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MISUSE OF DRUGS LAW

(2000 Revision)

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Law 8 of 1992 - 13th July, 1992
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Consolidated and revised this 25th day of January, 2000.

Note (not forming part of the Law): This revision replaces the 1999 Revision which should now be discarded.

MISUSE OF DRUGS LAW

(2000 Revision)

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MISUSE OF DRUGS LAW
(2000 Revision)

1. This Law may be cited as the Misuse of Drugs Law (2000 Revision).

Short title

2. (1) In this Law-

Definitions and
interpretation

“authorised” means authorised by this or any other law, and includes a person acting in the course of his lawful duties as a medical practitioner, dentist, veterinary practitioner or pharmacist, any of whom prescribes, administers, manufactures, compounds or supplies a controlled drug; and a person lawfully conducting the business of a retail pharmacy or of an importer, acting in either case in his capacity as such; and a person in possession of a controlled drug under a prescription;

“authorised possession” with respect to any drug means actual or constructive possession -

- (i) by the C.M.O. or any practitioner authorised by the C.M.O. in that behalf;
- (ii) by any person for the purpose of lawful administration thereof; or
- (iii) authorised by any regulation;

“benefited from drug trafficking” has the meaning assigned to that expression by section 31(3);

“cash” includes coins and notes in any currency;

“Cayman ship” means a ship registered in the Islands;

“C.M.O.” means the Chief Medical Officer and any medically qualified person acting under his authority;

“confiscation order” means an order made under section 31(5);

“constructive possession” includes the power to control the storage, use or distribution of any substance;

“consume” includes eat, drink, smoke, sniff, inhale, absorb, suck, chew, inject, use and destroy;

“contravene” and its grammatical derivations includes “fail to comply”;

“controlled drug” means a drug listed in the First Schedule;

“Convention state” means a state that is a party to the Vienna Convention;

“corresponding law” has the meaning assigned to it by subsection (2);

1998 Revision

“customs officer” means a person appointed by the Governor to be an officer of the Customs under section 6(1) of the Customs Law (1998 Revision);

“designated country” means a country or territory outside the Islands designated by an Order made under section 49(1);

“drug trafficking” means doing or being concerned in any of the following, whether in the Islands or elsewhere -

- (a) producing or supplying a controlled drug where the production or supply contravenes paragraph (c) or (f) of section 3(1) or a corresponding law;
- (b) storing a controlled drug where possession of the drug contravenes paragraph (d) of section 3(1) or a corresponding law;
- (c) importing or exporting a controlled drug where the importation or exportation is prohibited by paragraph (a) or (b) of section 3(1) or a corresponding law; or
- (d) manufacturing or supplying a scheduled substance within the meaning of section 4 where the manufacture or supply is an offence under that section,

and includes a person doing the following (whether on the Islands or elsewhere), that is, entering into or being otherwise concerned in an arrangement whereby-

- (e) the retention of control by or on behalf of another person of the other person’s proceeds of drug trafficking is facilitated; or
- (f) 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;

“drug trafficking offence” means any of the following -

- (a) an offence under paragraph (c), (f) or (m) of section 3(1);
- (b) an offence under section 3(1) of attempting any of the matters mentioned in paragraph (a);
- (c) an offence under section 4 (manufacture and supply of scheduled substances);

- (d) an offence under section 11 (assisting in or inducing commission outside the Islands of an offence punishable under a corresponding law);
- (e) an offence under section 19 (using ship for illicit trafficking);
- (f) an offence under section 47 (assisting another to retain the benefits of drug trafficking);
- (g) an offence under section 48 (concealing or transferring proceeds of drug trafficking);
- (h) an offence under section 10(1) of the Customs Law (1998 Revision), in connection with a prohibition on importation or exportation having effect by virtue of section 3; 1998 Revision
- (i) an offence under section 310 of the Penal Code (1995 Revision) of conspiracy to commit any of the offences in paragraph (a), (c), (d), (e), (f), (g) or (h); 1995 Revision
- (j) an offence under section 308 of the Penal Code (1995 Revision) of attempting to commit any of the offences in paragraph (a), (c), (d), (e), (f), (g) or (h);
- (k) any offence at common law of inciting another to commit any of the offences in paragraph (a),(c), (d), (e), (f), (g) or (h);or
- (l) aiding, abetting, counselling or procuring the commission of any of the offences in paragraph (a), (c), (d), (e), (f), (g) or (h);

“exported”, in relation to any cash, includes its being brought to a place in the Islands for the purpose of being exported;

“external confiscation order” means an order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value;

“Governor” means the Governor in Council;

“hard drug” means any substance or product specified in Part I of the First Schedule;

“lawful administration” with respect to a drug means administration of the same by any person to himself or another in accordance with a prescription issued by a practitioner authorised in that behalf;

“Minister” means the member of Executive Council responsible for health matters;

“practitioner” means the C.M.O. and any person authorised by him in writing to import, export, produce, store, deal in, supply, distribute, dispense, issue a

prescription for or administer controlled drugs for medicinal or research purposes, limited to the extent of such authorisation;

“prescription” means a lawful authorisation by a practitioner for the administration of any drug;

“realisable property” means any property held by-

- (a) a person against whom proceedings have been instituted for a drug trafficking offence; and
- (b) another person to whom that person has directly or indirectly made a gift caught by this Law, as defined in section 46(1):

Provided that property is not realisable property if an order under section 30 is in force in respect of the property;

“scheduled substance” means a substance specified in the Third Schedule;

“ship” includes any vessel used in navigation;

“to produce” with reference to any drug includes to prepare, manufacture, refine, process or cultivate such drug or any harmful or potentially harmful ingredient thereof;

“vessel” includes any ship, aircraft, hovercraft, vehicle or thing in which anything may be carried, stored or secreted; and

“Vienna Convention” means the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances signed in Vienna on 20 December, 1988.

(2) In this Law-

“corresponding law” means a law stated in a certificate purporting to be issued by or on behalf of the government of a country outside the Islands to be a law providing for the control and regulation in that country of the production, supply, use, export and import of drugs and other substances -

- (a) in accordance with the Single Convention on Narcotic Drugs signed at New York on 30 March, 1961; or
- (b) in pursuance of a treaty, convention or other agreement or arrangement to which the Government of that country and Her Majesty’s Government in the United Kingdom are for the time being parties.

(3) A statement in a certificate referred to in subsection (2) to the effect that an act constitutes an offence against the law mentioned in the certificate is evidence of the matter stated.

(4) For the purposes of this Law -

- (a) a payment or other reward received by a person at any time in connection with drug trafficking carried on by him or by another person is his proceeds of drug trafficking;
- (b) the value of a person's proceeds of drug trafficking is the aggregate of the values of payments or other rewards referred to in paragraph (a) received by that person.

3. (1) Whoever, without lawful excuse or without being authorised in that behalf,-

Offence to have dealings
in controlled drugs
unless authorised

- (a) imports;
- (b) exports;
- (c) produces;
- (d) stores;
- (e) sells, buys or otherwise deals in;
- (f) supplies;
- (g) distributes;
- (h) dispenses;
- (i) issues a prescription for;
- (j) administers;
- (k) possesses, constructively or otherwise;
- (l) consumes; or
- (m) has in his possession, whether lawfully or not, with intent that it be supplied, whether by himself or some other person, and whether in the Islands or elsewhere to another person in contravention of this subsection,

any controlled drug, pipe, utensil or thing used in the preparation or consumption of any controlled drug, or who attempts, assists or is concerned in any of such matters is guilty of an offence.

(2) A person is guilty of an offence if, without lawful excuse or without being authorised in that behalf -

- (a) being the occupier or concerned in the management of any premises, he permits or suffers any of the following activities to take place on those premises, that is to say, producing, supplying, distributing, dispensing, administering or consuming or attempting to do any of such things in contravention of subsection (1); or

(b) he frequents any place used for the purpose of consuming any controlled drug.

(3) For the purposes of subsection (1) -

“lawful excuse” in relation to possession, means possession by a customs officer, constable or person officially taking part in an investigation or trial of a matter arising out of a contravention or suspected contravention of this Law.

(4) Subject to subsection (5), in a prosecution under this section it shall be a defence for an accused person to prove that he neither knew, suspected nor had reason to suspect the existence of some fact alleged by the prosecution which it is necessary for the prosecution to prove if he is to be convicted.

(5) Where in a prosecution under this section it is necessary, if the accused person is to be convicted, for the prosecution to prove that some substance or product involved in the alleged offence was the controlled drug which the prosecution alleges it to have been, and it is proved that such substance or product was that controlled drug, the accused person -

(a) shall not be acquitted by reason only of proving that he neither knew, suspected nor had reason to suspect that such substance or product was the particular controlled drug alleged; but

(b) shall be acquitted if he proves that he neither believed, suspected nor had reason to suspect that the substance or product was a controlled drug.

(6) Nothing in subsection (4) or (5) shall prejudice any defence which it is open to a person charged with an offence under this section to raise apart from those subsections.

Manufacture and supply
of scheduled substances

4. (1) Whoever-

(a) manufactures a scheduled substance; or

(b) supplies a scheduled substance to another person,

knowing or suspecting that the scheduled substance is to be used in or for the production of a controlled drug contrary to paragraph (c) of section 3(1) is guilty of an offence and liable-

(i) on summary conviction, to a fine of ten thousand dollars and to imprisonment for five years; or

(ii) on conviction on indictment, to a fine and to imprisonment for fourteen years.

(2) The Governor may make regulations-

- (a) imposing requirements as to the documentation of transactions involving scheduled substances;
- (b) requiring the keeping of records and the furnishing of information with respect to scheduled substances;
- (c) for the inspection of records kept pursuant to the regulations; and
- (d) for the labelling of consignments of scheduled substances.

(3) Regulations made under paragraph (b) of subsection (2) may, in particular, require-

- (a) the notification of the proposed exportation of substances specified in Table I in the Third Schedule to such countries as may be specified in the regulations; and
- (b) the production, in such circumstances as may be so specified, of evidence that the required notification has been given,

and for the purposes of section 10 of the Customs Law (1998 Revision) (prohibited or restricted goods) any such substance is to be taken to have been exported contrary to a restriction for the time being in force with respect to it under this Law if it is exported without the requisite notification having been given.

1998 Revision

(4) Regulations under this section may make different provisions in relation to the substances specified in Tables I and II in the Third Schedule and in relation to different cases or circumstances.

(5) Whoever-

- (a) fails to comply with a requirement imposed by regulations under this section; or
- (b) in purported compliance with a requirement imposed by regulations under this section, furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular,

is guilty of an offence and liable-

- (c) on summary conviction to a fine of three thousand dollars and to imprisonment for twelve months; or
- (d) on conviction on indictment to a fine and to imprisonment for two years.

(6) Information obtained pursuant to regulations made under this section shall not be disclosed except in criminal proceedings or proceedings under this Law relating to the confiscation of the proceeds of drug trafficking.

Powers of arrest

5. (1) A constable or customs officer may arrest without warrant a person who has committed, or whom such constable or customs officer reasonably suspects to have committed an offence under this Law.

(2) A person who has been arrested-

1995 Revision

(a) under subsection (1); or

(b) in respect of an offence under section 230 (robbery), 231 (burglary) or 232 (aggravated burglary) of the Penal Code (1995 Revision),

may, while at a police station, hospital or other convenient place, be required by a constable or customs officer to provide a specimen of his urine for a laboratory test and, if such person, without reasonable excuse, fails to provide such a specimen he is guilty of an offence.

(3) When requesting any person to provide a specimen for the purpose of subsection (2) the constable or customs officer shall warn such person of the possible consequences of failure to supply such specimen.

(4) If the person giving a specimen so desires, he shall be given a portion of the specimen for examination by his own medical adviser.

Powers of search

6. (1) If a constable or customs officer has reasonable grounds to suspect that any person is in possession of a controlled drug or scheduled substance in contravention of this Law he may, without warrant, detain and search such person and whether or not any person is detained or searched may, without warrant, break open and search any premises, vessel or thing whatsoever in which he has reasonable grounds to suspect that any such drug or substance may be concealed.

(2) No person shall, in exercise of the powers conferred by subsection (1), conduct a personal search of a person not of the same sex.

(3) A Justice of the Peace may, at any time, issue a warrant for the search of any premises in furtherance of the enforcement of this Law and such warrant may be executed at any time of the day or night within one month of its issue, and, where necessary for entry to such premises, such force may be used as may be requisite thereto.

Evidence

7. (1) The presence on, in or about any place or premises or the possession by any person of any pipe, syringe, inhaler, still, retort or other device commonly used for the production or consumption of any controlled drug shall be receivable in evidence by any court in order to assist such court to determine whether or not

any person has contravened this Law, and the court may thereafter order the same (if exhibited) to be forfeited.

(2) Notwithstanding any other law, a certificate purporting to be under the hand of the C.M.O., a qualified chemist, a qualified medical laboratory technician or any other person appointed by the Governor in that behalf either specially or generally, stating or certifying that a given substance has been analysed or examined and stating the result of such analysis or examination, shall be admissible in evidence on any prosecution under this Law and, in the absence of evidence to the contrary, shall be proof of the statements contained therein as to the foregoing matters and any other matter specified therein concerning the substance analysed or examined or the analyst or examiner thereof, and no evidence shall be required by the court as to the signature or qualifications of the person purporting to have signed the certificate.

(3) No certificate shall be received in evidence unless the party intending to produce it has given to the other parties three days notice of such intention and has furnished with such notice a copy of the certificate.

(4) Where it is considered necessary or advisable, the court may require the attendance of the person under whose hand the certificate was issued to give evidence on oath.

(5) If, in proceedings under this Law, a question arises whether a country or territory is a state or is a party to the Vienna Convention, a certificate issued by the Governor is conclusive evidence on that question.

8. The court may, at its discretion, in any proceedings in which an accused person has been charged with an offence against this Law, on the application of the prosecution and after giving the accused person the opportunity of being heard, at any time order the destruction of any controlled drug which has been or is intended to be produced, in whole or in part, as evidence in such proceedings:

Destruction of evidence
pending prosecution

Provided that such quantity of such controlled drug as the court may direct shall not be ordered to be destroyed and shall be produced in such proceedings.

9. (1) Without prejudice to any other provision of this Law-

(a) where it is proved beyond reasonable doubt that a person imported anything containing a controlled drug, it shall be presumed, until the contrary is proved, that such person knew that such drug was contained in such thing;

(b) where it is proved beyond reasonable doubt that a person had in his possession or custody or under his control anything

Presumption of
possession and
knowledge of controlled
drug

containing a controlled drug, it shall be presumed, until the contrary is proved, that such person was in possession of such drug;

- (c) where it is proved beyond reasonable doubt that a person supplied to any other person anything containing a controlled drug, it shall be presumed, until the contrary is proved, that such first-mentioned person knew that such drug was contained in such thing;
- (d) where it is proved beyond reasonable doubt that a person is in any way concerned in carrying, removing, harbouring, keeping, concealing, handling or dealing in any manner with anything containing a controlled drug, it shall be presumed, until the contrary is proved, that such person knew that such drug was contained in such thing; and
- (e) where it is proved beyond reasonable doubt that a person had in his possession or custody or under his control a dock warrant, warehouse warrant or order, baggage receipt or claim, airway-bill, bill of lading or other similar document relating to anything containing a controlled drug, it shall be presumed, until the contrary is proved, that such person was in possession of such drug.

(2) The presumptions provided by subsection (1) shall not-

- (a) be rebutted by proof that a person never had physical possession of the controlled drug; nor
- (b) be construed as requiring the prosecution to prove any fact which, by virtue of any other provision of this Law, it does not have to prove.

Seizure and forfeiture

10. Any controlled drug found in the course of a search under section 6 or otherwise coming into the hand of any constable shall be held in police custody and, unless claimed within fifteen days by a person found to be authorised to be in possession of the same, shall be forfeited to the Crown.

Assisting in or inducing
commission outside
Islands of offence
punishable under a
corresponding law

11. A person shall not, in the Islands, assist in or induce the commission in a place outside the Islands of an offence punishable under a corresponding law in force in that place.

Offence by corporation

12. Where any offence under this Law by a body corporate is proved to have been committed, the consent, connivance or negligence of any director or officer, howsoever designated, of such body corporate may be presumed unless he proves the contrary to the satisfaction of the court, and such person as well as the body corporate shall be guilty of that offence.

13. The Governor may make regulations -

Regulations

- (a) amending the First or Third Schedule (whether by addition or deletion, or by transfer from one Table in a Schedule to another);
- (b) for the control of the import, export, transport and storage of controlled drugs; and
- (c) prescribing anything required to be prescribed under this Law or any regulation,

and may thereby make provision for penalties consequent upon any contravention thereof and for contravention of any rules made under section 14, which penalties shall not be limited to the provisions of paragraph (b) of section 27 of the Interpretation Law (1995 Revision).

1995 Revision

14. The C.M.O. may make rules for inspection, keeping of inventories, and general control and distribution of controlled drugs in the hands of persons authorised under this Law to be in possession of the same, and every such person shall, at the request of the C.M.O. or of any constable, give full information as to the controlled drugs in his possession and the whereabouts of the same and account for the distribution of all such drugs as have passed through his hands.

Rules

15. Whoever resists any lawful arrest or search or gives to any constable, customs officer or the C.M.O. any information of a kind required to be given under this Law in the truth of which he does not believe (the onus of proof of his belief being upon him) is guilty of an offence.

Resisting arrest or search or giving false information

16. (1) Subject to subsections (2), (3) and (4), whoever is guilty of an offence contrary to section 3(1) or (2) is liable on summary conviction to a fine of three thousand dollars and to imprisonment with hard labour for three years, and, in the case of a third or subsequent conviction, to a fine of ten thousand dollars and to imprisonment with hard labour for ten years.

Penalties for offences under section 3

(2) Notwithstanding subsection (1), whoever is guilty of an offence that -

- (a) is contrary to section 3(1);
- (b) is specified in Part A of the Second Schedule; and
- (c) is in relation to a controlled drug that-
 - (i) is not a hard drug; and
 - (ii) is less than one pound in weight,

is, on summary conviction, liable to a fine of twenty thousand dollars and to imprisonment with hard labour for seven years and, in the case of a second or subsequent conviction for any such offence, to a fine of twenty thousand dollars and to imprisonment with hard labour for ten years.

- (3) Notwithstanding subsection (1), whoever is guilty of an offence that -
- (a) is contrary to section 3(1);
 - (b) is specified in Part A of the Second Schedule; and
 - (c) is in relation to a controlled drug that -
 - (i) is not a hard drug; and
 - (ii) is one pound or more in weight,

is, on summary conviction, liable to a fine of twenty thousand dollars and to imprisonment with hard labour for seven years and , in the case of a second or subsequent conviction for any such offence, to a fine and to imprisonment with hard labour for fifteen years.

- (4) Notwithstanding subsection (1), whoever is guilty of an offence that-
- (a) is contrary to section 3(1); and
 - (b) is in relation to a controlled drug that-
 - (i) is a hard drug; and
 - (ii) is less than two ounces in weight; and
 - (c) consists of buying, consuming, possessing or attempting to buy, consume or possess any such drug,

is, on summary conviction, liable in the case of a first conviction for such an offence to a fine of ten thousand dollars and to imprisonment for seven years; and in the case of a second or subsequent conviction for any such offence to a fine of twenty thousand dollars and to imprisonment for fifteen years.

- (5) Notwithstanding subsection (1), whoever is guilty of an offence that-
- (a) is contrary to any provision of this Law;
 - (b) is specified in Part B of the Second Schedule; and
 - (c) is in relation to a controlled drug that is a hard drug,

is, on summary conviction, liable to imprisonment and a fine in accordance with Part B of the Second Schedule.

(6) Where a person who has attained the age of seventeen years is convicted of an offence punishable under subsection (1), (2), (3) or (4), the court before whom he is convicted may, with the consent of the person convicted and subject to sections 53 to 56, in addition to or instead of dealing with him in any other way, make a community service order.

(7) Where a person is convicted of an offence punishable under subsection (1), (2), (3) or (4), the court before whom he is convicted may, in addition to or instead of dealing with him in any other way, make an attendance order under sections 57 to 59.

(8) Where a court makes a community service order under subsection (6), it may also, in respect of the same offence, make an attendance order under subsection (7), and where a court makes an attendance order under subsection (7), it may also, in respect of the same offence, make a community service order under subsection (6).

17. (1) A captain of any ship belonging to the Royal Navy or any person acting under his orders shall have and exercise all of the powers of a constable under sections 5(1), 6(1) and 25(1) to seize and detain any vessel which he has reasonable cause to suspect of conveying any controlled drug within the territorial waters of the Islands and to arrest any person thereon.

Powers of naval officer

(2) Where a captain of any ship belonging to the Royal Navy or any person acting under his orders-

- (a) finds any controlled drug in any vessel-
 - (i) searched under section 6(1); or
 - (ii) seized and detained under section 25(1);
- (b) arrests any person in such vessel under section 5(1); or
- (c) finds anything in the course of a search of such vessel under section 6(1) which gives such captain or person reasonable cause to suspect that an offence under this Law has been committed,

he shall, as soon as practicable, hand over such vessel, thing or person to a constable or take it or him to a police station.

18. Anything which would constitute a drug trafficking offence if done on land in the Islands constitutes that offence if done on a Cayman ship.

Offences on Cayman ships

19. (1) This section applies to-

Ships used for illicit traffic

- (a) a Cayman ship;
- (b) a ship registered in a state other than the Islands which is a party to the Vienna Convention; and
- (c) a ship that is not registered in any country or territory.

(2) A person on a ship to which this section applies, wherever it may be who-

- (a) has a controlled drug in his possession; or
- (b) is knowingly concerned in the carrying or concealing of a controlled drug on the ship,

knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to section 3(1) or the law of any state other than the Islands is guilty of an offence and liable-

- (i) if the controlled drug is a hard drug -
 - (A) on summary conviction to a fine of twenty thousand dollars and to imprisonment for five years; or
 - (B) on conviction on indictment to a fine and to imprisonment for life; or
- (ii) if the controlled drug is not a hard drug -
 - (A) on summary conviction to a fine of ten thousand dollars and to imprisonment for two years; or
 - (B) on conviction on indictment to a fine and to imprisonment for fourteen years.

(3) A certificate purporting to be issued by or on behalf of the government of a state to the effect that the import or export of a controlled drug is prohibited by the law of that state is evidence of the matter stated.

Enforcement powers in
respect of ships

20. (1) The powers conferred on an enforcement officer by the Fourth Schedule are exercisable in relation to a ship to which section 18 or 19 applies for detecting and taking appropriate action in respect of the offences mentioned in those sections.

(2) The powers referred to in subsection (1) are not exercisable outside the landward limits of the territorial sea of the Islands in relation to a ship registered in a Convention state except with the authority of the Governor.

(3) The Governor shall not give his authority under subsection (2) unless the relevant state has, in relation to the ship-

- (a) requested the assistance of the Islands for the purpose mentioned in subsection (1); or
- (b) authorised the Islands to act for that purpose.

(4) In giving his authority pursuant to a request or authorisation from a Convention state, the Governor shall impose such conditions or limitations on the exercise of the powers as may be necessary to give effect to any conditions or limitations imposed by that state.

(5) The Governor may, either of his own motion or in response to a request from a Convention state, authorise that state to exercise, in relation to a Cayman ship, powers corresponding to those conferred on enforcement officers by the Fourth Schedule but subject to such conditions or limitations, if any, as he may impose.

(6) Subsection (5) is without prejudice to any agreement made, or which may be made, on behalf of the Islands whereby the Islands undertake not to

object to the exercise by any other state in relation to a Cayman ship of powers corresponding to those conferred by the Fourth Schedule.

(7) The powers conferred by the Fourth Schedule are not exercised in the territorial sea of a state other than the Islands without the authority of the Governor.

(8) The Governor shall not give his authority under subsection (7) unless the relevant state has consented to the exercise of those powers.

21. (1) Proceedings under this Law in respect of an offence on a ship are to be taken, and the offence is, for all incidental purposes, to be treated as having been committed in the Islands.

Jurisdiction and
prosecutions in respect
of ships

(2) Proceedings referred to in subsection (1) shall not be instituted except by or with the consent of the Attorney-General.

(3) Without prejudice to subsection (2), proceedings for an offence under section 19 alleged to have been committed outside the landward limits of the territorial sea of the Islands on a ship registered in a Convention state shall not be instituted except with the authority of the Governor.

22. (1) Subject to this section, a law enforcement official on board a law enforcement vessel of a designated Convention state may exercise in the internal waters and the territorial sea of the Islands the powers specified in paragraphs 2, 3 and 4 of the Fourth Schedule in relation to-

Pursuit into territorial
waters

- (a) any ship, when so authorised by a law enforcement official of the Islands who is embarked on a law enforcement vessel of the designated Convention state;
- (b) a ship which is reasonably suspected of engaging in the commission of a drug trafficking offence outside the landward limits of the territorial sea and is pursued into the territorial sea of the Islands by a law enforcement vessel of the designated Convention state; or
- (c) a ship (other than a Cayman ship) which is suspected of engaging in the commission of a drug trafficking offence.

(2) A law enforcement official may only seize and detain a ship where a search under subsection (1) reveals evidence that the ship is being used for the commission of a drug trafficking offence.

(3) A law enforcement vessel of a designated Convention state shall not exercise the powers specified in subsection (1) unless a law enforcement vessel of

the Islands is not immediately available to exercise the powers specified in this section in relation to the ship suspected of engaging in a drug trafficking offence.

(4) A law enforcement official of the designated Convention state shall, before exercising the powers under this section-

- (a) give advance notice of his proposed action in relation to the ship to an enforcement officer of the Islands; or
- (b) where it is not practical to give advance notice, notify an enforcement officer of the Islands of any action taken in relation to the ship at the earliest opportunity after the action has been taken.

(5) Where a law enforcement official of a Convention state exercises any of the powers conferred on him by this section-

- (a) paragraphs 5, 6, 7 and 8 of the Fourth Schedule shall apply to him; and
- (b) the Governor in Council may waive the right of the Islands to its primary jurisdiction and may authorise the enforcement of the law of the designated Convention state against the ship, its cargo or any person on board the ship.

(6) An enforcement officer of the Islands may exercise in the territorial sea of a designated Convention state any of the powers given to a law enforcement official under this section subject to the same conditions applicable to the exercise of those powers by a law enforcement official.

(7) In this section-

“designated Convention state” means a state which is a party to the Vienna Convention and which has been designated for the purposes of this Law by an order by the Governor in Council;

“law enforcement official” means an official of a class selected by a designated Convention state to carry out the powers specified in this section; and

“law enforcement vessel” of a designated Convention state means a warship or other non-commercial ship of that state-

- (a) which is authorised to be in the government’s service of that state for the purposes of enforcement under this Law;
- (b) on which law enforcement officials of that state are embarked; and
- (c) which is clearly marked and identifiable as a law enforcement vessel,

and includes any boat or aircraft embarked on that ship.

23. (1) A person is guilty of an offence if he-
- (a) intentionally obstructs a law enforcement official in the performance of any of his functions under section 22;
 - (b) fails without reasonable excuse to comply with a requirement made by a law enforcement official in the performance of those functions; or
 - (c) in purporting to give information required by an official for the performance of those functions-
 - (i) makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular; or
 - (ii) intentionally fails to disclose a material particular.

Offences relating to section 22

(2) Whoever is guilty of an offence under subsection (1) is liable on summary conviction to a fine of ten thousand dollars.

24. Whoever contravenes this Law or any rule or regulation pursuant thereto is, if no other penalty is specifically provided, liable on summary conviction to a fine of one thousand dollars and to imprisonment for one year.

General penalty

25. (1) If any constable or customs officer has reasonable cause to suspect that any vessel is being used or has been used for the commission of any offence against this Law, he may, without a warrant, board and search such vessel and, if such search reveals evidence that the vessel is being used for the commission of any such offence, seize and detain such vessel.

Seizure and forfeiture of vessels

(2) Where a person is convicted of an offence against this Law, and the court by or before which he is convicted is satisfied that any vessel which was in his possession or under his control at the time of his apprehension -

- (a) has been used in connection with or for the purpose of committing or facilitating the commission of such offence; or
- (b) was intended by him to be used for that purpose,

the court shall order the forfeiture to the Crown of such vessel.

(3) Facilitating the commission of an offence shall be taken for the purposes of this section to include the taking of any steps after the offence has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

(4) If any vessel to which an order under this section relates is not already in the possession of a constable at the time of the making of the order, the vessel shall be taken into such possession with all reasonable despatch.

1995 Revision

(5) Part V of the Police Law (1995 Revision) shall not apply to any vessel which is the subject of an order under this section.

(6) Where any vessel is ordered to be forfeited under subsection (2), the owner of such vessel may make within fourteen days of such order, and after having given not less than four days notice to the Attorney-General, a claim to the court making such order of forfeiture for the vessel to be restored to him.

(7) Where a claim is made to the court under subsection (6), the court may, subject to subsection (8), order that the vessel shall be restored to the owner thereof on payment by him of any expenses incurred for transporting and keeping such vessel for the purposes of this section.

(8) A court shall not make an order under subsection (7) unless it is satisfied that the owner, charterer, master, pilot, operator or person in control of the vessel -

- (a) (i) did not permit any person convicted of an offence under this Law to use the vessel for the purpose of conveying any controlled drug in respect of which the offence was committed; and
- (ii) had no knowledge that any person convicted of an offence under this Law would use the vessel for the purpose of conveying any controlled drug in respect of which the offence was committed; or
- (b) has paid into court a redemption fee equivalent to seventy-five per cent of the value of the vessel:

Provided that no order under this section shall give rise to a claim based on the difference in value at the time of revesting from such value at the time of seizure.

Seizure and detention of drug trafficking money imported or exported in cash

26. (1) A constable or customs officer may seize and, in accordance with this section, detain cash which is being imported into or exported from the Islands if he has reasonable grounds for suspecting that it directly or indirectly represents a person's proceeds of drug trafficking or is intended by a person for use in drug trafficking.

(2) Cash seized by virtue of subsection (1) shall not be detained for more than forty-eight hours unless its continued detention is authorised by an order made by a Justice of the Peace

(3) A Justice of the Peace shall not make an order under subsection (2) unless he is satisfied that -

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

(4) An order under subsection (2) authorises the continued detention of the cash to which it relates for such period, not exceeding three months, as is specified in the order.

(5) If a magistrate is satisfied as to the matters mentioned in subsection (3) he may, from time to time by order, authorise the further detention of the cash but so that-

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

(6) Any application for an order under subsection (2) or (5) shall be made by the Attorney-General.

(7) At any time while cash is detained by virtue of this section a magistrate may direct its release if he is satisfied -

- (a) 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 grounds or are no longer any grounds for its detention, as mentioned in subsection (3); or
- (b) on an application made by any other person, that detention of the cash is not for that or any other reason justified.

(8) At any time while cash is detained by virtue of this section a constable or customs officer may release the cash -

- (a) if he is satisfied that its detention is no longer justified; and
- (b) he is authorised to do so by the justice or magistrate under whose order it is being detained.

- (9) If, at a time while cash is detained by virtue of this section-
 - (a) an application for its forfeiture is made under section 27; or
 - (b) proceedings are instituted (whether in the Islands or elsewhere) against a person for an offence with which the cash is connected,

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

Forfeiture of cash

27. (1) A magistrate may order the forfeiture of cash which has been seized under section 26 if he is satisfied, on an application made while the cash is detained under that section, that the cash directly or indirectly represents a person's proceeds of drug trafficking or is intended by a person for use in drug trafficking.

(2) Any application under subsection (1) shall be made by the Attorney-General.

(3) The standard of proof in proceedings on an application under subsection (1) is that applicable to civil proceedings.

(4) An order may be made under subsection (1) whether or not proceedings are brought against a person for an offence with which the cash in question is connected.

(5) Any money representing cash forfeited under subsection (1) and any interest accrued on that money forms part of the revenue of the Islands.

Interest

28. (1) Cash seized under section 26 and detained for more than forty-eight hours shall, unless required as evidence of an offence, be held in an interest-bearing account.

(2) Interest accruing on cash seized under section 26 shall be added to the cash on its forfeiture or release.

Procedure

29. (1) An order under section 26(2) shall provide for notice to be given to persons affected by the order.

- (2) Provision may be made by rules of court-
 - (a) with respect to applications to a court under section 26 or 27;
 - (b) for the giving of notice of such applications to persons affected;
 - (c) for the joinder of such persons as parties; and
 - (d) generally with respect to the procedure under those sections before a court.

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

30. (1) Notwithstanding and not in derogation of section 31, but subject to subsection (2), where a person is convicted of an offence against this Law, and the court by or before which he is convicted is satisfied that any monies or any other thing relate to or have been acquired due to or as a result of the offence, the court shall order that such monies or other thing be forfeited to the Crown or dealt with in such other manner as it may direct.

Forfeiture, etc., of
acquired assets

(2) The court shall not order any monies or other thing to be forfeited or dealt with under subsection (1) where a person claiming to be the owner of or otherwise interested therein applies to be heard by the court within fourteen days of conviction, unless an opportunity has been given to him to show cause why the order should not be made.

(3) Part V of the Police Law (1995 Revision) shall not apply to any monies or other thing which is the subject of an order under subsection (1).

1995 Revision

31. (1) Where a person, who has not previously been sentenced or otherwise dealt with in respect of his conviction for that offence, appears before a court to be sentenced in respect of a drug trafficking offence, the court shall act in accordance with subsections (2), (4) and (5).

Confiscation order

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

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

(4) If the court determines that he has so benefited, it shall, before sentencing or otherwise dealing with him in respect of the offence, determine in accordance with section 35 the amount to be recovered by virtue of this section.

(5) The court shall then, in respect of that offence-

- (a) order him 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 30; and
- (c) subject to paragraph (b), leave the order out of account in determining the appropriate sentence or other manner of dealing

with the person against whom proceedings have been instituted for the drug trafficking offence.

(6) No law 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 it considers appropriate in respect of a drug trafficking offence.

1995 Revision

(7) Where the court makes a confiscation order, sections 28 and 30 of the Penal Code (1995 Revision) shall apply *mutatis mutandis* as if the amount mentioned in such order were a fine imposed by the court.

1995 Revision

(8) Where the court has directed that, in default of payment of an amount ordered to be paid under a confiscation order, the person against whom that order is made shall serve a term of imprisonment, and, at the time such direction is made, that person is liable to serve a term of imprisonment in respect of a drug trafficking offence, the term of imprisonment under section 30 of the Penal Code (1995 Revision), as applied by subsection (7), to be served in default of payment of that amount shall not begin to run until after such term has been served:

Provided that, for the purposes of this subsection-

- (a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term; and
- (b) there shall be disregarded any sentence suspended under section 24 of the Penal Code (1995 Revision) which has not taken effect at the time the warrant is issued.

Variation of confiscation order

32. (1) If, on an application by a person against whom proceedings have been instituted for a drug trafficking offence in respect of a confiscation order, the Grand Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order the court shall issue a certificate to that effect, giving its reasons.

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

- (a) in the case of realisable property held by a person against whom an absolute order for bankruptcy has been made, 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 person against whom the proceedings have

been instituted for the purpose of preserving any property held by a person to whom he had directly or indirectly made a gift caught by this Law, as defined in section 46(1), from any risk of realisation under section 40.

(3) Where a certificate has been issued under subsection (1), the person against whom the proceedings have been instituted may apply to the Grand Court for the amount to be recovered under the order to be reduced.

(4) An application under subsection (1) or (3) may be made in chambers, and notice thereof shall be given to the prosecution.

33. (1) The court may, for the purpose of determining whether the person against whom proceedings have been instituted for a drug trafficking offence has benefited from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking, make the assumptions mentioned in subsection (2), except to the extent that any of them are shown to be incorrect in his case.

Assessing the proceeds
of drug trafficking

(2) Those assumptions are -

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

(3) For the purpose of assessing the value of the proceeds of drug trafficking of a person against whom proceedings have been instituted for a drug trafficking offence 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.

(4) For the purposes of this section -

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

Statements relating to
drug trafficking

34. (1) Where-

- (a) there is tendered to the court by the prosecution a statement as to any matters relevant to the determination whether a person against whom proceedings have been instituted for a drug trafficking offence has benefited from drug trafficking or to the assessment of the value of his proceeds of drug trafficking; and
- (b) that person accepts to any extent any allegation in the statement,

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

(2) Where -

- (a) a statement is tendered under paragraph (a) of subsection (1); and
- (b) the court is satisfied that a copy of that statement has been served on the person against whom the proceedings have been instituted,

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

(3) If the person against whom the proceedings have been instituted fails in any respect to comply with a requirement under subsection (2), he may be treated, for the purposes of this section, as accepting every allegation in the statement apart from-

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

(4) Where-

- (a) there is tendered to the court by the person against whom the proceedings have been instituted 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 prosecution accepts to any extent any allegation in the statement,

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

(5) An allegation may be accepted or a matter indicated for the purposes of this section either orally before the court or in writing.

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

35. (1) Subject to subsection (3), the amount to be recovered in the case of a person against whom proceedings have been instituted for a drug trafficking offence under the confiscation order shall be the amount the court assesses to be the value of his proceeds of drug trafficking.

Amount to be recovered
under confiscation order

(2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made, whether by an acceptance under section 34 or otherwise, the court may issue a certificate giving its 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 it assesses to be the value of his proceeds of drug trafficking, the amount to be recovered under the confiscation order shall be the amount appearing to the court to be the amount that might be so realised.

(4) For the purposes of this section -

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

(5) For the purposes of this section, the amount that might be realised at the time a confiscation order is made is-

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

together with the total of the values at that time of all gifts caught by this Law, as defined in section 46.

(6) For the purposes of subsection (5), an obligation has priority at any time if it is an obligation to pay-

- (a) an amount due in respect of a fine or order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
- (b) any sum which, if the defendant has had an absolute order for bankruptcy made against him or was being wound up, would be among debts to be paid in priority to all other debts.

Increase in realisable property

36. (1) This section has effect where by virtue of section 35(3) (insufficient realisable property) 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 Grand 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 Attorney-General or by a receiver appointed under section 39(5) in relation to the realisable property of the person in question.

(4) If a certificate has been issued under subsection (2), the Attorney-General may apply to the Grand Court for an increase in the amount to be recovered under the confiscation order.

(5) On an application under subsection (4), the court may -

- (a) substitute for the amount to be recovered under the confiscation order 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 any term of imprisonment that the court has directed to be served in default of payment of the amount ordered to be paid under the confiscation order.

Interest on sums unpaid under confiscation order

37. (1) If a sum required to be paid by a person under a confiscation order is not paid when it is required to be paid, that person is to pay interest on that sum for the period for which it remains unpaid and the amount of the interest is, for

the purposes of enforcement, to be treated as part of the amount to be recovered from him under the confiscation order.

(2) The Grand Court may, on the application of the Attorney-General increase any term of imprisonment that the court has directed to be served in default of payment of the amount ordered to be paid.

(3) The rate of interest under subsection (1) is that for the time being applying to a civil judgement debt.

38. (1) The powers conferred on the Grand Court by section 39(1) are exercisable where-

Cases in which restraint order may be made

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

(2) Those powers are also exercisable where the court is satisfied that -

- (a) a complaint is to be made under section 13(1) of the Criminal Procedure Code (1995 Revision) that a person has or is suspected of having committed a drug trafficking offence; and
- (b) there is reasonable cause to believe that he has benefited from drug trafficking.

1995 Revision

(3) Where the court has made an order under section 39(1) by virtue of subsection (2) hereof, the court shall discharge the order if the proposed proceedings are not instituted within such time as it considers reasonable.

(4) For the purposes of paragraph (a) of subsection (1), proceedings for an offence are instituted in the Islands -

- (a) when a charge has been signed, under section 13(3) or (4) of the Criminal Procedure Code (1995 Revision) in respect of the offence; or
- (b) when a person is charged with the offence after being arrested without a warrant, under section 13(5) of the Criminal Procedure Code (1995 Revision),

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 earlier of those times.

(5) For the purposes of paragraph (b) of subsection (1), proceedings in the Islands for an offence are concluded on-

- (a) the discontinuance of the proceedings;
- (b) the acquittal of the person against whom the proceedings were instituted;
- (c) the quashing of his conviction for the offence;
- (d) the grant of Her Majesty's pardon in respect of his conviction for the offence;
- (e) the court sentencing or otherwise dealing with him in respect of his conviction for the offence without having made a confiscation order; or
- (f) the satisfaction of a confiscation order made in the proceedings, whether by payment of the amount due under the order or by the person serving imprisonment in default.

Restraint order

39. (1) The Grand Court may, by 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) A restraint order -

- (a) may be made only on an application by or on behalf of the Attorney-General;
- (b) may be made on an *ex parte* application in chambers; and
- (c) shall provide for notice to be given to persons affected by the order.

(4) A restraint order-

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged when proceedings for the offences are concluded, which latter word, for the purposes of this paragraph, has the same meaning as applies to section 38(5).

(5) Where the Grand Court has made a restraint order, it may at any time appoint a receiver -

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

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

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

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

(7) Where the Grand Court has made a restraint order, a constable may seize any realisable property for the purpose of preventing it being removed from the Islands.

(8) Property seized under subsection (7) shall be dealt with in accordance with the court's directions.

(9) For the purposes of this section, at any time when the powers conferred on the Grand Court by section 38 are exercisable before proceedings have been instituted, a reference to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in paragraph (a) of section 38(2) for a drug trafficking offence.

(10) In this section-

“restraint order” means an order made under subsection (1).

40. (1) Where-

Realisation of property

- (a) in proceedings instituted (which latter word, for the purposes of this paragraph, has the same meaning as applies to paragraph (a) of section 38(1)) in the Islands for a drug trafficking offence, a confiscation order is made;
- (b) the order is not subject to appeal; and
- (c) the proceedings have not been concluded, (which latter word, for the purposes of this paragraph, has the same meaning as applies to section 38(5)),

the Grand Court may, on an application by or on behalf of the Attorney-General, 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) hereof or under section 39(5), in relation to any realisable property, to take possession of that property subject to such conditions or exceptions as may be specified by the court.

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

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

(6) The court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Law, as defined in section 46(1), as it may direct and it may, on the payment being made, by Order, transfer, grant or extinguish any interest in the property.

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

(8) For the purposes of paragraph (b) of subsection (1), an order is subject to appeal so long as an appeal or further appeal is pending against it or, if it was made on a conviction, against that conviction; and, for this purpose, an appeal or further appeal shall be treated as pending (where one is competent but has not been brought) until the expiration of the time for bringing that appeal.

Application of proceeds
of realisation and other
sums

41. (1) Subject to subsection (2), the following sums in the hands of a receiver appointed under section 39(5) or 40(2) that is-

- (a) the proceeds of the realisation of any property under paragraph (b) of section 39(5) or under section 40(5) or (6); and
- (b) any other sums, being property held by a person against whom proceedings have been instituted for a drug trafficking offence,

shall, after such payments, if any, as the Grand Court may direct have been made out of those sums, be applied on that person's behalf towards the satisfaction of the confiscation order.

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

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

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

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

- (a) if paid by a receiver under subsection (1), it shall first be applied in payment of his remuneration and expenses; and
- (b) subject to paragraph (a), it shall be applied in reimbursement of any sums paid by the prosecution under section 42(8),

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

42. (1) Subsections (1) to (6) apply to the powers conferred on the Grand Court by sections 39, 40 and 41 or on a receiver appointed under section 39(5) or 40(2).

Exercise of powers by
Grand Court or receiver

(2) Subject to subsections (3) to (8), 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 case of the person against whom proceedings have been instituted for a drug trafficking offence the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to whom the person against whom the proceedings have been instituted has directly or indirectly made a gift caught by this Law, as defined in section 46(1), the powers shall be exercised with a view to realising no more than the value, for the time being, of that gift.

(4) The powers shall be exercised with a view to allowing any person, other than the person against whom the proceedings have been instituted or the recipient of any such gift, to retain or recover the value of any property held by him.

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

(6) In exercising those powers, no account shall be taken of any obligations of the person against whom the proceedings have been instituted or of

the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

(7) Where a receiver appointed under section 39(5) or 40(2) takes any action -

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

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

(8) Any amount due in respect of the remuneration and expenses of a receiver appointed under section 39(5) or 40(2) shall, if no sum is available to be applied in payment of it under paragraph (a) of section 41(3), be paid by the prosecution or, in a case where proceedings for a drug trafficking offence are not instituted, by the person on whose application the receiver was appointed.

Compensation

43. (1) If proceedings are instituted against a person for a drug trafficking offence and either -

- (a) the proceedings do not result in his conviction for any drug trafficking offence; or
- (b) where he is convicted of the offence -
 - (i) the conviction concerned is quashed without a conviction for any other drug trafficking offence being substituted; or
 - (ii) Her Majesty has granted pardon in respect of the conviction,

the Grand Court may, on an application by a person who held property which was realisable property, order compensation to be paid by the Government to the applicant.

(2) The Grand 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 concerned and that, but for that default, the proceedings would not have been instituted or continued; and
- (b) that the applicant has suffered substantial loss in consequence of anything done in relation to the property by or in pursuance of an order of the Grand Court under section 39 or 40.

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

44. (1) A constable may, for the purpose of an investigation into drug trafficking, apply to the Grand Court for an order under subsection (2) in relation to particular material or to material of a particular description.

Order to make material available

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

- (a) produce it to a constable to take away; or
- (b) give a constable access to it,

within such period as the order may specify.

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

(4) The conditions referred to in subsection (2) are that -

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

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

(5) Where the court makes an order under paragraph (b) of subsection (2) in relation to material on any premises it may, on the application of a constable, order any person who appears to it to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.

(6) The Chief Justice may make rules governing the procedure in relation to -

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

(7) Where the material to which an application under this section relates consists of information contained in a computer -

- (a) an order under paragraph (a) of subsection (2) 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 paragraph (b) of subsection (2) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(8) An order under subsection (2) -

- (a) shall not confer any right to production of, or access to, items subject to legal privilege;
- (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information whether imposed by the Confidential Relationships (Preservation) Law (1995 Revision), any other law or the common law; and
- (c) may be made in relation to material in the possession of the Government.

1995 Revision

(9) Where, in relation to an investigation into drug trafficking, an order under subsection (2) has been made or has been applied for and has not been refused or a warrant under section 45 has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation is guilty of an offence.

(10) 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.

(11) Whoever is guilty of an offence under subsection (9) is liable on conviction to a fine and to imprisonment for five years.

Authority for search

45. (1) A constable may, for the purpose of an investigation into drug trafficking, apply to the Grand Court for a warrant under this section in relation to specified premises.
- (2) On such application the court may issue a warrant authorising a constable to enter and search the premises if it is satisfied that -
- (a) an order made under section 44(2) in relation to material on the premises has not been complied with;
 - (b) the conditions in subsection (3) are fulfilled; or
 - (c) the conditions in subsection (4) are fulfilled.
- (3) The conditions referred to in paragraph (b) of subsection (2) are that-
- (a) there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
 - (b) the conditions in paragraphs (b) and (c) of section 44(4) are fulfilled in relation to any material on the premises; and
 - (c) 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 constable could secure immediate access to the material.
- (4) The conditions referred to in paragraph (c) of subsection (2) are that -
- (a) there are reasonable grounds for suspecting that a specific person has carried on or has benefited from drug trafficking;
 - (b) there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised; and
 - (c)
 - (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
 - (ii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a constable

arriving at the premises could secure immediate entry to them.

(5) Where a constable 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, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

Other provisions re offences, gifts, property, etc.

46. (1) A gift is caught by this Law if -

- (a) it was made by a person against whom proceedings have been instituted for a drug trafficking offence at any time since the beginning of the period of six years ending when the proceedings were instituted; or
- (b) it was made by him at any time and was a gift of property -
 - (i) received by him in connection with drug trafficking carried on by him or another; or
 - (ii) which in whole or in part directly or indirectly represented in his hands property received by him in that connection.

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

- (a) the circumstances in which a person against whom proceedings have been instituted for a drug trafficking offence 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 him; and
- (b) in those circumstances, section 35(5) and subsections (1), (2), (4) and (5) hereof shall apply as if he had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the value referred to in paragraph (a) bears to the value of the consideration provided by him.

(3) Subject to section 35(5) and subsections (1), (2), (4) and (5) hereof, for the purposes of this Law, the value of property (other than cash) in relation to any person holding the property is-

- (a) where any other person holds an interest in the property, the market value of the first mentioned person's beneficial interest in the property, less the amount required to discharge any encumbrance on that interest; and
- (b) in any other case, its market value.

(4) Subject to subsection (2), a reference in this Law to the value at any time (referred to in subsection (5) as “the material time”) of a gift caught by this Law, as defined in subsection (1), or of any payment or reward is a reference 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 (5) applies, the value there mentioned,

whichever is the greater.

(5) Subject to subsection (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 paragraph (b) of subsection (4) 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 so represents the property which he received.

(6) For the purposes of sections 31 to 46 -

- (a) a reference to an offence includes a reference to an offence committed before the 12th September, 1988; but nothing in those sections imposes any duty or confers any power on any court in or in connection with proceedings against a person for a drug trafficking offence instituted before that date;
- (b) a reference to property applies to property whether it is situated in the Islands or elsewhere;
- (c) property is held by a person if he holds any interest in it;
- (d) property is transferred by one person to another if the first person transfers or grants to the other any interest in it; and
- (e) a reference to anything received in connection with drug trafficking includes a reference to anything received both in that connection and in some other connection.

47. (1) Subject to subsection (3), any person who after the 9th June, 1989, enters into or is otherwise concerned in any arrangement whereby-

Offence of assisting
drug traffickers

- (a) the retention or control by or on behalf of any other person, in this section referred to as ‘A’, of proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
- (b) ‘A’'s proceeds of drug trafficking are used-
 - (i) to secure that funds are placed at ‘A’'s disposal; or

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

knowing or believing that 'A' is a person who carries on or has carried on drug trafficking or has at any time received any payment or other reward in connection with drug trafficking carried on by him or another, is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to imprisonment for two years and on conviction on indictment to a fine and to imprisonment for fourteen years.

(2) In this section, a reference to a person's proceeds of drug trafficking includes 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 constable of the rank of Inspector or above 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 contract or by any law; and
- (b) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if the disclosure is made-
 - (i) before he does the act, being an act done with the consent of such constable; or
 - (ii) after he does the act, but was made on his initiative and as soon as it was a reasonable for him to have made it.

(4) In proceedings against a person for an offence under this section, it is a defence to prove on the balance of probabilities that-

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

Offence of concealing or transferring proceeds of drug trafficking

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

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

to avoid 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 believe that property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he-

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

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

(3) A person is guilty of an offence if, knowing or having reasonable grounds to believe that property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he acquires the property for no consideration or for an inadequate consideration.

(4) In paragraph (a) of subsection (1) and paragraph (a) of subsection (2), references to concealing or disguising property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or a right with respect to it.

(5) For the purposes of subsection (3)-

- (a) consideration given for property is inadequate if its value is significantly less than the value of the property; and
- (b) the provision of services or goods for a person which are of assistance to him in drug trafficking is not consideration given for property.

(6) Whoever is guilty of an offence under this section is liable -

- (a) on summary conviction to a fine of five thousand dollars and to imprisonment for two years; and
- (b) on conviction on indictment to a fine and to imprisonment for fourteen years.

49. (1) The Governor may, by Order-

Enforcement of external
confiscation orders

- (a) direct in relation to a designated country that, subject to such modifications (which expression includes additions, alterations and omissions) as may be specified, this Law 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 of section 50; and
 - (iii) such incidental, consequential and transitional provision, as appears to him to be expedient; and
- (c) without prejudice to the generality of this subsection, direct that, in such circumstances as may be specified, proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under such order to such extent as may be specified.

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

(3) The power to make an order under this section includes power to modify (which expression includes to add to, to alter and to make omissions from) this Law in such a way as to confer power on a person to exercise a discretion.

Registration of external
confiscation orders

50. (1) On an application made by or on behalf of the Government of a designated country, the Grand Court may register an external confiscation order made there if it is-

- (a) satisfied that at the time of registration the order is in force and not subject to appeal (which expression includes both any proceedings by way of discharging or setting aside a judgement or an application for a new trial or for a stay of execution);
- (b) 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) of the opinion that enforcing the order in the Islands would not be contrary to the interests of justice.

(2) The Grand Court shall cancel the registration of an external confiscation order if it appears to it that the order has been satisfied by payment

of the amount due under it, by the person against whom it was made serving imprisonment in default of payment, or by any other means.

51. Notwithstanding any other law prescribing the time within which proceedings for an offence punishable on summary conviction may be commenced, any proceedings for an offence under this Law, may be commenced either within the time so prescribed or within three months from the date on which evidence sufficient in the opinion of the Attorney-General to justify a prosecution for the offence comes to his knowledge, whichever time is the longer, and for the purposes of this section a certificate purporting to be signed by the Attorney-General as to the date on which such evidence came to his knowledge shall be conclusive evidence thereof.

Time within which proceedings may be brought

52. (1) Subject to subsection (2), where a person is convicted of an offence under this Law and the powers of sentence for that offence are contained in section 16(2), (3) or (4), neither the Probation of Offenders Law (1999 Revision) nor sections 35 and 36 of the Penal Code (1995 Revision) nor section 74 of the Criminal Procedure Code (1995 Revision) shall apply for the purpose of avoiding or mitigating that sentence.

Probation of Offenders Law, etc. not applicable

1999 Revision

1995 Revisions

(2) Subsection (1) does not apply where a person is convicted of an offence under paragraphs (k) or (l) of section 3(1) in relation to a controlled drug that-

- (a) is not a hard drug, is less than one pound in weight, and the power of sentence for that offence is contained in section 16(2); or
- (b) is less than two ounces in weight and the power of sentence for that offence is contained in section 16(4).

53. (1) A community service order made under section 16(6) shall require the person convicted to perform unpaid work in accordance with the subsequent provisions of this Law for such number of hours (being in the aggregate not less than forty nor more than two hundred and forty) as may be specified in the order.

Community service order in respect of convicted person

(2) A court shall not make a community service order in respect of any offender unless the offender consents and the court -

- (a) has been notified by the Governor that arrangements exist for persons to perform work under such orders; and
- (b) is satisfied -
 - (i) after considering a report by a probation officer about the offender and his circumstances and, if the court thinks it necessary, hearing a probation officer, that the offender is a suitable person to perform work under such an order; and

- (ii) that provision can be made under the arrangements for him to do so.

(3) Where a court makes community service orders in respect of two or more offences of which the offender has been convicted by or before the court, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders.

(4) A community service order shall specify the area in which the offender resides or will reside; and the functions conferred by the subsequent provisions of this Law on the relevant officer shall be discharged by a probation officer appointed for or assigned to the area.

(5) Before making a community service order the court shall explain to the offender in ordinary language -

- (a) the purpose and effect of the order (and in particular the requirements of the order as specified in section 54);
- (b) the consequences which may follow under section 55 if he fails to comply with any of those requirements; and
- (c) that the court has under section 56 the power to review the order on the application either of the offender or of a probation officer.

(6) The court by which a community service order is made shall forthwith give copies of the order to the offender and to the relevant officer.

(7) The Governor may, by notice, direct that subsection (1) shall be amended by substituting, for the maximum number of hours specified, such number of hours as may be specified in the notice.

(8) Nothing in subsection (1) shall be construed as preventing a court which makes a community service order in respect of any offence from making an order for costs against, or imposing any disqualification on, the offender.

Obligations of person
subject to community
service order

54. (1) An offender in respect of whom a community service order is in force shall-

- (a) report to the relevant officer and subsequently from time to time notify him of any change of address; and
- (b) perform, for the number of hours specified in the order, such work at such times as he may be instructed by the relevant officer.

(2) Subject to section 56, the work required to be performed under a community service order shall be performed during the period of twelve months beginning with the date of the order.

(3) The instructions given by the relevant officer under this section shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which he normally works or attends a school or other educational establishment.

55. (1) If, at any time while a community service order is in force in respect of an offender, it appears on information to a Justice of the Peace that the offender has failed to comply with any of the requirements of section 54 (including any failure satisfactorily to perform the work which he has been instructed to do), the Justice may issue a summons requiring the offender to appear at the place and time specified therein, or may, if the information is in writing and on oath, issue a warrant for his arrest.

Breach of requirements of community service order

(2) Any summons or warrant issued under this section shall direct the offender to appear or be brought before the magistrates court.

(3) If it is proved to the satisfaction of the magistrates court before which an offender appears or is brought that he has failed without reasonable excuse to comply with any of the requirements of section 54 the court may, without prejudice to the continuance of the order, impose on him a fine not exceeding one hundred dollars or may revoke the order and impose in substitution therefor, in addition to any other sentence either by way of fine or imprisonment, or both, which may have already been imposed at the time of the original conviction a further fine or a further term of imprisonment, or both, but not so as to cause the further fine when added to the fine originally imposed, if any, or the further term of imprisonment when added to the term of imprisonment originally imposed, if any, to exceed the fine or term of imprisonment laid down in the section of the Law in respect of contravention of which the person convicted was originally sentenced and where no fine or imprisonment has been imposed at the time of the original conviction then the court before whom the offender is brought under the provisions of this subsection may impose such fine or imprisonment or both as could have been imposed by the court by whom the offender was originally convicted, and in all such cases imprisonment shall be imprisonment with hard labour.

56. Where a community service order is in force in respect of any offender and, on the application of the offender or the relevant officer, it appears to the court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, the court may extend, in relation to the order, the period of twelve months specified in section 54(2).

Amendment of community service order

57. (1) An attendance order made under section 16(7) shall require the person convicted to attend during such period not exceeding twelve months as may be

Attendance order in respect of convicted person

specified in the order at a training centre or such other place as may be specified in the said order.

(2) A court shall not make an attendance order in respect of any offender unless -

- (a) it has been notified by the Governor that a training centre or other suitable place exists in respect of which the order may be made; and
- (b) it is satisfied that arrangements can be made for his attendance at such place.

(3) An attendance order made shall require the person in respect of whom it is made -

- (a) to attend at the place specified in such order on not more than sixty days in accordance with such instructions as shall be given by the probation officer who has been appointed by the order to be responsible for his supervision; and
- (b) shall further require the person in respect of whom the order is made while attending there to comply with such instructions as are given by or under the authority of the person in charge of the place.

(4) For the purposes of this section references to attendance at a training centre shall include references to attendance elsewhere for the purpose of receiving training in accordance with instructions given by or under the authority of the person in charge of the centre.

(5) Where a court makes attendance orders in respect of two or more offences of which the offender has been convicted by or before the court, the court may direct that the orders shall be concurrent with or additional to those specified in any other of those orders.

(6) The court by which an attendance order is made shall forthwith give copies of the order to the offender and to the relevant officer.

(7) The Governor may, by notice, direct that subsection (1) or (3) shall be amended by substituting, for the maximum number of months or days specified, such number of months or days as may be specified in the notice.

(8) Nothing in subsection (1) shall be construed as preventing a court which makes an attendance order in respect of any offence from making an order for costs against, or imposing any disqualification on, the offender.

58. (1) If, at any time while an attendance order is in force in respect of an offender, it appears on information to a Justice of the Peace that the offender has failed to comply with any of the requirements of the attendance order, the Justice may issue a summons requiring the offender to appear at the place and time specified therein, or may, if the information is in writing and on oath, issue a warrant for his arrest.

Breach of requirements
of attendance order

(2) Any summons or warrant issued under this section shall direct the offender to appear or be brought before the magistrates court.

(3) If it is proved to the satisfaction of the magistrates court before which an offender appears or is brought that he has failed without reasonable excuse to comply with any of the requirements of the attendance order, the court may, without prejudice to the continuance of the order, impose on him a fine not exceeding one hundred dollars or may revoke the order and impose in substitution therefor, in addition to any other sentence either by way of fine or imprisonment, or both, which may have already been imposed at the time of the original conviction a further fine or a further term of imprisonment, or both, but not so as to cause the further fine when added to the fine originally imposed, if any, to exceed the fine or term of imprisonment laid down in the section of the Law in respect of contravention of which the person convicted was originally sentenced, and, where no fine or imprisonment has been imposed at the time of the original conviction, then the court before whom the offender is brought under this subsection may impose such fine or imprisonment, or both, as could have been imposed by the court by whom the offender was originally convicted, and in all such cases imprisonment shall be imprisonment with hard labour.

59. Where an attendance order is in force in respect of any offender and, on the application of the offender or the relevant officer, it appears to the court that it would be in the interests of justice to do so having regard to the circumstances which have arisen since the order was made, the court may extend, in relation to the order, the period of twelve months specified in section 57(1).

Amendment of
attendance order

60. (1) Notwithstanding any other section of this Law where a person is charged with any offence of selling, dealing in, distributing, supplying, dispensing, storing, issuing a prescription for, administering, importing, exporting, producing or attempting, contrary to section 3(1) which relates to a controlled drug that is a hard drug, then such offence shall be deemed, for the purpose of determining the mode of trial, a category B offence in accordance with section 5 of the Criminal Procedure Code (1995 Revision).

Procedure in respect of
certain offences

1995 Revision

(2) For the removal of doubt it is hereby declared that where a person is convicted of an offence on trial upon indictment pursuant to subsection (1) the

Grand Court may impose a term of imprisonment and a fine in accordance with section 16(4) or Part B of the Second Schedule.

No derogation from
Rehabilitation of
Offenders Law (1998
Revision)

61. For the avoidance of doubt, it is hereby declared that nothing in this Law derogates from the provisions of the Rehabilitation of Offenders Law (1998 Revision).

FIRST SCHEDULE
CONTROLLED DRUGS (Section 2(1))

PART I

1. The following substances and products, namely-

(a)

Acetorphine	Ethylmethylthiambutene
Alfentanil	Etorphine
Allylprodine	Etoxidine
Alphacetylmethadol	Fentanyl
Alphameprodine	Furethidine
Alphamethadol	Hydrocodone
Alphaprodine	Hydromorfinol
Anileridine	Hydromorphone
Benzethidine	Hydroxypethidine
Benzylmorphine	Isomethadone
(3-benzylmorphine)	Ketobemidone
Betacetylmethadol	Levomethorphan
Betameprodine	Levomoramide
Betamethadol	Levophenacylmorphin,
Betaprodine	Levorphanol
Bezitramide	Lofentanil
Bufotenine	Lysergamide
Cannabinol, except where	Lysergide and other N-alkyl
contained in cannabis or	derivatives of lysergamide
cannabis resin	Mescaline
Cannabinol derivatives	Metazocine
Carfentanil	Methadone
Clonitazene	Methadyl acetate
Coca leaf	Methyldesorphine
Cocaine	Methyldihydromorphine (6-methyl-
Desomorphi	dihydromorphine)
Dextromoramide	Metopon
Diamorphine	Morpheridine
Diampromide	Morphine
Diethylthiambutene	Morphine methobromide, morphine N-
Difenoxin (1-(3-cyano-3,	oxide and other prevalent nitrogen
3-diphenylpropyl)-4-phenylpiperidine-	morphine derivatives
4 carboxylic acid)	Myrophine
Dihydrocodeinone O-carboxymethyloxime	Nicomorphine
Dihydromorphine	(3,6-dinicotinoyl-morphine)
Dimenoxadole	Noracymethadol

Dimepheptanol	Norlevorphanol
Dimethylthiambutene	Normethadone
Dioxaphertyl butyrate	Normorphine
Diphenoxylate	Norpipanone
Dipipanone	Opium, whether raw, prepared or medicinal
Drotebanol (3,4-dimethoxy-17 methyl-morphinan-6 β ,- 14-diol)	Oxycodone
Ecgonine, and any derivative of ecgonine which is convertible to ecgonine or to cocaine	Oxymorphone
Phenampromide.	Pethidine
Phenazocine	Phenadoxone
Phencyclidine	Trimeperidine
Phenomorphan	4-Bromo-2,5-dimethoxy- α -methyl-phenethylamine
Phenoperidine	4-Cyano-2-dimethyl-amino-4, 4-diphenyl-butane
Piminodine	4-Cyano- 1 -methyl-4-phenyl-piperidine
Piritramide	N, N -Diethyltryptamine
Poppy-straw and concentrate of poppy-straw	N, N-Dimethyltryptamine
Proheptazine	2,5-Dimethoxy- α ,4-dimethyl-phenethylamine
Properidine	N-Hydroxytenamphetamine
(1-methyl-4-phenylpiperidine-4-carboxylic acid isopropyl ester)	1 -Methyl -4-phenyl-piperidine-4-carboxylic acid
Psilocin	2-Methyl-3-morpholino- 1, 1-diphenylpropane-carboxylic acid
Racemethorphan	4-Methylaminorex.
Racemoramide	4-Phenylpiperidine-4-carboxylic acid ethyl ester
Racemorphan	
Rolicyclidine	
Sufentanil	
Tenocyclidine	
Thebacon	
Thebaine	
Tilidate	

- (b) any compound (not being a compound for the time being specified in sub-paragraph (a)) structurally derived from tryptamine or from a ring-hydroxy tryptamine by substitution at the nitrogen atom of the sidechain with one or more alkyl substituents but no other substituent;
- (c) any compound (not being methoxyphenamine or a compound for the time being specified in sub-paragraph (a)) structurally derived from phenethylamine, an N-alkylphenethylamine, α -methylphenethylamine, an N-alkyl- α -methylphenethylamine, α -

ethylphenethylamine, or an N-alkyl- α -ethylphenethylamine by substitution in the ring to any extent with alkyl, alkoxy, alkylendioxy or halide substituents, whether or not further substituted in the ring by one or more other univalent substituents;

- (d) any compound (not being a compound for the time being specified in sub-paragraph (a)) structurally derived from fentanyl by modification in any of the following ways, that is to say-
 - (i) by replacement of the phenyl portion of the phenethyl group by any heteromonocycle whether or not further substituted in the heterocycle;
 - (ii) by substitution in the phenethyl group with alkyl, alkenyl, alkoxy, hydroxy, halogeno, haloalkyl, amino or nitro groups;
 - (iii) by substitution in the piperadine ring with alkyl or alkenyl groups;
 - (iv) by substitution in the aniline ring with alkyl, alkoxy, alkylendioxy, halogeno or haloalkyl groups,
 - (v) by substitution at the 4-position of the piperidine ring with any alkoxy-carbonyl or alkoxyalkyl or acyloxy group;
 - (vi) by replacement of the N-propionyl group by another acyl group;
- (e) any compound (not being a compound for the time being specified in sub-paragraph (a)) structurally derived from pethidine by modification in any of the following ways, that is to say-
 - (i) by replacement of the 1-methyl group by an acyl, alkyl whether or not unsaturated, benzyl or phenethyl group, whether or not further substituted;
 - (ii) by substitution in the piperidine ring with alkyl or alkenyl groups or with a propano bridge, whether or not further substituted;
 - (iii) by substitution in the 4-phenyl ring with alkyl, alkoxy, aryloxy, halogeno or haloalkyl groups;
 - (iv) by replacement of the 4-ethoxycarbonyl by any other alkoxy-carbonyl or any alkoxyalkyl or acyloxy group;
 - (v) by formation of an N-oxide or of a quaternary base.

2. Any stereoisomeric form of a substance for the time being specified in paragraph 1 not being dextromethorphan or dextrorphan.

3. Any ester or ether of a substance for the time being specified in paragraph 1 or 2 not being a substance for the time being specified in Part II of this Schedule.

4. Any salt of a substance for the time being specified in any of paragraphs 1 to 3.
5. Any preparation or other produce containing a substance or produce for the time being specified in any of paragraphs 1 to 4.
6. Any preparation designed for administration by injection which includes a substance or produce for the time being specified in any of paragraphs 1 to 3 of Part II of this Schedule.

PART II

1. The following substances and products, namely -

(a)

Acetylihydrocodeine	Methylamphetamine
Amphetamine	Methylphenidate
Cannabis and cannabis resin	Methylphenobarbitone
Codeine	Nicocodine
Dihydrocodeine	Nicodicodine
Ethylmorphine (3-ethylmorphine)	(6-nicotinoydihydrocodeine)
Ganja	Norcodeine
Glutethimide	Pentazocine
Lefetamine	Phenmetrazine
Mecloqualone	Pholcodine
Methaqualone	Propiram

(b) any 5,5 disubstituted barbituric acid.

2. Any stereoisomeric form of a substance for the time being specified in paragraph 1 of this Part of this Schedule.
3. An salt of a substance for the time being specified in paragraph 1 or 2 of this Part of this Schedule.
4. Any preparation or other product containing a substance or produce for the time being specified in any of paragraphs 1 to 3 of this Part of this Schedule, not being a preparation falling within paragraph 6 of Part 1 of this Schedule.

PART III

1. The following substances, namely-

Alprazolam	Haloxazolam
Benzphetamine	Ketazolam

Bromazepam	Loprazolam
Buprenorphine	Lorazepam
Camazepam	Lormetazepam
Cathine	Mazindol
Cathinone	Medazepam
Chlordiazepoxide	Mefenorex
Chlorphentermine	Mephentermine
Clobazam	Meprobamate
Clonazepam	Methyprylone
Clorazepic acid	Midazolam
Clotiazepam	Nimetazepam
Cloxazolam	Nitrazepam
Delorazepam	Nordazepam
Dextropropoxyphene	Oxazepam
Diazepam	Oxazolam
Diethylpropion	Pemolinc
Estazolam	Phendimetrazine
Ethchlorvynol	Phentermine
Ethinamate	Pinazepam
Ethyl loflazepate	Pipadrol
Fencanfamin	Prazepam
Fenethylline	Propylhexedrine
Fenproporex	Pyrovalerone
Fludiazepam	Temazepam
Flunitrazepam	Tetrazepam
Flurazepam	Triazolam
Halazepam	N-Ethylamphetamine

2. Any stereoisomeric form of a substance for the time being specified in paragraph 1 of this Part of this Schedule not being phenylpropanolamine.
3. Any salt of a substance for the time being specified in paragraph 1 or 2 of this Part of this Schedule.
4. Any preparation of other produce containing a substance for the time being specified in any of paragraphs 1 to 3 of this Part of this Schedule not being phenylpropanolamine.

PART IV

MEANING OF CERTAIN EXPRESSIONS USED IN THIS SCHEDULE

For the purposes of this Schedule the following expressions (which are not among those defined in section 2(1) of this Law) have the meaning hereby assigned to them respectively, that is to say -

“cannabinol derivatives” “Carfentanil” means the following substances except where contained in cannabis or cannabis resin namely tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives;

“cannabis” (except in the expression “cannabis resin”) means any plant of the genus Cannabis or any part of any such plant (by whatever name designated) except that it does not include cannabis resin or any of the following products after separation from the rest of the plant, namely -

- (a) mature stalk of any such plant.
- (b) fibre produced from mature stalk of any such plant,

“coca leaf” means the leaf of any plant of the genus Erythroxylon from whose leaves cocaine can be extracted either directly or by chemical transformation;

“concentrate of poppy-straw” means the material produced when poppy-straw has entered into a process for the concentration of its alkaloids;

“ganja” means cannabis and cannabis resin;

“medicinal opium” means raw opium which has undergone the process to adapt it for medicinal use in accordance with the requirements of the British Pharmacopoeia whether it is in the form of powder or is granulated or is in any other form, and whether it is or is not mixed with neutral substances;

“opium poppy” means the plant of the species *Papaver somniferum* L;

“poppy straw” means all parts, except the seeds, of the opium poppy after mowing;

“raw opium” includes powdered or granulated opium but does not include medicinal opium.

SECOND SCHEDULE
(Section 16(2), (3) and (4))
PART A

LIST OF OFFENCES CONTRARY TO SECTION 4(1) RELATING TO A CONTROLLED DRUG THAT IS NOT A HARD DRUG.

- | | |
|---|---|
| (i) Importing; | (vii) Possessing; |
| (ii) Exporting; | (viii) Possessing with intent to supply; |
| (iii) Producing; | (ix) Attempting, assisting or being concerned in any offence specified in paragraphs (i) to (viii) inclusive. |
| (iv) Selling, buying or otherwise dealing in; | |
| (v) Supplying; | |
| (vi) Distributing; | |

PART B

SENTENCES RELATING TO OFFENCES CONTRARY TO SECTION 3(1) WHICH RELATE TO A CONTROLLED DRUG THAT IS A HARD DRUG

OFFENCE	AMOUNT OF HARD DRUG	PENALTY	
		FIRST CONVICTION	SECOND OR SUBSEQUENT CONVICTION
		Maximum	Maximum
Buying Consuming Possessing Assisting or being concerned in Attempting	2 ounces or more	15 years + a fine without limit as to amount	15 years + a fine without limit as to amount

OFFENCE	AMOUNT OF HARD DRUG	PENALTY	
Selling Dealing in Distributing Supplying Dispensing Storing Issuing a prescription for Administering Possessing with	less than 2 ounces	15 years + a fine without limit as to amount	20 years + a fine without limit as to amount

intent to supply Importing Exporting Producing Assisting or being concerned in Attempting			
Selling Dealing in Distributing Supplying Dispensing Storing Issuing a prescription for Administering Possessing with intent to supply Importing Exporting Producing Assisting or being concerned in Attempting	2 ounces or more	20 years + a fine without limit as to amount	30 years + a fine without limit as to amount

THIRD SCHEDULE

(Section 4)

**SUBSTANCES USEFUL FOR MANUFACTURING
CONTROLLED DRUGS**

TABLE I

Ephedrine	Lysergic Acid
Ergometrine	1-Phenyl-2 Propanone
Ergotamine	Pseudoephedrine

The salts of the substances listed in this Table whenever the existence of such salts is possible.

TABLE II

Acetic Anhydride	Ethyl Ether
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Acetone
Anthranilic Acid

Phenylacetic Acid
Piperidine

The salts of the substances listed in this Table whenever the existence of such salts is possible.

FOURTH SCHEDULE

(Section 20)

ENFORCEMENT POWERS IN RESPECT OF SHIPS

Preliminary

1. In this Schedule -

“an enforcement officer” means -

- (a) a constable;
- (b) a customs officer; or
- (c) any other person of a description specified in an order made for the purposes of this Schedule by the Governor.

“the ship” means the ship in relation to which the powers conferred by this Schedule are exercised.

Power to stop, board, divert and detain

2. (1) An enforcement officer may stop the ship, board it and, if he thinks it necessary for the exercise of his functions, require it to be taken to a port in the Islands and detain it there.

(2) Where an enforcement officer is exercising his powers with the authority of the Governor given under section 20(2) the officer may require the ship to be taken to a port in the Convention state in question or, if that state has so requested in any other country or territory willing to receive it.

(3) For any of those purposes he may require the master or member of the crew to take such action as may be necessary.

(4) If an enforcement officer detains a ship he must serve on the master a written notice stating that it is to be detained until the notice is withdrawn by the service on him of a further written notice by an enforcement officer.

Power to search and obtain information

3. (1) An enforcement officer may search the ship, anyone on it and anything on it including its cargo.

(2) An enforcement officer may require a person on the ship to give information concerning himself or anything on the ship.

(3) Without prejudice to the generality of those powers an enforcement officer may

- (a) open containers;
- (b) make tests and take samples of anything on the ship;
- (c) require the production of documents, books or records relating to the ship or anything on it; or
- (d) make photographs or copies of anything whose production he has power to require.

Powers in respect of suspected offence

4. If an enforcement officer has reasonable grounds to suspect that an offence mentioned in section 18 or 19 has been committed on a ship to which that section applies he may -

- (a) arrest without warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence; and
- (b) seize and detain anything found on the ship which appears to him to be evidence of the offence.

Assistants

5. (1) An enforcement officer may take with him, to assist him in exercising his powers -

- (a) any other persons; and
- (b) any equipment or materials.

(2) A person whom an enforcement officer takes with him to assist him may perform any of the officer's functions but only under the officer's supervision.

Use of reasonable force

6. An enforcement officer may use reasonable force, if necessary, in the performance of his functions.

Evidence of authority

7. An enforcement officer must, if required, produce evidence of his authority.

Protection of officers

8. An enforcement officer is not liable in civil or criminal proceedings for anything done in the purported performance of his functions under this Schedule if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

Offences

9. (1) A person is guilty of an offence if he -
- (a) intentionally obstructs an enforcement officer in the performance of any of his functions under this Schedule;
 - (b) fails without reasonable excuse to comply with a requirement made by an enforcement officer in the performance of those functions; or
 - (c) in purporting to give information required by an officer for the performance of those functions-
 - (i) makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular; or
 - (ii) intentionally fails to disclose a material particular.
- (2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine of ten thousand dollars.

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Carmena H. Parsons
Clerk of Executive Council