceedings have been instituted for a drug trafficking offence (whether or not he has been convicted);

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

“judge” means the Chief Justice or an additional judge of the Supreme Court;

“making a gift” has the meaning given to it in section 9(2);

“modifications” includes additions, alterations and omissions;

“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;

“proceeds of drug trafficking” has the meaning given to it in section 5(1)(a);

“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 (16)(b) and in section 33;

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“Scheduled Substance” means a substance for the time being specified in Schedule 4 to the Drugs (Misuse) Act<sup>1</sup>;

“subject to appeal” – 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);

“value of proceeds of drug trafficking” has the meaning given to it in section 5(1)(b);

“value of property” has the meaning given to it in section 8(1);

“Vienna Convention” means the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed in Vienna on the 20th of December, 1988.

(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 14 of that Act 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 17 of that Act;

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<sup>1</sup> 1973-06

- (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.

(3) In this Act, “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.

(4) In this Act, “drug trafficking offence” means any of the following–

- (a) an offence under section 6(2) or (3) or 7(3) of the Drugs (Misuse) Act;
- (b) an offence under section 24 of the Drugs (Misuse) Act;
- (c) an offence under section 15, 80 or 105(iii) or (iv) of the Imports and Exports Act<sup>2</sup>;
- (d) an offence under section 14 of the Drugs (Misuse) Act;
- (e) an offence under section 17 of the Drugs (Misuse) Act;
- (f) an offence under section 54, 55 or 56 of this Act;
- (g) an offence of conspiracy to commit any of the offences under paragraphs (a) to (f) of section 11 of the Criminal Offences Act<sup>3</sup>;
- (h) an offence of attempting to commit any of those offences under section 7 of the Criminal Offences Act;

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<sup>2</sup> 1986-21

<sup>3</sup> 1960-17



- (j) an offence of inciting or attempting to incite another to commit any of those offences, whether under section 23 of the Drugs (Misuse) Act or at common law;
  - (k) aiding, abetting, counselling or procuring the commission of any of those offences.
- (5) In this Act, “items subject to legal privilege” means—
- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
  - (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
  - (c) items enclosed with or referred to in such communications and made—
    - (i) in connection with the giving of legal advice; or
    - (ii) in connection or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them.
- (6) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.
- (7) In this Act, subject to subsections (8) and (9) “excluded material” means—
- (a) personal records which a person has acquired or created in the course of trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;
  - (b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;

- (c) journalistic material which a person holds in confidence and which consists—
  - (i) of documents; or
  - (ii) of records other than documents.
  
- (8) A person holds material, other than journalistic material in confidence for the purposes of subsection (7), if he holds it subject –
  - (a) to an express or implied undertaking to hold it in confidence; or
  - (b) to a restriction on disclosure or an obligation of secrecy contained in any enactment including an enactment contained in an Act passed after this Act.
  
- (9) A person holds journalistic material in confidence for the purposes of subsection (7), if—
  - (a) he holds it, subject to such an undertaking, restriction or obligation; and
  - (b) it has been continuously held by one or more persons, subject to such an undertaking, restriction or obligation, since it was first acquired or created for the purposes of journalism.
  
- (10) In subsection (7) “personal records” means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating –
  - (a) to his physical or mental health;
  - (b) to spiritual counselling or assistance given or to be given to him; or
  - (c) to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who—
    - (i) by reason of his office or occupation has responsibilities for his personal welfare; or
    - (ii) by reason of an order of the court has responsibilities for his supervision.

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(11) For the purposes of subsection (7) “journalistic material” means material acquired or created for the purposes of journalism and the material is only journalistic material for the purposes of that subsection if it is in the possession of a person who acquired or created it for the purposes of journalism.

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

(13) Proceedings for an offence are instituted—

- (a) when a justice of the peace issues a summons or warrant under section 107 of the Criminal Procedure Act in respect of the offence;
- (b) when a person is charged with the offence after being taken into custody without a warrant;
- (c) when a bill of indictment is preferred under section 137 of the Criminal Procedure Act, in a case falling within subsection (2)(b) of that section,

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.

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

- (a) when the defendant is acquitted on all counts;
- (b) if he is convicted of 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.

(15) An application under section 14 or 15 is concluded—

- (a) if the court decides not to vary the confiscation order in question, when it makes that decision; or
- (b) if the court varies the confiscation order as a result of the application, when the order is satisfied.

- (16) An application under section 12, 13 or 18 is concluded—
- (a) if the court decides not to make a confiscation order against the defendant, when it makes that decision; or
  - (b) if a confiscation order is made against him as a result of that application when the order is satisfied, and a confiscation order is satisfied when no amount is due under it.
- (17) In this Act, “property” includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.
- (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 trustee 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.

**PART II.**  
**CONFISCATION ORDERS.**

**Confiscation orders.**

This version is out of date

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

- (a) if the prosecutor asks the court to proceed under this section, or
- (b) if the court considers that, even though the prosecutor has not asked it to do so, it is appropriate for it to proceed under this section,

it shall act as follows.

(2) The court shall first determine whether the defendant has benefitted from drug trafficking.

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

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

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

- (a) order the defendant to pay that amount;
- (b) take account of the order before—
  - (i) imposing any fine on him;
  - (ii) making any order involving any payment by him; or
  - (iii) making any order under section 28 of the Drugs (Misuse) Act or section 123 or 124 of the Imports and Exports Act or section 248 of the Criminal Procedure Act; and
- (c) subject to paragraph (b), leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

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

(7) The standard of proof required to determine any question arising under this Act as to—

- (a) whether a person has benefitted from drug trafficking, or
- (b) the amount to be recovered in his case by virtue of this section,

shall be that applicable in civil proceedings.

**Postponed determinations.**

4. (1) Where the court is acting under section 3 but considers that it requires further information before—

- (a) determining whether the defendant has benefitted from drug trafficking, or
- (b) determining the amount to be recovered in his case by virtue of that section,

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

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

(3) Unless it is satisfied that there are exceptional circumstances, the court shall not specify a period under subsection (1) which—

- (a) by itself, or,
- (b) where there have been one or more previous postponements under subsections (1) or (4), when taken together with the earlier specified period or periods,

exceeds six months beginning with the date of conviction.

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

- (a) postpone making either or both of the determinations mentioned in subsection (1) for such period as it may specify; or
  - (b) where it has already exercised its powers under this section to postpone, extend the specified period.
- (5) A postponement or extension under subsections (1) and (4) may be made—
- (a) on application by the defendant or the prosecutor; or
  - (b) by the court of its own motion.
- (6) Unless the court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (4) shall not exceed the period ending three months after the date on which the appeal is determined or otherwise disposed of.
- (7) Where the court exercises its power under subsection (1) or (4), it may nevertheless proceed to sentence, or otherwise deal with, the defendant in respect of the relevant offence or any of the relevant offences.
- (8) Where the court has so proceeded, section 3 shall have effect as if—
- (a) in subsection (4) of that section, the words from “before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned” were omitted; and
  - (b) in subsection (5)(c) of that section, after the word “determining” there were inserted “in relation to any offence in respect of which he has not been sentenced or otherwise dealt with”.
- (9) In sentencing, or otherwise dealing with, the defendant in respect of the relevant offence or any of the relevant offences at any time during the specified period, the court shall not—
- (a) impose any fine on him; or
  - (b) make any such order as is mentioned in section 3(5) (b)(ii) or (iii).
- (10) In this section—

“the date of conviction” means–

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

“the relevant offence” means the drug trafficking offence in respect of which the defendant appears (as mentioned in section 3 (1)) before the court;

and references to an appeal include references to an application under section 62 of the Magistrates Court Act.

**Assessing the proceeds of drug trafficking.**

5.(1) For the purposes of this Act–

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

(2) The court shall, for the purpose of determining whether the defendant has benefitted from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking, make the required assumptions.

(3) The required assumptions are–

- (a) that any item of property appearing to the court–
  - (i) to have been held by the defendant at any time since his conviction, or
  - (ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,

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



- (b) that any item of expenditure of his, since the beginning of that period, was met out of payments received by him in connection with drug trafficking carried on by him; and
  - (c) that for the purposes of valuing any item of property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.
- (4) The court shall not make any one of the required assumptions only to the extent that—
- (a) that assumption is shown to be incorrect in the defendant's case:

Provided that the required assumptions may be shown to be incorrect only to the extent that the defendant shows to the satisfaction of the court that the property, or, where the property is not money, the money with which the property was purchased, has been declared by the defendant to the Commissioner of Income Tax or to the taxation authority or authorities in the jurisdiction in which the property is or from which it came, or, where the property is not liable to tax in the hands of the defendant, has been so declared by another person unless the defendant can, by the production of such evidence as the court may, in its discretion, require, satisfy the court that the property was not and is not subject to taxation in Gibraltar or in any other jurisdiction in which the property is or from which it came; or
  - (b) the court is satisfied that there would be a serious risk of injustice in the defendant's case if the assumption were to be made.
- (5) Subsection (2) does not apply if the only drug trafficking offence in respect of which the defendant appears before the court to be sentenced is an offence under section 54, 55 or 56.
- (6) Where the court does not make one or more of the required assumptions, it shall state its reasons.
- (7) For the purpose of assessing the value of the defendant's proceeds of drug trafficking in a case where a confiscation order has previously been made against him, the court shall leave out of account any of his proceeds of drug trafficking that are shown to the court to have been taken into account in determining the amount to be recovered under that order.

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

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

(2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made whether by reason of—

- (a) the acceptance by the prosecutor or the defendant of an allegation made in a statement given under section 24; or
- (b) information given under section 25; or
- (c) a failure to comply with an order under section 25; or
- (d) otherwise,

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

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

- (a) the amount appearing to the court to be the amount that might be so realised; or
- (b) a nominal amount, whether it appears to the court, on the information available to it at the time, that the amount that might be so realised is nil.

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

7.(1) For the purposes of this Act, the amount that might be realised at the time a confiscation order is made against the defendant is—

- (a) the total of the values at that time of all the realisable property held by the defendant, less
- (b) where there are obligations having priority at that time, the total amount payable in pursuance of such obligations,

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

- (2) In this Act, “realisable property” means, subject to subsection (1)–
  - (a) any property held by the defendant; and
  - (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act.
  
- (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.
  
- (4) For the purposes of subsection (1), an obligation has priority at any time if it is an obligation of the defendant–
  - (a) to pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or the order was made before the confiscation order, or
  - (b) to pay any sum which would be included among the preferential debts, within the meaning given by subsection (5), in the defendant’s bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.
  
- (5) For the purposes of sub-section (4), “the preferential debts” means -
  - (a) in relation to bankruptcy, the debts to be paid in priority under section 33 of the Bankruptcy Act; and
  - (b) in relation to winding up, the preferential debts provided for in section 241 of the Companies 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 incumbrance, 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.

(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 this Part, 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—

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- (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 share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

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

10. (1) Where the court orders the defendant to pay any amount under section 3, section 191(1)(c) of the Criminal Procedure Act shall have effect as if that amount were a fine imposed on him by the court, and—

- (a) the court shall make an order fixing the term of imprisonment which he is to undergo if any sum which he is liable to pay is not duly paid or covered, and
- (b) the limitation of the term of imprisonment to one year contained in the proviso to section 191(1) of the Criminal Procedure Act shall not apply.

(2) Subject to subsections (3) and (4), the periods set out in the second column of the following table shall be the maximum periods of imprisonment under subsection (1) applicable respectively to the amounts set out opposite thereto.

### **TABLE**

An amount not exceeding £50

7 days

An amount exceeding £400 but not exceeding £1,000	60 days
An amount exceeding £1,000 but not exceeding £2,000	90 days
An amount exceeding £2,000 but not exceeding £5,000	6 months
An amount exceeding £5,000 but not exceeding £10,000	9 months
An amount exceeding £10,000 but not exceeding £20,000	12 months
An amount exceeding £20,000 but not exceeding £50,000	18 months
An amount exceeding £50,000 but not exceeding £100,000	2 years
An amount exceeding £100,000 but not exceeding £250,000	3 years
An amount exceeding £250,000 but not exceeding £1 million	5 years
An amount exceeding £1 million	10 years.

(3) Where the amount due at the time imprisonment is imposed is so much as remains due after part payment, then, subject to subsection (4), the maximum period applicable to the amount shall be the period applicable to the whole sum reduced by such number of days as bears to the total number of days therein the same proportion as the part paid bears to the total sum.

(4) In calculating the reduction required under subsection (3), any fraction of a day shall be left out of account and the maximum period shall not be reduced to less than five days.

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

(6) This section applies in relation to confiscation orders made—

(a) by the court by virtue of section 18,

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- (b) by the Court of Appeal under Part II of the Court of Appeal Act, or
- (c) by Her Majesty in Council on appeal from the Court of Appeal,

as it applies in relation to confiscation orders made by the court, and the reference in subsection (1) to the court shall be construed accordingly.

### **Interest on sums unpaid under confiscation orders.**

11. (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of the order or at anytime specified by application of the powers contained in section 191 of the Criminal Procedure Act) that person shall be liable to pay interest on that sum for the period for which it remains unpaid, and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.

(2) The court may, on the application of the prosecutor, increase the term of imprisonment fixed in respect of the confiscation order under section 10(1) if the effect of subsection (1) is to increase the maximum period applicable in relation to the order under section 10(2).

(3) The rate of interest under subsection (1) shall be that for the time being applying to a civil judgment debt as provided for under section 36 of the Supreme Court Act.

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### **Reconsideration of case where the court has not proceeded under section 3.**

12. (1) This section applies where the defendant has appeared before the court to be sentenced in respect of one or more drug trafficking offences but the court has not proceeded under section 3.

- (2) If the prosecutor has evidence—
  - (a) which was not available to him when the defendant appeared to be sentenced, and accordingly was not considered by the court, but
  - (b) which the prosecutor believes would have led the court to determine that the defendant had benefitted from drug trafficking if—
    - (i) the prosecutor had asked the court to proceed under section 3, and

(ii) the evidence had been considered by the court,

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

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

(4) In considering whether it is appropriate to proceed under section 3, the court shall have regard to all the circumstances of the case.

(5) Where, having decided to proceed under section 3, the court proposes to make a confiscation order against the defendant, it shall order the payment of such amount as it thinks just in all the circumstances of the case.

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

(7) Where the court is proceeding under section 3 by virtue of this section, subsection (4) of that section shall have effect as if the words “before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned” were omitted.

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

(9) In considering under this section any evidence which relates to any payment or reward to which subsection (8) applies, the court shall not make the assumptions which would otherwise be required by section 5.

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

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

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



(12) Sections 24 and 25 shall apply where the prosecutor makes an application under this section as they apply where the prosecutor asks the court to proceed under section 3.

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

13. (1) This section applies where the court has made a determination under section 3(2) (“the section 3(2) determination”) that the defendant has not benefitted from drug trafficking.

- (2) If the prosecutor has evidence—
  - (a) which was not considered by the court in making the section 3(2) determination, but
  - (b) which the prosecutor believes would have led the court to determine that the defendant had benefitted from drug trafficking if it had been considered by the court,

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

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

- (a) shall make—
  - (i) a fresh determination under subsection (2) of section 3; and
  - (ii) a determination under subsection (4) of that section of the amount to be recovered by virtue of that section; and
- (b) may make an order under that section.

(4) Where the court is proceeding under section 3 by virtue of this section, subsection (4) of that section shall have effect as if the words “before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned” were omitted.

(5) The court may take into account any payment or other reward received by the defendant on or after the date of the section 3 (2) determination, but only if the prosecutor shows that it was received by the

defendant in connection with drug trafficking carried on by the defendant or another person on or before that date.

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

(7) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date of conviction, and in this subsection “the date of conviction” has the same meaning as in section 12.

(8) Sections 24 and 25 shall apply where the prosecutor makes an application under this section as they apply where the prosecutor asks the court to proceed under section 3.

**Increase in realisable property.**

14. (1) This section applies where, by virtue of section 6(3), the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of drug trafficking.

(2) If, on an application made in accordance with subsection (3), the court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased) the court shall issue a certificate to that effect giving the court’s reasons.

(3) An application under subsection (2) may be made either by the prosecutor or by a receiver appointed under this Act in relation to the realisable property of the person in question under section 27 or section 30.

(4) Where a certificate has been issued under subsection (2), the prosecutor may apply to the court for an increase in the amount to be recovered under the confiscation order, and on that application the court may—

- (a) substitute for that amount such amount, not exceeding the amount assessed as the value referred to in subsection (1), as appears to the court to be appropriate having regard to the amount now shown to be realisable; and
- (b) increase the term of imprisonment fixed in respect of the confiscation order under subsection (1) of section 10 if the effect of the substitution is to increase the maximum period

applicable in relation to the order under subsection (2) of that section.

## **Revised assessment of proceeds of drug trafficking.**

15. (1) This section applies where the court has made a determination under subsection (4) of section 3 of the amount to be recovered in a particular case by virtue of that section (“the current section 3(4) determination”).

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

(3) If, having considered the evidence, the court is satisfied that the real value of the defendant’s proceeds of drug trafficking is greater than their assessed value (whether because the real value at the time of the current section 3(4) determination was higher than was thought or because the value of the proceeds in question has subsequently increased), the court shall make a fresh determination under subsection (4) of section 3 of the amount to be recovered by virtue of that section.

(4) In subsections (2) and (3)–

“assessed value” means the value of the defendant’s proceeds of drug trafficking as assessed by the court in accordance with section 6(1); and

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

(a) in the period by reference to which the current section 3(4) determination was made; or

(b) in any earlier period.

(5) Where the court is proceeding under section 3 by virtue of this section, subsection (4) of that section shall have effect as if the words “before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned” were omitted.

(6) Any determination made under section 3(4) by virtue of this section shall be by reference to the amount that might be realised at the time when the determination is made.

(7) In the case of any determination under section 3(4) by virtue of this section, section 5(7) shall not apply in relation to any of the defendant's proceeds of drug trafficking taken into account in respect of the current section 3(4) determination.

(8) In relation to any such determination by virtue of this section—

- (a) sections 6(2), 7(4) and 24(9)(a) shall have effect as if for “confiscation order” there were substituted “determination”;
- (b) section 6(3) shall have effect as if for “confiscation order is made” there were substituted “determination is made”; and
- (c) section 7(1) shall have effect as if for “a confiscation order is made against the defendant” there were substituted “of the determination”.

(9) The court may take into account any payment or other reward received by the defendant on or after the date of the current section 3(4) determination, but only if the prosecutor shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another person on or before that date.

(10) In considering under this section any evidence which relates to any payment or reward to which subsection (9) applies, the court shall not make the assumptions which would otherwise be required by section 5.

(11) If, as a result of making the fresh determination required by subsection (4), the amount to be recovered exceeds the amount set by the current section 3(4) determination, the court may substitute for the amount to be recovered under the confiscation order which was made by reference to the current section 3(4) determination such greater amount as it thinks just in all the circumstances of the case.

(12) Where the court varies a confiscation order under subsection (11), it shall substitute for the term of imprisonment fixed under section 10(1) in respect of the amount to be recovered under the order a longer term determined in accordance with that section in respect of the greater amount substituted under subsection (11).

(13) Subsection (12) shall apply only if the effect of the substitution is to increase the maximum period applicable in relation to the order under section 10(2).

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

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conviction, and in this subsection “the date of conviction” has the same meaning as in section 12.

(15) Sections 24 and 25 shall apply where the prosecutor makes an application as they apply where the prosecutor asks the court to proceed under section 3, but, in the case of section 24, subject to subsection (8)(a).

## **Inadequacy of realisable property.**

16. (1) If, on an application made in respect of a confiscation order by–

- (a) the defendant, or
- (b) a receiver appointed under section 27 or 30 or in pursuance of a charging order,

the court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order, the court shall issue a certificate to that effect, giving the court’s reasons.

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

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

(3) Where a certificate has been issued under subsection (1), the person who applied for it may apply to the court for the amount to be recovered under the confiscation order to be reduced.

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

- (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and

- (b) substitute for the term of imprisonment fixed under section 10(1) in respect of the amount to be recovered under the order a shorter term determined in accordance with that section in respect of the lesser amount.
- (5) Rules of court may make provision—
- (a) for the giving of notice of any application under this section; and
  - (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the court.

**Compensation.**

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

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

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

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

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned, being a person mentioned in section 64(8); and
- (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order of the court under sections 27 to 30.

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

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

(5) Compensation payable under this section shall be paid out of any special fund established under the Public Finance (Control and Audit) Act which has as its prescribed expenditure such compensation, or in the absence of such a fund, out of the Consolidated Fund.

## **Powers of the court where the defendant has absconded or died.**

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

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

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

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

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

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

- (a) section 5(2) shall not apply;
- (b) section 24 shall apply as it applies where the prosecutor asks the court to proceed under section 3 but with the omission of subsections (5), (7) and (8);
- (c) the court shall not make a confiscation order against a person who has absconded unless it is satisfied that the prosecutor has taken reasonable steps to contact him; and

- (d) any person appearing to the court to be likely to be affected by the making of a confiscation order by the court shall be entitled to appear before the court and make representations.

(7) Where the court—

- (a) has been asked to proceed under this section in relation to a defendant who has absconded, but
- (b) has decided not to make a confiscation order against him,

section 13 shall not apply at any time while he remains an absconder.

(8) Where a confiscation order has been made in relation to any defendant by virtue of this section, section 15 shall not apply at anytime while he is an absconder.

**Effect of conviction where the court has acted under section 18.**

19. (1) Where, in the case of any defendant, the court has made a confiscation order by virtue of section 18, the court shall, in respect of the offence, or, as the case may be, any of the offences concerned—

- (a) take account of the order before—
  - (i) imposing any fine on the defendant;
  - (ii) making any order involving any payment by him; or
  - (iii) making any order under section 28 of the Drugs (Misuse) Act or section 248 of the Criminal Procedure Act; and
- (b) subject to paragraph (a), leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(2) Where the court has made a confiscation order by virtue of section 18 and the defendant subsequently appears before the court to be sentenced in respect of one or more of the offences concerned, section 3(1) shall not apply so far as his appearance is in respect of that offence or those offences.

**Variation of confiscation orders made by virtue of section 18.**

20. (1) This section applies where—



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- (a) the court has made a confiscation order by virtue of section 18(4), and
  - (b) the defendant has ceased to be an absconder.
- (2) If the defendant alleges that–
- (a) the value of his proceeds of drug trafficking in the period by reference to which the determination in question was made (the “original value”), or
  - (b) the amount that might have been realised at the time the confiscation order was made,
- was less than the amount ordered to be paid under the confiscation order, he may apply to the court for it to consider his evidence.
- (3) If, having considered that evidence, the court is satisfied that the defendant’s allegation is correct, it–
- (a) shall make a fresh determination under section 3(4); and
  - (b) may, if it considers it just in all the circumstances, vary the amount to be recovered under the confiscation order.
- (4) In the case of any determination under section 3 by virtue of this section, section 5(7) shall not apply in relation to the defendant’s proceeds of drug trafficking taken into account in determining the original value.
- (5) Where the court varies a confiscation order under this section–
- (a) it shall substitute for the term of imprisonment fixed under section 10(1) in respect of the amount to be recovered under the order a shorter term determined in accordance with section 10(2) in respect of the lesser amount ; and
  - (b) on the application of a person who held property which was realisable property, it may order compensation to be paid to the applicant in accordance with section 23 if–
    - (i) it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order, and
    - (ii) having regard to all the circumstances of the case, the court considers it to be appropriate.

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

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

21. (1) This section applies where—

- (a) the court has made a confiscation order by virtue of section 18(4), and
- (b) the defendant is subsequently tried for the offence or offences concerned and acquitted on all counts.

(2) The court by which the defendant is acquitted shall cancel the confiscation order.

(3) The court may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant in accordance with section 23 if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

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

22. (1) This section applies where—

- (a) the court has made a confiscation order by virtue of section 18(4) in relation to an absconder;
- (b) the defendant has ceased to be an absconder; and
- (c) section 21 does not apply.

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

- (a) there has been undue delay in continuing the proceedings in respect of which the power under section 18(4) was exercised; or
- (b) the prosecutor does not intend to proceed with the prosecution.

(3) Where the court cancels a confiscation order under this section it may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant in accordance with

section 23 if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

## **Provisions supplementary to sections 20, 21 and 22.**

23. (1) Where the court orders compensation to be paid under section 20, 21 or 22, the amount of that compensation shall be such as the court considers just in all the circumstances of the case.

(2) Rules of court may make provision—

(a) for the giving of notice of any application under section 20, 21 or 22; and

(b) for any person appearing to the court to be likely to be affected by any exercise of its powers under any of those sections to be given an opportunity to make representations to the court.

(3) Compensation payable under any of those sections shall be paid out of a special fund established under the Finance (Control and Audit) Act and having as its prescribed expenditure such compensation or in the absence of such a fund, out of the Consolidated Fund.

(4) Where the court cancels a confiscation order under section 21 or 22, it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

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

24. (1) Where the prosecutor asks the court to proceed under section 3, he shall give the court, within such period as it may direct, a statement of matters which he considers relevant in connection with—

(a) determining whether the defendant has benefitted from drug trafficking; or

(b) assessing the value of his proceeds of drug trafficking.

(2) In this section such a statement is referred to as a “prosecutor’s statement”.

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

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

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

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

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

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

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

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

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

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

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

(9) Where—

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- (a) there is given to the court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made, and
- (b) the prosecutor accepts to any extent any allegation in the statement,

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

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

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

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

25. (1) This section applies where—

- (a) the prosecutor has requested the court to proceed under section 3; or
- (b) no such request has been made but the court is nevertheless proceeding, or considering whether to proceed, under section 3.

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

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

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

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

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

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

**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 in Gibraltar against the defendant for a drug trafficking offence or an application has been made by the prosecutor in respect of the defendant under section 12, 13, 14, 15 or 18;
- (b) the proceedings have not, or the application has not, been concluded; and
- (c) the court is satisfied that there is reasonable cause to believe—
  - (i) in the case of an application under section 14 or 15, that the court will be satisfied as mentioned in section 14(2) or, as the case may be, 15(3); or
  - (ii) in any other case, that the defendant has benefitted from drug trafficking.

(2) The court shall not exercise those powers by virtue of subsection (1) if it is satisfied that—

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

(3) The powers mentioned in subsection (1) are also exercisable where—

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

(b) the court is also satisfied as mentioned in subsection (1)(c).

(4) For the purposes of sections 27 and 28, at any time when those powers are exercisable before proceedings have been instituted–

(a) references in this Act to the defendant shall be construed as references to the person referred to in subsection (3)(a);

(b) references in this Act to the prosecutor shall be construed as references to the person who the court is satisfied is to have the conduct of the proposed proceedings; and

(c) references in this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (3)(a) for a drug trafficking offence.

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

(b) to realisable property held by a specified person, being property transferred to him after the making of the order.

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

(4) A restraint order–

(a) may be made only on an application by the prosecutor;

- (b) may be made on an ex parte application to a judge in chambers; and
  - (c) shall provide for notice to be given to persons affected by the order.
- (5) A restraint order–
- (a) may be discharged or varied in relation to any property; and
  - (b) shall be discharged on the conclusion of the proceedings or of the application in question.
- (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)–
- (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 confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
- (b) where a confiscation order has been made, of an amount not exceeding the amount payable under the confiscation order.

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

(3) A charging order—

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

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

- (a) any interest in realisable property 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 interests 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–
    - (i) on the conclusion of the proceedings or of the application in question; or
    - (ii) on payment into court of the amount, payment of which is secured by the charge.

(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.

(2) The Government may, by notice in the Gazette, amend section 28 by adding to or removing from the kinds of assets for the time being referred to there any asset of a kind which, in its opinion, ought to be so added or removed.

## **Realisation of property.**

30. (1) Where a confiscation order—

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

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

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

(3) The court may empower a receiver appointed under subsection (2) of this section, 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.

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

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 be applied, subject to subsection (2), on the defendant's behalf towards the satisfaction of the confiscation order.

(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) If, after the amount payable under the confiscation order 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.

(4) A receipt of any sum by a clerk of the magistrates' court on account of an amount payable under a confiscation order shall reduce the amount so payable, but the clerk of the magistrates' court shall apply the money received for the purpose specified in this section and in the order so specified.

(5) The clerk of the magistrates' court shall first 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 clerk of the magistrates' court by a receiver appointed under section 27 or 30 or in pursuance of a charging order, the clerk of the magistrates' court shall next pay the receiver's remuneration and expenses.

(7) After making—

(a) any payment required by subsection (5), and

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

the clerk of the magistrates' court shall reimburse any amount paid under section 36(2).

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

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

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

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

(6) An order may be made or other action taken in respect of a debt owed by 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 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;

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- (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 the restraint order.

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

- (a) no order shall be made under section 26 or 42 of the Bankruptcy Act, in respect of the making of the gift, at any time when—
  - (i) proceedings for a drug trafficking offence have been instituted against him and have not been concluded;
  - (ii) an application has been made in respect of the defendant under section 12, 13, 14, 15 or 18 and has not been concluded; or
  - (iii) the property of the person to whom the gift was made is subject to a restraint order or charging order, and
- (b) any order made under section 26 or 42 of the Bankruptcy Act after the conclusion of the proceedings or of the application shall take into account any realisation under this Act of property held by the person to whom the gift was made.

(6) In addition to the position provided for in 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 a 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 the 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 the 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 liquidator properly incurred in the winding up in respect of the property;

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—



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“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 in pursuance of an order of the court or otherwise) to seize or dispose of that property,

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

(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(1) 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.

**PART III.**

**MUTUAL LEGAL ASSISTANCE.**

**Service of overseas process in Gibraltar.**

37. (1) This section has effect where the Attorney General receives from the government of, or other authority in, a country or territory, being a Convention state, or, as the case may be, a territory of such a state to which application of the Vienna Convention has been extended, outside Gibraltar,

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- (a) a summons or other process requiring a person to appear as a defendant or attend as a witness in criminal proceedings in that country or territory; or
- (b) a document issued by a court exercising criminal jurisdiction in that country or territory and recording a decision of the court made in exercise of that jurisdiction,

together with the request for that process or document to be served on a person in Gibraltar.

(2) The Attorney General may cause the process or document to be served by post or, if the request is for personal service, direct the Commissioner to cause it to be personally served on that person.

(3) Service by virtue of this section of any such process as is mentioned in subsection (1)(a) does not impose any obligation under the law of Gibraltar to comply with it.

(4) Any such process or document served by virtue of this section shall be accompanied by a notice—

- (a) stating the effect of subsection (3);
- (b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of failing to comply with the process under the law of the country or territory where it was issued; and
- (c) indicating that under that law he may not, as a witness, be accorded the same rights and privileges as would be accorded to him in criminal proceedings in Gibraltar.

(5) Where the Commissioner is directed under this section to cause any process or document to be served, he shall, after it has been served, forthwith inform the Attorney General when and how it was served and, if possible, furnish him with a receipt signed by the person on whom it was served, and if the Commissioner has been unable to cause the process or document to be served, he shall forthwith inform the Attorney General of that fact and of the reasons.

(6) In subsection (1) “criminal proceedings in that country or territory” and “a decision of the court made in exercise of that jurisdiction” are proceedings or a decision in that country or territory in respect of an offence of drug trafficking or an offence under a corresponding law.

**Service of Gibraltar process overseas.**

38. (1) Process of the following descriptions, that is to say—

- (a) a summons requiring a person charged with an offence under this Act or under the Drugs (Misuse) Act to appear before a court in Gibraltar;
- (b) a summons or order requiring a person to attend before a court in Gibraltar for the purpose of giving evidence in criminal proceedings, being proceedings under this Act or under the Drugs (Misuse) Act,

may be issued or made notwithstanding that the person in question is outside Gibraltar and may be served outside Gibraltar in accordance with arrangements made by the Attorney General.

(2) Service of any process outside Gibraltar by virtue of this section does not impose any obligation under the law of Gibraltar to comply with it and accordingly failure to do so shall not constitute contempt of any court or be a ground for issuing a warrant to secure the attendance of the person in question.

(3) Subsection (2) is without prejudice to the service of any process (with the usual consequences for non-compliance) on the person in question, if subsequently effected in Gibraltar.

**Overseas evidence for use in Gibraltar.**

39. (1) Where, on an application made in accordance with subsection (2), it appears to a judge—

- (a) that an offence under this Act or the Drugs (Misuse) Act has been committed or that there are reasonable grounds for suspecting that such an offence has been committed; and
- (b) that proceedings in respect of such an offence have been instituted or that such an offence is being investigated,

he may issue a letter (a “letter of request”) requesting assistance in obtaining outside Gibraltar such evidence as is specified in the letter for use in the proceedings or investigation.

(2) An application under subsection (1) may be made by the Attorney General or, if proceedings have been instituted, by the person charged in those proceedings, and may be made where the court, tribunal or other

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authority to which the letter is to be addressed, is a court, tribunal or authority of a Convention state or of a territory of such a state to which application of the Vienna Convention has been extended.

(3) Subject to subsection (4), a letter of request shall be sent to the Governor for transmission either–

- (a) to a court or tribunal specified in the letter and exercising jurisdiction in the place where the evidence is to be obtained; or
- (b) to an authority recognised by the government of the country or territory in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.

(4) In the case of urgency, a letter of request may be sent direct to such a court or tribunal as is mentioned in subsection (3)(a).

(5) In this section, “evidence” includes documents and other articles.

(6) Evidence obtained by virtue of a letter of request shall not, without the consent of such an authority as is mentioned in subsection (3)(b), be used for any reason other than that specified in the letter, and where any document or other article obtained pursuant to a letter of request is no longer required for that purpose or for any purpose for which such consent has been obtained; it shall be returned to such an authority unless that authority indicates that the document or article need not be returned.

(7) In exercising any discretion conferred by law to exclude evidence in relation to a statement contained in evidence taken pursuant to a letter of request, the court shall have regard–

- (a) to whether it was possible to challenge the statement by questioning the person who made it; and
- (b) if proceedings have been instituted, to whether the local law allowed the parties to the proceedings to be legally represented when the evidence was being taken.

## **Gibraltar evidence for use overseas.**

40. (1) This section has effect where the Attorney General receives–

- (a) from a court or tribunal exercising jurisdiction in a country or territory, being a Convention state, or, as the case may be, a

territory of such a state to which application of the Vienna Convention has been extended, outside Gibraltar; or

- (b) from another authority in such a country or territory which appears to him to have the function of making requests of the kind to which this section applies,

a request for assistance in obtaining evidence in Gibraltar in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on in that country or territory, where the proceedings or investigations are in respect of offences of drug trafficking or offences under a corresponding law.

- (2) If the Attorney General is satisfied—
  - (a) that an offence of drug trafficking under the law of that country or territory in question or under a corresponding law of that country or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed; and
  - (b) that proceedings in respect of that offence have been instituted in that country or territory or that an investigation into that offence is being carried on there,

he may, if he thinks fit, by a notice in writing nominate a court in Gibraltar to receive such of the evidence to which the request relates as may appear to the court to be appropriate for the purpose of giving effect to the request.

(3) For the purpose of satisfying himself as to the matters mentioned in subsection (2)(a) and (b), the Attorney General shall regard as conclusive a certificate issued by such an authority in the country or territory in question as appears to him to be appropriate.

(4) In this section “evidence” includes documents and other articles.

(5) The Schedule to this Act has effect with respect to the proceedings before a nominated court in pursuance of a notice under subsection (2).

#### **Transfer of Gibraltar prisoner to give evidence or assist investigation overseas.**

41. (1) The Attorney General may, if he thinks fit, issue a warrant providing for any person (“a prisoner”) serving a sentence in a prison in Gibraltar to be transferred to a country or territory outside Gibraltar where that country is a Convention state, or, as the case may be, the territory of such a country to

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which application of the Vienna Convention has been extended, for the purpose—

- (a) of giving evidence in criminal proceedings there; or
- (b) of being identified or otherwise by his presence assisting, in such proceedings or the investigation of an offence.

(2) No warrant shall be issued under this section in respect of a prisoner unless he has consented in writing to being transferred as mentioned in subsection (1), and that consent may be given either—

- (a) by the prisoner himself; or
- (b) in circumstances in which it appears to the Attorney General inappropriate, by reason of the prisoner's physical or mental condition or his youth, for him to act for himself, by a person appearing to the Attorney General to be an appropriate person to act on his behalf,

but a consent once given, is not capable of being withdrawn after the issue of the warrant.

(3) The effect of a warrant under this section is to authorise—

- (a) the taking of the prisoner to a place in Gibraltar and his delivery at a place of departure from Gibraltar into the custody of the person representing the appropriate authority of the country or territory to which the prisoner is to be transferred; and
- (b) the bringing of the prisoner back to Gibraltar and his transfer in custody to a place where he is liable to be detained under the sentence to which he is subject.

(4) Where a warrant has been issued in respect of the prisoner under this section, he shall be deemed to be in legal custody at any time when, being in Gibraltar or on board a ship registered in Gibraltar, he is being taken under the warrant to or from any place or being kept in custody under the warrant.

(5) A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep him in custody, has all the powers, authority, protection and privileges of a police officer.

(6) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a customs or police officer and taken to any place to which he may be taken under the warrant issued under this section.

(7) This section applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying a fine as it applies to a prisoner, and the reference in subsection (3)(b) to a sentence shall be construed accordingly.

(8) This section applies to proceedings in a country or territory in respect of an offence of drug trafficking or an offence under a corresponding law and to an offence in that country or territory of drug trafficking or under a corresponding law.

**Transfer of overseas prisoner to give evidence or assist investigation in Gibraltar.**

42. (1) This section has effect where—

- (a) a witness order has been made or a witness summons issued in criminal proceedings under this Act or under the Drugs (Misuse) Act in Gibraltar in respect of a person (“a prisoner”) who is detained in custody in a country or territory outside Gibraltar by virtue of a sentence or order of a court or tribunal exercising criminal jurisdiction in that country or territory; or
- (b) it appears to the Attorney General that it is desirable for a prisoner to be identified, or otherwise by his presence to assist, in such proceedings or the investigation in Gibraltar of an offence under this Act or under the Drugs (Misuse) Act.

(2) If the Attorney General is satisfied that the appropriate authority in the country or territory where the prisoner is detained being a Convention state or, as the case may be, a territory of such a state to which application of the Vienna Convention has been extended, will make arrangements for him to come to Gibraltar to give evidence pursuant to the witness order or witness summons or, as the case may be, for the purposes mentioned in subsection (1)(b), he may issue a warrant under this section.

(3) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being brought to Gibraltar to give evidence as aforesaid or, as the case may be, for the purpose mentioned in subsection (1)(b) but a consent once given, shall not be capable of being withdrawn after the issue of the warrant.

(4) The effect of the warrant shall be to authorise—



- (a) the bringing of the prisoner to Gibraltar;
- (b) the taking of the prisoner to, and his detention in custody at, such place or places in Gibraltar as are specified in the warrant; and
- (c) the returning of the prisoner to the country or territory from which he has come.

(5) Subsections (4) to (7) of section 41 shall have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.

(6) A person shall not be subject to the Immigration Control Act in respect of his entry into or presence in Gibraltar in pursuance of a warrant under this section, but if the warrant ceases to have effect whilst he is in Gibraltar, he shall be treated for the purposes of that Act as if he has then illegally entered Gibraltar.

(7) This section applies to a person detained in custody in a country or territory outside Gibraltar in consequence of having been transferred there under any provisions or arrangements for the repatriation of prisoners as it applies to a person detained as is mentioned in subsection (1).

## **Search, etc., for material relevant to overseas investigation.**

43.(1) If, on an application made by a customs or police officer, a justice of the peace is satisfied—

- (a) that criminal proceedings have been instituted against a person in a country or territory, being a Convention state, or, as the case may be, a territory of such a state to which application of the Vienna Convention has been extended, outside Gibraltar or that a person has been arrested in the course of a criminal investigation carried on there;
- (b) that the conduct constituting the offence which is the subject of the proceedings or investigation constitutes an offence under this Act or under the Drugs (Misuse) Act if it had occurred in Gibraltar; and
- (c) that there are reasonable grounds for suspecting that there are on premises in Gibraltar occupied or controlled by that person, evidence relating to the offence other than items subject to legal privilege,

he may issue a warrant authorising a customs or police officer to enter and search those premises and to seize any such evidence found there.

(2) The power to search conferred by subsection (1) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence as is there mentioned.

(3) No application for a warrant or order shall be made by virtue of subsection (1) except in pursuance of a direction given by the Attorney General in response to a request received—

- (a) from a court or tribunal exercising criminal jurisdiction in the overseas country or territory in question; or
- (b) from any other authority in that country or territory which appears to him to have the function of making requests for the purposes of this section;

and any evidence seized by a customs or police officer by virtue of this section shall be furnished by him to the Attorney-General for transmission to that court, tribunal or authority.

(4) If, in order to comply with the request it is necessary for any such evidence to be accompanied by a certificate, affidavit or other verifying document, the customs or police officer shall also furnish for transmission such document of that nature as may be specified in the direction given by the Attorney General.

(5) Where the evidence consists of a document, the original or a copy shall be transmitted, and where it consists of any other article, the article itself or a description, photograph or other representation of it, shall be transmitted, as may be necessary in order to comply with the request.

**Enforcement of overseas forfeiture orders.**

44. (1) The Government may, by order, provide for the enforcement in Gibraltar of any order which –

- (a) is made by a court in a country or territory outside Gibraltar, being a Convention state or, as the case may be, a territory of such a state to which application of the Vienna Convention has been extended, designated for the purposes of this section by the order; and

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- (b) is for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which an offence to whom this section applies has been committed or which was used, or intended for use, in connection with the commission of such an offence.

(2) Without prejudice to the generality of subsection (1), an order under this section may provide for the registration by a court in Gibraltar of any order as a condition of its enforcement and prescribe requirements to be satisfied before an order can be registered.

(3) An order under this section may include such supplementary and incidental provisions as appear to the Government to be necessary or expedient, and may apply for the purposes of the order, with such modifications as appear to the Government to be appropriate, any provisions relating to confiscation or forfeiture orders under any other enactment.

(4) An order under this section may make different provision for different cases.

(5) This section applies to an offence which corresponds to a drug trafficking offence or to an offence under the Drugs (Misuse) Act.

## **Rules of court.**

45. (1) Provision may be made by rules of court for any purpose for which it appears to the authority having power to make the rules that it is necessary or expedient that provision should be made in connection with any of the provisions in sections 37 to 44 and the Schedule.

(2) Rules made for the purposes of the Schedule may, in particular, make provision with respect to the persons entitled to appear or take part in the proceedings to which that Schedule applies and for excluding the public from any such proceedings.

(3) An order under section 44 may authorise the making of rules of court for any purpose specified in the order.

(4) This section is without prejudice to the generality of any existing powers to make rules.

## **Enforcement of external orders.**

46. The Government may, by Order—

- (a) direct in relation to a country or territory outside Gibraltar designated by the order ( “designated country”) that subject to such modifications as may be specified, this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
- (b) make—
  - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order;
  - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 47, and
  - (iii) such incidental, consequential and transitional provision, as appears to the Government to be expedient; and
- (c) without prejudice to the generality of this subsection, direct that in such circumstances that may be specified, proceeds which arise out of action taken in a designated country with a view to satisfying a confiscation order, shall be treated as reducing the amount payable under the order to such extent as may be specified.

(2) In this section “external confiscation order” means an order made by a court in a designated country for the purpose of recovering, or recovering the value of, payments or other rewards received in connection with drug trafficking.

(3) An order under this section may make different provision for different cases or classes of case.

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

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

47. (1) On an application made by or on behalf of the Government of the designated country, the court may register an external confiscation order made there if –

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- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
  - (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
  - (c) it is of the opinion that enforcing the order in Gibraltar would not be contrary to the interests of justice.
- (2) In subsection (1), “appeal” includes–
- (a) any proceedings by way of discharging or setting aside a judgment; and
  - (b) an application for a new trial or a stay of execution.
- (3) The court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it.
- (4) In this section “designated country” and “external confiscation order” have the same meaning as in section 46.

## **PART IV.** DRUG TRAFFICKING MONEY IMPORTED OR EXPORTED IN CASH.

### **Seizure and detention.**

48. (1) A customs or police officer may seize and, in accordance with this section, detain any cash which is being imported into or exported from Gibraltar if–
- (a) its amount is not less than the prescribed sum; and
  - (b) he has reasonable grounds for suspecting that it directly or indirectly represents any person’s proceeds of drug trafficking or is intended by any person for use in drug trafficking.
- (2) Cash seized by virtue of this section shall not be detained for more than 48 hours unless its continued detention is authorised by an order made by a justice of the peace, and no such order shall be made unless the justice is satisfied–

- (a) that there are reasonable grounds for the suspicion mentioned in subsection (1); and
- (b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in Gibraltar or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.

(3) Any order under subsection (2) shall authorise the continued detention of the cash to which it relates for such period, not exceeding three months beginning with the date of the order, as may be specified in the order, and the magistrates' court, if satisfied as to the matters mentioned in that subsection, may thereafter from time to time by order authorise the further detention of the cash but so that—

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

(4) Any order under subsection (2) shall provide for notice to be given to persons affected by the order.

(5) Any application for an order under subsection (2) or (3) shall be made by a customs or police officer.

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

- (a) the magistrates' court may direct its release if satisfied—
  - (i) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer, any such grounds for its detention as are mentioned in subsection (2); or
  - (ii) on an application made by any other person, that detention of the cash is not for that or any other reason justified; and
- (b) a customs or police officer may release the cash if satisfied that its detention is no longer justified but shall first notify the

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justice or the magistrates' court, under whose order it is being detained.

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

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

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

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

(9) For the purposes of this section, “the prescribed sum” means such sum in sterling as may, for the time being, be prescribed for the purpose of this section by an order made by the Government and in determining under this section whether an amount of currency other than sterling is not less than the prescribed sum, that amount shall be converted at the prevailing rate of exchange.

## **Forfeiture.**

49. (1) The magistrates' court may order the forfeiture of any cash which has been seized under section 48 if satisfied, on an application made while the cash is detained under that section, that the cash directly or indirectly represents any person's proceeds of drug trafficking or is intended by any person for use in drug trafficking.

(2) Any application for an order under this section shall be made by a customs or police officer.

(3) The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings, and an order may be made under this section whether or not proceedings are brought against any person for an offence with which the cash in question is connected.

## **Appeal against forfeiture order made by the magistrates' court.**

50.(1) This section applies where an order for the forfeiture of cash (“the forfeiture order”) is made under section 49 by the magistrates’ court.

(2) Any party to the proceedings in which the forfeiture order is made (other than the applicant for the order) may, before the end of the period of 30 days beginning with the date on which it is made, appeal to the court.

(3) An appeal under this section shall be by way of a rehearing.

(4) On an application made by the appellant to the magistrates’ court at any time, that court may order the release of so much of the cash to which the forfeiture order relates as it considers appropriate to enable him to meet his legal expenses in connection with the appeal.

(5) The court hearing an appeal under this section may make such order as it considers appropriate.

(6) If the court upholds the appeal, the court may order the release of the cash, or as the case may be, the remaining cash, together with any accrued interest.

(7) Subsection (3) of section 49 applies in relation to a rehearing on an appeal under this section as it applies to proceedings under that section.

#### **Rules of court.**

51. (1) Provision may be made by rules of court with respect to applications or appeals to any court under this Part, for the giving of notice of such applications or appeals to persons affected, for the joinder of such persons as parties and generally with respect to the procedure under the sections of this Part before any court.

(2) Subsection (1) is without prejudice to the generality of any existing power to make rules.

#### **Receipts.**

52. (1) Any money representing cash forfeited under this Part or accrued interest thereon, shall be paid into a special fund established under the Public Finance (Control and Audit) Act having as prescribed income such money and accrued interest and in the absence of such fund, into the Consolidated Fund.

(2) Subsection (1) does not apply–



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- (a) where an appeal is made under section 50, before the application is determined or otherwise disposed of; and
- (b) in any other case where forfeiture was ordered by the magistrates' court, before the end of the period of 30 days mentioned in section 50(2).

## **Interpretation of Part IV.**

53. In this Part—

“cash” includes coins and notes in any currency;

“exported”, in relation to any cash, includes it being brought to any place in Gibraltar for the purpose of being exported whether in the currency in which it is being brought or in some other currency to which it has been exchanged and by whatever means the export is, or is intended to be, effected.

## **PART V.**

### **OFFENCES IN CONNECTION WITH PROCEEDS OF DRUG TRAFFICKING**

#### **Concealing or transferring proceeds of drug trafficking.**

54. (1) A person is guilty of an offence if he -

- (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of drug trafficking, or
- (b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of avoiding prosecution for a drug trafficking offence or the making or enforcement in his case of a confiscation order.

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

- (a) conceals or disguises that property, or
- (b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or the making or enforcement of a confiscation order.

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

**Assisting another person to retain the benefit of drug trafficking.**

55. (1) Subject to sub-section (3), a person is guilty of an offence if he enters into or is otherwise concerned in an arrangement whereby -

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

and he knows or suspects that A is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking.

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

(3) Where a person discloses to a customs or police officer a suspicion or belief that any funds or investments are derived from or used in connection with drug trafficking or any matter on which such a suspicion or belief is based -

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and
- (b) if he does any act in contravention of sub-section (1) above and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if -

- (i) the disclosure is made before he does the act concerned and the act is done with the consent of the customs or police officer; or
  - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.
- (4) In proceedings against a person for an offence under this section, it is a defence to prove -
- (a) that he did not know or suspect that the arrangement related to any person's proceeds of drug trafficking;
  - (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in sub-section (1) (b); or
  - (c) that -
    - (i) he intended to disclose to a customs or police officer such a suspicion, belief or matter as is mentioned in sub-section (3) in relation to the arrangement, but
    - (ii) there is reasonable excuse for his failure to make disclosure as mentioned in paragraph (b) (i) or (ii) of that sub-section.
- (5) In the case of a person who was in employment at the time in question, sub-section (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures, to a customs or police officer.

## **Acquisition, possession or use of proceeds of drug trafficking.**

56. (1) A person is guilty of an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he acquires or uses that property or has possession of it.

(2) It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.

(3) For the purposes of sub-section (2) -

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

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

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

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and
- (b) if he does any act in relation to the property in contravention of sub-section (1), he does not commit an offence under this section if -
  - (i) the disclosure is made before he does the act concerned and the act is done with the consent of the customs or police officer; or
  - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

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

(7) In proceedings against a person for an offence under this section, it is a defence to provide that -

- (a) he intended to disclose to a customs or police officer such a suspicion, belief or matter as is mentioned in sub-section (5), but

- (b) there is reasonable excuse for his failure to make the disclosure in accordance with paragraph (b) of that sub-section.

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

(9) No customs or police officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement of any provision of this Act or of any other enactment relating to drug trafficking or the proceeds of drug trafficking.

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

57. (1) A person is guilty of an offence if -

- (a) he knows or suspects that another person is engaged in drug money laundering,
- (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 a customs or police officer as soon as is reasonably practicable after it comes to this attention.

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

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

(4) Where a person discloses to a customs or police officer -

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

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

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

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

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

(7) In this section “drug money laundering” means doing any act -

- (a) which constitutes an offence under sections 54, 55 or 56: or
- (b) in the case of an act done otherwise than in Gibraltar which would constitute such an offence if done in Gibraltar,

and for the purposes of this sub-section, having possession of any property shall be taken to be doing an act in relation to it.

(8) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or give, to him -

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

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

## Tipping-off.

58. (1) A person is guilty of an offence if -

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

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

- (a) he knows or suspects that a disclosure has been made to a customs or police officer under section 55, 56 or 57 (“the disclosure”), and
- (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

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

- (a) He knows or suspects that a disclosure of a kind mentioned in sections 55 (5), 56 (8) or 57 (5) (“the disclosure”) has been made, and
- (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

(4) Nothing in sub-sections (1) to (3) makes it an offence for a professional legal adviser to disclose any information or other matter -

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

(5) Sub-section (4) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(6) In proceedings against a person for an offence under sub-section (1), (2) or (3), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that sub-section.

(7) No customs or police officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to drug trafficking or the proceeds of drug trafficking.

(8) In this section “drug money laundering” has the same meaning as in section 57.

#### **Penalties.**

59. (1) A person guilty of an offence under section 54, 55 or 56, shall be liable -

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 4 on the standard scale or to both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or to both.

(2) A person guilty of an offence under section 57 or 58 shall be liable -

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 4 on the standard scale or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

#### **PART VI.**

##### MISCELLANEOUS AND SUPPLEMENTAL.

#### **Order to make material available.**

60. (1) A customs or police officer may, for the purpose of an investigation into drug trafficking, apply to a judge for an order under subsection (2) in relation to particular material or material of a particular description.



(2) If on such an application the judge is satisfied that the conditions in subsection (5) are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—

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

within such period as the order may specify.

(3) Subsection (2) has effect subject to section 64(11).

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

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

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

that the material should be produced or that access to it should be given.

- (6) Where the judge makes an order under subsection (2)(b) in relation to material on any premises he may, on the application of a customs or police officer, order any person who appears to him to be entitled to grant entry to the premises to allow a customs or police officer to enter the premises to obtain access to the material.
- (7) An application under subsection (1) or (5) may be made *ex parte* to a judge in chambers.
- (8) Provision may be made by rules of court as to—
- (a) the discharge and variation of orders under this section; and
  - (b) proceedings relating to such orders.
- (9) Where the material to which an application under subsection (1) relates consists of information contained in a computer—
- (a) an order under subsection (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
  - (b) an order under subsection (2)(a) shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (10) An order under subsection (2)—
- (a) shall not confer any right to production of, or access to, items subject to legal privilege or excluded material;
  - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and
  - (c) may be made in relation to material in the possession of the Crown in right of Her Majesty's Government both in Gibraltar and in the United Kingdom.

**Authority for search.**

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

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- (2) On such application the judge may issue a warrant authorising a customs or police officer to enter and search the premises if the judge is satisfied –
- (a) that an order made under section 60 in relation to material on the premises has not been complied with;
  - (b) that the conditions in subsection (3) are fulfilled; or
  - (c) that the conditions in subsection (4) are fulfilled.
- (3) The conditions referred to in subsection (2)(b) are –
- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefitted from drug trafficking;
  - (b) that the conditions in subsection (4)(b) and (c) of section 60 are fulfilled in relation to any material on the premises; and
  - (c) that it would not be appropriate to make an order under that section in relation to the material because–
    - (i) it is not practicable to communicate with any person entitled to produce the material;
    - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
    - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a customs or police officer could secure immediate access to the material.
- (4) The conditions referred to in subsection (2)(c) are–
- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefitted from drug trafficking;
  - (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself together with other material) to the investigation for the purpose of which the application is made, but that the material cannot, at the time of the application, be particularised; and

- (c) that—
  - (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
  - (ii) entry to the premises will not be granted unless a warrant is produced; or
  - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a customs or police officer arriving at the premises could secure immediate entry to them.

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

**Access and copying.**

62. (1) A customs or police officer who seizes anything in the exercise of a power conferred by this Act shall, if so requested by a person showing himself—

- (a) to be the occupier of premises on which it was seized; or
- (b) to have had custody or control of it immediately before the seizure,

provide that person with a record of what he seized.

(2) The officer shall provide the record within a reasonable time from the making of the request for it.

(3) Subject to subsection (8), if a request for permission to be granted access to anything which—

- (a) has been seized by a customs or police officer; and
- (b) is retained by customs or the police for the purpose of investigating an offence,

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is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized or by someone acting on behalf of such a person, the officer shall allow the person who had made the request access to it under the supervision of a customs or police officer.

(4) Subject to subsection (8), if a request for a photograph or a copy of any such thing is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer shall—

- (a) allow the person who made the request access to it under the supervision of a customs or police officer for the purpose of photographing or copying it; or
- (b) photograph or copy it or cause it to be photographed or copied.

(5) A customs or police officer may also photograph or copy, or have photographed or copied, anything which he has power to seize without a request being made under subsection (4).

(6) Where anything is photographed or copied under subsection (4)(b), the photograph or copy shall be supplied to the person who made the request.

(7) The photograph or copy shall be so supplied within a reasonable time from the making of the request.

(8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the officer in charge of the investigation for the purposes of which it was seized, has reasonable grounds for believing that to do so, would prejudice—

- (a) that investigation;
- (b) the investigation of an offence other than the offence for the purposes of investigating which the thing was seized; or
- (c) any criminal proceeding which may be brought as a result of—
  - (i) the investigation of which he is in charge; or
  - (ii) any such investigation as is mentioned in paragraph (b).

## **Retention.**

63. (1) Subject to subsection (4), anything which has been seized by a customs or police officer or taken away by a customs or police officer under the provisions of section 60 or 61, may be retained as long as is necessary in all the circumstances.

- (2) Without prejudice to the generality of subsection (1)–
- (a) anything seized under the provisions of sections 60 and 61 may be retained, except as provided by subsection (4)–
    - (i) for use as evidence at a trial for an offence; or
    - (ii) for forensic examination or for investigation in connection with an offence; and
  - (b) anything may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.
- (3) Nothing which is seized on the grounds that it may be used–
- (a) to cause physical injury to any person;
  - (b) to damage property;
  - (c) to interfere with evidence; or
  - (d) to assist in escape from customs or police detention or lawful custody,

may be retained when the person from whom it was seized is no longer in customs or police detention or the custody of a court.

(4) Nothing may be retained for either of the purposes mentioned in subsection (2)(a) if a photograph or copy would be sufficient for that purpose.

(5) In this section “an offence” means an offence under this Act or under the Drugs (Misuse) Act.

**Disclosure of information held by the Crown.**

64. (1) Subject to subsection (4), the court may, on an application by the prosecutor, order any material mentioned in subsection (3) which is in the

possession of the Crown to be produced to the court within such period as the court may specify.

- (2) The power to make an order under subsection (1) is exercisable if—
  - (a) the powers conferred on the court by sections 27(1) and 28(1) are exercisable by virtue of subsection (1) of section 26; or
  - (b) those powers are exercisable by virtue of subsection (3) of that section and the court has made a restraint or charging order which has not been discharged;

but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b), subsection (4) of section 26 shall apply for the purposes of this section as it applies for the purposes of sections 27 and 28.

- (3) The material referred to in subsection (1) is any material which—
  - (a) has been submitted to an officer of the Crown by the defendant or by a person who has at any time held property which was realisable property;
  - (b) has been made by an officer of the Crown in relation to the defendant or such a person; or
  - (c) is correspondence which passed between an officer of the Crown and the defendant or such a person;

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

(4) An order under subsection (1) shall not require the production of any material unless it appears to the court that the material is likely to contain information that would facilitate the exercise of the powers conferred on the court by sections 27 to 30 or on a receiver appointed under section 27 or 30 or in pursuance of a charging order.

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

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

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

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

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

- (a) any customs officer;
- (b) any police officer; and
- (c) any person engaged by the Crown in right of Her Majesty's Government in Gibraltar to provide legal services to customs or the police.

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

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

(11) An order under subsection (1) and, in the case of material in the possession of the Crown, an order under section 60(2) may require an officer of the Crown (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the Crown.

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

- (a) shall take all reasonable steps to bring it to the attention of the officer concerned; and



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- (b) if the order is not brought to that officer's attention within the period referred to in subsection (1), shall report the reasons for the failure to the court;

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

## **Offence of prejudicing investigation.**

65. (1) Where, in relation to an investigation into drug trafficking—

- (a) an order under section 60 has been made or has been applied for and has not been refused, or
- (b) a warrant under section 61 has been issued,

a person is guilty of an offence if, knowing or suspecting that the investigation is taking place, he makes any disclosure which is likely to prejudice the investigation.

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

- (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation; or
- (b) that he had lawful authority or reasonable excuse for making the disclosure.

(3) Nothing in subsection (1) makes it an offence for a professional legal adviser to disclose any information or other matter—

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

(4) Subsection (3) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(5) A person guilty of an offence under this section shall be 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; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

**Extension of certain offences to Crown servants and exemptions for regulators, etc.**

66. (1) The Government may, by regulations, provide that, in such circumstances as may be prescribed, sections 54(2), 55, 56, 57, 58 and 59 shall apply to such persons in the public service of the Crown, or such category of persons in that service as may be prescribed.

(2) Section 57 shall not apply to—

- (a) any person designated by regulations made by the Government for the purposes of this paragraph; or
- (b) in such circumstances as may be prescribed, any person who falls within such category of persons as may be prescribed for the purposes of this paragraph.

(3) The Government may designate, for the purpose of subsection (2)(a), any person appearing to it to be performing regulatory, supervisory, investigative, or registration functions.

(4) The category of persons prescribed by the Government for the purpose of subsection (2)(b), shall be such category of persons connected with the performance of any designated person or regulatory, supervisory, investigative or registration functions as it considers appropriate to prescribe.

(5) In this section “the Crown” means the Crown in right of Her Majesty’s Government both in Gibraltar and in the United Kingdom.

**Authorisation of delay in notifying arrest.**

67. Notwithstanding the provisions of section 19 of the Criminal Procedure Act, the giving of information about a person’s arrest to a person named by him may be delayed if a police officer of the rank of Superintendent or above has reasonable grounds for believing—

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- (a) that the detained person has benefitted from drug trafficking, and
- (b) that the recovery of the value of that person's proceeds of drug trafficking will be hindered by telling the person named of the arrest.

## **Power to make regulations.**

68. (1) The Government may make regulations for the purpose of—

- (a) giving effect to Council Directive 91/308/EEC or any other Community legal obligation on the prevention of the use of the financial system for the purpose of money laundering;
- (b) *Omitted*
- (c) giving effect to any Convention or Treaty relating to drug trafficking which has been ratified by the United Kingdom and the application of which has been extended to Gibraltar;
- (d) prescribing anything required or permitted by this Act to be prescribed;
- (e) giving proper effect to this Act.

(2) Regulations made under subsection (1) may—

- (a) where they are made for the purpose of paragraph (a) of that subsection—
  - (i) prescribe offences to which the provisions or some of the provisions of the Act are to be applied;
  - (ii) prescribe the provisions of the Act which are to be applied to prescribed offences;
  - (iii) make such modifications to the prescribed provisions as in the opinion of the Government are necessary or expedient and “modification” includes additions, alterations and omissions;
- (b) provide that a contravention of a prohibition or requirement imposed by or under the regulations, shall constitute an offence for which the offender shall be liable, on summary conviction, to a fine not exceeding a specified amount or to imprisonment

not exceeding a specified period or to both, and on conviction on indictment, to a fine or to imprisonment or to both and the provisions of section 23(b) of the Interpretation and General Clauses Act shall not operate to limit the amount or the period specified;

- (c) provide for any specified defence to be available, either generally or in specified circumstances, in proceedings for an offence under the regulations;
- (d) make provision with respect to the institution of proceedings for an offence under the regulations, with respect to the circumstances in which, in the case of an offence committed by a body corporate, an officer of that body shall also be guilty of an offence, with respect to the onus of proof of specified matters and other questions of evidence in proceedings for an offence, and would expect the powers of the Court to make an order of any kind provided for by this Act;
- (e) provide for the extent to which the regulations shall bind the Crown and for the extent to which they shall apply to persons in the service of the Crown;
- (f) make provision in respect of fees or other charges;
- (g) make such transitional, incidental or supplementary provisions as the Government may deem proper for the better execution of this Act or the regulations made thereunder.

(3) Regulations shall not be made under this section having retrospective effect except in a manner comparable with the provisions of section 1(2) of this Act.

#### **Repeal of the Drug Trafficking Offences Act, 1988.**

69. (1) The Drug Trafficking Offences Act, 1988 is hereby repealed.

(2) All subordinate legislation made under the Drug Trafficking Offences Act, 1988 is hereby revoked to the extent and at the time specified by any regulations made under section 68.

## SCHEDULE

Section 40

### **GIBRALTAR EVIDENCE FOR USE OVERSEAS: PROCEEDINGS OF NOMINATED COURT**

#### **Securing attendance of witness.**

1. The court shall have the like powers for securing the attendance of a witness for the purpose of the proceedings as it has for the purpose of other proceedings before the court.

#### **Power to administer oaths.**

2. The court may, in the proceedings, take evidence on oath.

#### **Privilege of witnesses.**

3. (1) A person shall not be compelled to give in the proceedings any evidence which he could not be compelled to give—

- (a) in criminal proceedings in Gibraltar; or
- (b) subject to subparagraph (2), in criminal proceedings in the country or territory from which the request for the evidence has come.

(2) Subparagraph (1) shall not apply unless the claim of the person questioned to be exempt from giving the evidence is conceded by the court, tribunal or authority which made the request.

(3) Where such a claim made by any person is not conceded as aforesaid, he may, subject to the other provisions of this paragraph, be required to give the evidence to which the claim relates but the evidence shall not be transmitted to the court, tribunal or authority which requested it if a court in the country or territory in question, on the matter being referred to it, upholds the claim.

(4) Without prejudice to subparagraph (1), a person shall not be compelled under this Schedule to give any evidence if his doing so would be prejudicial to the security of Gibraltar, and a certificate signed by or on behalf of the Governor to the effect that it would be so prejudicial for the person to do so, shall be conclusive evidence of that fact.

(5) Without prejudice to subparagraph (1), a person shall not be compelled under this Schedule to give any evidence in his capacity as an officer or servant of the Crown.

(6) In this paragraph references to giving evidence include references to answering any question and to producing any document, and the references in subparagraph (3) to the transmission of evidence given by a person shall be construed accordingly.

**Transmission of evidence.**

4. (1) The evidence received by the court shall be furnished to the Attorney General for transmission to the court, tribunal or authority that made the request.

(2) If, in order to comply with the request, it is necessary for the evidence to be accompanied by any certificate, affidavit or other verifying document, the court shall also furnish for transmission such document of that nature as may be specified in the notice nominating the court.

(3) Where the evidence consists of a document, the original or a copy shall be transmitted, and where it consists of any other article, the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

**Supplementary.**

5. For the avoidance of doubt, it is hereby declared that the Bankers' Books Evidence Act 1879 applies to the proceedings as it applies to other proceedings before the court.

**Costs.**

6. No order for costs shall be made in the proceedings.