

CHAPTER 143

PROCEEDS OF CRIME

1990-13

This Act came into operation on 15th August, 1990 by Proclamation (S.I. 1990 No. 86).

Amended by:

1998-38

2002-6

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1991

2002

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 143

PROCEEDS OF CRIME 1990-13

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**BARBADOS**

PROCEEDS OF CRIME

1990-13

An Act to provide for the forfeiture or confiscation of the proceeds of certain crimes and for connected or related matters.

[Commencement: 15th August, 1990]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Proceeds of Crime Act*.

Principal objects

2. The principal objects of this Act are
 - (a) to deprive persons of the proceeds of, and the benefits derived from, the commission of scheduled offences;
 - (b) to provide for the forfeiture of property used in, or in connection with, or for the purpose of facilitating, the commission of scheduled offences;

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- (c) to provide for the forfeiture of property derived, obtained or realised directly or indirectly from the commission of scheduled offences;
- (d) to provide for the making of confiscation orders in respect of property shown to have been derived, obtained or realised by a person, directly or indirectly, from the commission of scheduled offences;
- (e) to enable law enforcement authorities to trace such proceeds, benefits and property.

Interpretation

3. In this Act

“benefit” falls to be construed in accordance with section 4(1);

“Commissioner” means the Commissioner of Police;

“confiscation order” means an order made by the Court pursuant to section 18(1);

“the Court” means the High Court;

“forfeiture order” means an order made by the Court pursuant to section 10(1);

“gift caught by this Act” falls to be construed in accordance with subsections (12), (13) and (14) of section 4;

“interest”, in relation to property, means

- (a) a legal or equitable interest in the property; or
- (b) a right, power or privilege in connection with the property;

“police officer” means a member of the Police Force;

“proceeds” means any property that is derived, obtained or realised, directly or indirectly, by any person from the commission of a scheduled offence;

“proceeds of crime” means

- (a) proceeds of a scheduled offence; or

- (b) any property or benefits derived, obtained or realised, directly or indirectly, by any person from any act or omission that occurred outside Barbados and would, if it had occurred in Barbados, have constituted a scheduled offence;

“production order” means an order made by the Court pursuant to section 42;

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

“Public Trustee” means the Public Trustee appointed in accordance with the *Public Trustee Act*, Cap. 248;

“realisable property” falls to be construed in accordance with section 4(3) and (4);

“relevant application period”, in relation to a person’s conviction of a scheduled offence, means the period of 12 months,

- (a) where the person is to be taken to have been convicted of the offence by reason of section 4(2)(a), after the day on which the person was convicted of the offence;
- (b) where the person is to be taken to have been convicted of the offence by reason of section 4(2)(b), after the day on which the person was discharged without conviction;
- (c) where the person is to be taken to have been convicted of the offence by reason of section 4(2)(c), after the day on which the court took the offence into account in passing sentence for the other offence referred to in that paragraph;

“restraining order” means an order made by the Court pursuant to section 32(1);

“scheduled offence” means an offence specified in the *Schedule*, and includes

- (a) an offence of conspiring to commit any of those offences;

- (b) an offence of aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the commission of any of those offences;
- (c) an offence of attempting to commit any of those offences;
- (d) an offence of inciting another to commit any of those offences;

“tainted property”, in relation to a scheduled offence, means

- (a) property used in, or in connection with, the commission of the offence;
or
- (b) property derived, obtained or realised, directly or indirectly, from the commission of the offence;

“unlawful activity” means an act or omission that constitutes an offence against a law in force in Barbados or against a law of any other country.

Definition of certain terms etc.

4.(1) In this Act

- (a) “a benefit” includes any property, service or advantage, whether direct or indirect;
- (b) “to benefit” has a corresponding meaning;
- (c) a reference to a benefit derived or obtained by, or otherwise accruing to, a person (“A”) includes a reference to a benefit derived or obtained by, or otherwise accruing to, another person at A’s request or direction.

(2) For the purposes of this Act, a person is to be taken to be convicted of a scheduled offence if

- (a) he is convicted, whether summarily or on indictment, of the offence;
- (b) he is charged with the offence and is found guilty but is discharged without conviction; or

-
- (c) a court with his consent takes the scheduled offence, of which he has not been found guilty, into account in sentencing him for another offence.
- (3) In this Act “realisable property” means, subject to subsection (4),
- (a) any property held by a person who has been convicted of, or charged with, a scheduled offence; and
- (b) any property held by a person to whom a person so convicted or charged has directly or indirectly made a gift caught by this Act.
- (4) Property is not realisable property if
- (a) there is in force in respect of that property a forfeiture order under this Act or under any other enactment;
- (b) a forfeiture order is proposed to be made against that property under this Act or under any other enactment.
- (5) For the purposes of sections 20 and 21, the amount that might be realised at the time a confiscation order is made against a person is the total of the values at that time of all the realisable property held by the person, less the total amounts payable in pursuance of an obligation, where there is an obligation having priority at that time, together with the total of the values at that time of all gifts caught by this Act.
- (6) For the purposes of subsection (5), an obligation has priority at any time if it is an obligation of the person to
- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence where the fine was imposed or the order was made before the confiscation order;
- (b) pay an amount due in respect of any tax, rate, duty, cess or other impost payable under any enactment for the time being in force; or
- (c) pay any other civil obligation as may be determined by the Court;

(7) Subject to subsections (8) and (9), for the purposes of this Act, the value of property (other than cash) in relation to a person holding the property

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

(8) References in this Act to the value at any time ("the material time") of the transfer of any property are references to

- (a) the value of the property to the recipient when he receives it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (9) applies, the value there mentioned, whichever is the greater.

(9) Where at the material time the recipient holds

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

the value referred to in subsection (7)(b) is the value to him at the material time of the property mentioned in paragraph (a) of this subsection or, as the case may be, of the property mentioned in paragraph (b) of this subsection, so far as it represents the property which he received.

(10) Subject to subsection (14), a reference to the value at any time ("the material time") of a gift is a reference to

- (a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
- (b) the value there mentioned, where subsection (11) applies;

whichever is the greater.

(11) Subject to subsection (14), where at the material time a person holds

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

the value referred to in subsection (10) is the value to him at the material time of the property mentioned in paragraph (a) of this subsection or the value of the property mentioned in paragraph (b) so far as it so represents the property which he received.

(12) A gift, including a gift made before the 15th August, 1990 is caught by this Act where

- (a) it was made by the person convicted or charged at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate; and the Court considers it appropriate in all the circumstances to take the gift into account;
- (b) it was made by the person convicted or charged at any time and was a gift of property
 - (i) received by the person in connection with the commission of a scheduled offence committed by him or another, or
 - (ii) which in whole or in part directly or indirectly represented in the person's hands property received by him in that connection.

(13) The reference in subsection (12) to "an offence to which the proceedings for the time being relate" includes where the proceedings have resulted in the conviction of the person, a reference to any offence which the Court takes into consideration when determining sentence.

(14) For the purposes of this Act

- (a) the circumstances in which a person is to be treated as making a gift include those where the person transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the person; and
- (b) in those circumstances, the preceding provisions of this section shall apply as if the person had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the person.

PART II

FORFEITURE ORDERS, CONFISCATION ORDERS AND RELATED MATTERS

General

Application for forfeiture order or confiscation order on conviction

5.(1) Where a person is convicted of a scheduled offence committed after the 15th August, 1990, the Director of Public Prosecutions may apply to the Court for one or both of the following orders

- (a) a forfeiture order against property that is tainted property in respect of the scheduled offence;
 - (b) a confiscation order against the person in respect of benefits derived by the person from the commission of the scheduled offence.
- (2) The Director of Public Prosecutions may not make an application after the end of the relevant application period in relation to the conviction.
- (3) An application under this section may be made in respect of one or more than one scheduled offence.

(4) Where an application under this section is finally determined, no further application for a forfeiture order or a confiscation order may be made in respect of the offence for which the person was convicted unless the Court gives leave for the making of a new application on being satisfied

- (a) that the property, or benefit to which the new application relates was identified after the previous application was determined; or
- (b) that necessary evidence became available after the previous application was determined; or
- (c) that it is in the interests of justice that the new application be made.

Notice of application

6.(1) Where the Director of Public Prosecutions applies for a forfeiture order against property in respect of a person's conviction of a scheduled offence

- (a) the Director of Public Prosecutions must give no less than 14 days written notice of the application to the person and to any other person who the Director of Public Prosecutions has reason to believe may have an interest in the property;
- (b) the person, and any other person who claims an interest in the property, may appear and adduce evidence at the hearing of the application; and
- (c) the Court may, at any time before the final determination of the application, direct the Director of Public Prosecutions
 - (i) to give notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property;
 - (ii) to publish in the *Official Gazette* and in a newspaper published and circulating in Barbados notice of the application in the manner and containing such particulars and within the time that the Court considers appropriate.

- (2) Where the Director of Public Prosecutions applies for a confiscation order against a person
- (a) the Director of Public Prosecutions must give the person no less than 14 days written notice of the application; and
 - (b) the person may appear and adduce evidence at the hearing of the application.

Amendment of application

7.(1) The Court hearing an application under section 5(1) may, before final determination of the application, and on the application of the Director of Public Prosecutions, amend the application to include any other property or benefit, as the case may be, upon being satisfied that

- (a) the property or benefit was not reasonably capable of identification when the application was originally made; or
 - (b) necessary evidence became available only after the application was originally made.
- (2) Where the Director of Public Prosecutions applies to amend an application for a forfeiture order and the amendment would have the effect of including additional property in the application for the forfeiture order he must give no less than 14 days written notice of the application to amend to any person who he has reason to believe may have an interest in the property to be included in the application for the forfeiture order.
- (3) Any person who claims an interest in the property to be included in the application for the forfeiture order may appear and adduce evidence at the hearing of the application to amend.
- (4) Where the Director of Public Prosecutions applies to amend an application for a confiscation order against a person and the effect of the amendment would be to include an additional benefit in the application for the confiscation order he must give the person no less than 14 days written notice of the application to amend.

Procedure on application

8.(1) Where an application is made to the Court for a forfeiture order or a confiscation order in respect of a person's conviction of a scheduled offence whether in the magistrates' court or in the Court, the Court may, in determining the application, have regard to the transcript of any proceedings against the person for the offence.

(2) Where an application is made for a forfeiture order or a confiscation order to the Court before which the person was convicted, and the Court has not, when the application is made, passed sentence on the person for the offence, the Court may, if it is satisfied that it is reasonable to do so in all the circumstances, defer passing sentence until it has determined the application for the order.

Application for in rem forfeiture order on abscondence

9.(1) Where a person absconds in connection with a scheduled offence committed after the 15th August, 1990, the Director of Public Prosecutions may apply to the Court for a forfeiture order under section 17 in respect of any tainted property.

(2) For the purposes of this section, a person shall be deemed to have absconded in connection with a scheduled offence if

- (a) an information has been laid alleging the commission of the offence by the person,
- (b) a warrant for the arrest of the person has been issued in relation to that information, and
- (c) reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period of 6 months commencing on the day the warrant was issued,

and the person shall be deemed to have so absconded on the last day of that period of 6 months.

(3) Where the Director of Public Prosecutions applies under this section for a forfeiture order against any tainted property the Court shall, before hearing the application

- (i) require notice of the application to be given to any person who, in the opinion of the Court, appears to have an interest in the property;
- (ii) direct notice of the application to be published in the *Official Gazette* and in a newspaper published and circulating in Barbados containing such particulars and for so long as the Court may require.

Forfeiture Orders

Forfeiture order on conviction

10.(1) Where the Director of Public Prosecutions applies to the Court for a forfeiture order against property in respect of a person's conviction for a scheduled offence and the Court is satisfied that the property is tainted property in respect of the offence, the Court may order that the property or such of the property as is specified by the Court in the order be forfeited to the Crown.

- (2) In determining whether property is tainted property the Court may infer
- (a) that the property was used in, or in connection with the commission of the offence, where the evidence establishes that the property was in the person's possession at the time of, or immediately after, the commission of the offence for which the person was convicted;
 - (b) that the property was derived, obtained or realised as a result of the commission by the person of the scheduled offence for which the person was convicted, where the evidence establishes that property, and in particular money, was found in the person's possession or under his control in a building, vehicle, receptacle or place during the course of investigations conducted by the police before or after the arrest and charge of the person for the scheduled offence for which the person was convicted;

- (c) that the value of the increase represents property which was derived, obtained or realised by the person directly or indirectly from the commission of the scheduled offence for which the person was convicted, where the evidence establishes that the value, after the commission of the scheduled offence, of all ascertainable property of a person convicted of the scheduled offence exceeds the value of all ascertainable property of that person prior to the commission of that offence, and the Court is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the increase in value.
- (3) Where the Court orders that property, other than money, be forfeited to the Crown, the Court shall specify in the order the amount that it considers to be the value of the property at the time when the order is made.
- (4) In considering whether a forfeiture order should be made under subsection (1), the Court shall have regard to
- (a) the rights and interests, if any, of third parties in the property;
 - (b) the gravity of the offence concerned;
 - (c) any hardship that may reasonably be expected to be caused to any person, by the operation of the order; and
 - (d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.
- (5) Where the Court makes a forfeiture order the Court may give such directions as are necessary or convenient for giving effect to the order.

Effect of forfeiture order

11.(1) Subject to subsection (2), where the Court makes a forfeiture order against any property, the property vests absolutely in the Crown by virtue of the order.

(2) Where property directed by a forfeiture order to be forfeited is registrable property

- (a) the property vests in the Crown in equity but does not vests in the Crown at law until the applicable registration requirements have been complied with;
- (b) the Crown is entitled to be registered as owner of the property;
- (c) the Attorney-General has power on behalf of the Crown to do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Crown as owner, including the execution of any instrument required to be executed by a person transferring an interest in property of that kind.

(3) Where the Court makes a forfeiture order against property

- (a) the property shall not, except with the leave of the Court and in accordance with any directions of the Court be disposed of, or otherwise dealt with, by or on behalf of the Crown, before the relevant appeal date; and
- (b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the direction of the Attorney-General.

(4) Without limiting the generality of subsection (3)(b) the directions that may be given pursuant to that subsection include a direction that property is to be disposed of in accordance with the provisions of any enactment specified in the direction.

(5) In this section

“registrable property” means property the title to which is passed by registration in accordance with the provisions of the *Land Registration Act, Cap. 229*;

“relevant appeal date” used in relation to a forfeiture order made in consequence of a person’s conviction of a scheduled offence, means

- (a) the date on which the period allowed by the rules of court for the lodging of an appeal against a person’s conviction or for the lodging of an appeal against the making of a forfeiture order expires without an appeal having been lodged, whichever is the later; or
- (b) where an appeal against a person’s conviction or against the making of a forfeiture order is lodged, the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later.

Voidable transfers

12. The Court may

- (a) before making a forfeiture order; and
- (b) in the case of property in respect of which a restraining order was made, where the order was served in accordance with section 33,

set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

Protection of third parties

13.(1) Where an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the Court, before the forfeiture order is made, for an order under subsection (2).

(2) If a person applies to the Court for an order under this section in respect of his interest in property and the Court is satisfied on a balance of probabilities

- (a) that he was not in any way involved in the commission of the offence; and
- (b) where he acquired the interest during or after the commission of the offence, that he acquired the interest
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time he acquired it, property that was tainted property,

the Court shall make an order declaring the nature, extent and value (as at the time the order is made) of his interest.

(3) Subject to subsection (4), where a forfeiture order has already been made directing the forfeiture of property, a person who claims an interest in the property may before the end of the period of 12 months commencing on the day on which the forfeiture order is made, apply under this subsection to the Court for an order under subsection (2).

(4) A person who

- (a) had knowledge of the application for the forfeiture order before the order was made; or
- (b) appeared at the hearing of that application,

shall not be permitted to make an application under subsection (3), except with the leave of the Court.

(5) A person who makes an application under subsection (1) or (3) must give no less than 14 days written notice of the making of the application to the Director of Public Prosecutions, who shall be a party to any proceedings in the application.

(6) An applicant or the Director of Public Prosecutions may in accordance with the rules of court, appeal to the Court of Appeal from an order made under subsection (2).

(7) The Public Trustee shall, on application made by any person who has obtained an order under subsection (2), and where the period allowed by the rules of court with respect to the making of appeals has expired and any appeal from that order taken under subsection (6) has been determined,

- (a) direct that the property or the part thereof to which the interest of the applicant relates be returned to the applicant; or
- (b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

Discharge of forfeiture order on appeal and quashing of conviction

14.(1) Where the Court makes a forfeiture order against property in reliance on a person's conviction of a scheduled offence and the conviction is subsequently quashed, the quashing of the conviction discharges the order.

(2) Where a forfeiture order against property is discharged as provided for in subsection (1) or by the Court hearing an appeal against the making of the order, any person who claims to have an interest in the property immediately before the making of the forfeiture order may apply to the Public Trustee in writing for the transfer of the interest to the person.

(3) On receipt of an application under subsection (2) the Public Trustee shall

- (a) if the interest is vested in the Crown, give directions that the property or part thereof to which the interest of the applicant relates be transferred to the person; or
- (b) in any other case, direct that there be payable to the person an amount equal to the value of the interest as at the time the order is made.

(4) In the exercise of his powers under this section and section 13 the Public Trustee shall have the power to do or authorise the doing of anything necessary

or convenient to effect the transfer or return of property, including the execution of any instrument and the making of an application for the registration of an interest in the property on any appropriate register.

Payment instead of forfeiture order

15. Where the Court is satisfied that a forfeiture order should be made in respect of the property of a person convicted of a scheduled offence but that the property or any part thereof or interest therein cannot be made subject to such an order and, in particular

- (a) cannot, on the exercise of due diligence, be located;
- (b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the forfeiture of the property;
- (c) is located outside Barbados;
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been commingled with other property that cannot be divided without difficulty,

the Court may, instead of ordering the property or part thereof or interest therein to be forfeited, order the person to pay to the Crown an amount equal to the value of the property, part or interest.

Application of procedure for enforcing fines

16.(1) Where the Court orders a person to pay an amount under section 15 that amount shall be treated as if it were a fine imposed upon him in respect of a conviction of a scheduled offence and the Court shall

- (a) notwithstanding anything contained in section 22 of the *Interpretation Act*, Cap. 1, impose, in default of the payment of that amount, a term of imprisonment
 - (i) of 18 months, where the amount does not exceed \$10,000;

- (ii) of 2 years, where the amount exceeds \$10,000 but does not exceed \$20,000;
 - (iii) of 3 years, where the amount exceeds \$20,000 but does not exceed \$50,000;
 - (iv) of 5 years, where the amount exceeds \$50,000 but does not exceed \$100,000;
 - (v) of 7 years, where the amount exceeds \$100,000 but does not exceed \$200,000;
 - (vi) of 10 years, where the amount exceeds \$200,000 but does not exceed \$1,000,000;
 - (vii) of 15 years, where the amount exceeds \$1,000,000;
- (b) direct that the term of imprisonment imposed pursuant to paragraph (a), in the case of conviction for an offence against the *Drug Abuse (Prevention and Control) Act*, Cap. 131, be served consecutively to any other form of imprisonment imposed on the person, or that the person is then serving;
- (c) direct that the *Prisons Act*, Cap. 168 and any regulations made thereunder regarding the remission of sentences of prisoners serving a term of imprisonment shall not apply in relation to a term of imprisonment imposed on a person pursuant to paragraph (a) in the case of a conviction for an offence against the *Drug Abuse (Prevention and Control) Act*, Cap. 131.

Forfeiture order on abscondence

17.(1) Subject to section 9(3), where an application is made to the Court under section 9(1) for a forfeiture order against any tainted property in consequence of a person's abscondence in connection with a scheduled offence and the Court is satisfied that

- (a) any property is tainted property in respect of the offence;

- (b) proceedings in respect of a scheduled offence committed in relation to that property were commenced; and
- (c) the accused charged with the offence referred to in paragraph (b) has absconded

the Court may order that the property or such of the property as is specified by the Court in the order be forfeited to the Crown.

(2) The provisions of sections 10(2), (3), (4) and (5), 11, 12 and 13 shall apply with such modifications as are necessary to give effect to this section.

Confiscation Orders

Confiscation order on conviction

18.(1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a confiscation order against a person in respect of that person's conviction of a scheduled offence the Court shall, if it is satisfied that the person has benefited from that offence order him to pay to the Crown an amount equal to the value of his benefits from the offence or such lesser amount as the Court certifies in accordance with section 21 to be the amount that might be realised at the time the confiscation order is made.

(2) The Court shall assess the value of the benefits derived by a person from the commission of an offence in accordance with sections 19 to 22.

(3) The Court shall not make a confiscation order under this section

- (a) until the period allowed by the rules of court for the lodging of an appeal against conviction has expired without such an appeal having been lodged; or
- (b) where an appeal against convictions has been lodged, until the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later date.

Rules for determining benefit and assessing value

19.(1) Where a person obtains property as the result of, or in connection with the commission of, a scheduled offence, his benefit is the value of the property so obtained.

(2) Where a person derives an advantage as a result of or, in connection with the commission of a scheduled offence, his advantage shall be deemed to be a sum of money equal to the value of the advantage so derived.

(3) The Court, in determining whether a person has benefited from the commission of a scheduled offence or from that offence taken together with other scheduled offences and, if he has, in assessing the value of the benefit, shall unless the contrary is proved, deem

- (a) all property appearing to the Court to be held by the person on the day on which the application is made; and
- (b) all property appearing to the Court to be held by the person at any time
 - (i) within the period between the day the scheduled offence, or the earliest offence, was committed and the day on which the application is made; or
 - (ii) within the period of 6 years immediately before the day on which the application is made; whichever is longer

to be property that came into the possession or under the control of the person by reason of the commission of that scheduled offence or those scheduled offences for which the person was convicted;

- (c) any expenditure by the person since the beginning of that period to be expenditure met out of payments received by him as a result of, or in connection with, the commission of that scheduled offence or those scheduled offences; and
- (d) any property received or deemed to have been received by the person at any time as a result of, or in connection with, the commission by him

of that scheduled offence, or those scheduled offences as property received by him free of any interests therein.

(4) Where a confiscation order has previously been made against a person, in assessing the value of any benefit derived by him from the commission of the scheduled offence, the Court shall leave out of account any of his benefits that are shown to the Court to have been taken into account in determining the amount to be recovered under that order.

(5) If evidence is given at the hearing of the application that the value of the person's property at any time after the commission of the scheduled offence exceeded the value of the person's property before the commission of the offence, then the Court shall, subject to subsection (6), treat the value of the benefits as being not less than the amount of the excess.

(6) If, after evidence of the kind referred to in subsection (5) is given, the person satisfies the Court that the whole or part of the excess was due to causes unrelated to the commission of the scheduled offence, subsection (5) does not apply to the excess or, as the case may be, that part.

Statements relating to benefits from commission of scheduled offences

20.(1) Where

- (a) a person has been convicted of a scheduled offence and the Director of Public Prosecutions tenders to the Court a statement as to any matters relevant
 - (i) to determining whether the person has benefited from the offence or from any other scheduled offence of which he is convicted in the same proceedings or which is taken into account in determining his sentence, or
 - (ii) to an assessment of the value of the person's benefit from the offence or any other scheduled offence of which he is so convicted in the same proceedings or which is so taken into account, and
- (b) the person accepts to any extent an allegation in the statement,

the Court may, for the purposes of so determining or making that assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where

- (a) a statement is tendered under subsection (1)(a), and
- (b) the Court is satisfied that a copy of that statement has been served on the person,

the Court may require the person 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) Where the person fails in any respect to comply with a requirement under subsection (2), he may be treated for the purposes of this section as having accepted every allegation in the statement, other than

- (a) an allegation in respect of which he has complied with the requirement; and
- (b) an allegation that he has benefited from the scheduled offence or that any property or advantage was obtained by him as a result of, or in connection with the commission of the offence.

(4) Where

- (a) the person tenders to the Court 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 Director of Public Prosecutions accepts to any extent any allegation in the statement,

the Court may, for the purposes of that determination, treat the acceptance of the Director of Public Prosecutions 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

- (a) orally before the Court; or
- (b) in writing in accordance with rules of court.

(6) An acceptance by a person under this section that he received any benefits from the commission of a scheduled offence is admissible in any proceedings for any offence.

Amount to be recovered under confiscation order

21.(1) Subject to subsection (2), the amount to be recovered in the person's case under a confiscation order shall be the amount which the Court assesses to be the value of the person's benefit from the scheduled offence or if more than one, all the offences in respect of which the order may be made.

(2) Where the Court is satisfied as to any matter relevant for determining the amount which might be realised at the time the confiscation order is made (whether by an acceptance under section 20 or otherwise) the Court may issue a certificate giving the Court's opinion as to the matters concerned, and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount that the Court assesses to be the value of the person's benefit from the offence, or if more than one, all the offences in respect of which the confiscation order may be made.

Variation or confiscation orders

22.(1) Where

- (a) the Court makes a confiscation order against a person in relation to a scheduled offence;
- (b) in calculating the amount of the confiscation order, the Court took into account a forfeiture of the property or a proposed forfeiture of the property or a proposed forfeiture order in respect of property; and

- (c) an appeal against the forfeiture or forfeiture order is allowed or the proceedings for the proposed forfeiture order terminate without the proposed forfeiture order being made

the Director of Public Prosecutions may apply to the Court for a variation of the confiscation order to increase the amount of the order by the value of the property not so forfeited and the Court may, if it considers it appropriate to do so, vary the order accordingly.

(2) Where

- (a) the Court makes a confiscation order against a person in relation to a scheduled offence;
- (b) in calculating the amount of the confiscation order, the Court took into account in accordance with section 4(5) and (6) an amount of tax paid by the person; and
- (c) an amount is repaid or refunded to the person in respect of that tax,

the Director of Public Prosecutions may apply to the Court for a variation of the confiscation order to increase the order by the amount repaid or refunded and the Court may, if it considers it appropriate to do so, vary the order accordingly.

Court may lift corporate veil

23.(1) In assessing the value of benefits derived by a person from the commission of a scheduled offence, the Court may treat as property of the person any property that, in the opinion of the Court, is subject to the effective control of the person whether or not he has

- (a) any legal or equitable interest in the property; or
- (b) any right, power or privilege in connection with the property.

(2) Without prejudice to the generality of subsection (1) the Court may have regard to

- (a) shareholdings in, debentures over or directorships in any company that has an interest, whether direct or indirect, in the property, and for this purpose the Court may order the investigation and inspection of the books of a named company;
- (b) any trust that has any relationship to the property;
- (c) any relationship whatsoever between persons having an interest in the property or in companies of the kind referred to in paragraph (a) or trust of the kind referred to in paragraph (b), and any other persons.

(3) Where the Court, for the purposes of making a confiscation order against a person, treats particular property as the person's property pursuant to subsection (1), the Court may, on application by the Director of Public Prosecutions, make an order declaring that the property is available to satisfy the order.

(4) Where the Court declares that property is available to satisfy a confiscation order

- (a) the order may be enforced against the property as if the property were property of the person against whom the order is made; and
- (b) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.

(5) Where the Director of Public Prosecutions makes an application for an order under subsection (3) that property is available to satisfy a confiscation order against a person

- (a) the Director of Public Prosecutions shall give written notice of the application to the person and to any person who the Director of Public Prosecutions has reason to believe may have an interest on the property; and

- (b) the person and any person who claims an interest in the property may appear and adduce evidence at the hearing.

Enforcement of confiscation orders

24. Where the Court orders a person to pay an amount under a confiscation order the provisions of section 16 shall apply with such modifications as the Court may determine for the purpose of empowering the Court to impose a term of imprisonment on a person in default of compliance by him of a confiscation order.

PART III

PROVISIONS FOR FACILITATING POLICE INVESTIGATIONS AND PRESERVING PROPERTY LIABLE TO FORFEITURE AND CONFISCATION ORDERS

Powers of Search and Seizure

Warrant to search land etc. for tainted property

25.(1) Where a police officer has reasonable grounds for suspecting that there is, or there may be within the next following 72 hours, tainted property upon any land or upon or in any premises the police officer may lay before a magistrate an information on oath setting out those grounds and apply for the issue of a warrant to search the land or premises for tainted property.

(2) Where an application is made under subsection (1) for a search warrant, the magistrate may, subject to section 26, issue a warrant authorising a police officer (whether named in the warrant or not) with such assistance and by such force as is necessary and reasonable

- (a) to enter upon the land or upon or into the premises;
- (b) to search the land or premises for tainted property; and
- (c) to seize property found in the course of the search that the police officer believes on reasonable grounds, to be tainted property.

Restrictions on issue of search warrants

- 26.** A magistrate shall not issue a warrant under section 25 unless
- (a) the informant or some other person has given to the magistrate, either on oath or by affidavit, any further information that the magistrate may require concerning the grounds on which the issue of the warrant is sought;
 - (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

Matters to be included in search warrant

- 27.** A warrant issued under section 25 shall include
- (a) a statement of the purpose for which the warrant is issued, and a reference to the nature of the scheduled offence;
 - (b) a description of the kind of property to be seized;
 - (c) a time, not being later than 28 days, upon which the warrant ceases to have effect; and
 - (d) a statement as to whether entry is authorised to be made at any time of the day or night, or during specified hours of the day or night.

Police may seize other tainted property

- 28.** Where in the course of a search under a warrant issued pursuant to section 25 for tainted property in relation to a scheduled offence, a police officer finds
- (a) property that he believes, on reasonable grounds, to be
 - (i) tainted property in relation to the offence, although not of a kind specified in the warrant, or
 - (ii) tainted property in relation to another scheduled offence, or

- (b) anything that he believes, on reasonable grounds will afford evidence as to the commission of a criminal offence,

and the police officer believes, on reasonable grounds that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction or its use in committing, continuing or repeating the offence or any other offence, the warrant shall be deemed to authorise the police officer to seize that property or thing.

Record of property seized

- 29.(1)** A police officer who executes a warrant issued under this Part shall
- (a) detain the property seized, taking reasonable care to ensure that the property is preserved so that it may be dealt with in accordance with the law;
 - (b) as soon as practicable after the execution of the warrant, but within a period of 48 hours thereafter, prepare a written report, identifying the property seized and the location where the property is being detained and forward a copy of the report to the clerk of the court in the magisterial district where the property is being detained.
- (2) A magistrate shall, on application, provide a copy of the report
- (a) to the person from whom the property was seized; and
 - (b) to any other person who appears to the magistrate to have an interest in the property.
- (3) A request under subsection (2) by a person, other than the person from whom the property was seized, shall be in writing and supported by affidavit sworn to by the person making the request.

Return of property seized

- 30.(1)** Where property has been seized under section 28, otherwise than because it may afford evidence of the commission of a scheduled offence, any

person who claims an interest in the property may apply to the Court for an order that the property be returned to him.

(2) Where a person makes an application under subsection (1) and the Court is satisfied that

- (a) the person is entitled to possession of the property;
- (b) the property is not tainted property in relation to the scheduled offence; and
- (c) the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property,

the Court shall order the Commissioner to return the property to the person, and the Commissioner shall arrange for the property to be returned.

(3) Where

- (a) at the time when the property was seized, an information had not been laid in respect of a scheduled offence,
- (b) the property has been seized under section 28, otherwise than because it may afford evidence as to the commission of an offence,
- (c) at the end of the period of 48 hours after the time when the property was seized, an information has not been laid in respect of a scheduled offence,

the Commissioner shall, subject to subsections (5) and (6), arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

(4) Where

- (a) property has been seized under section 28, otherwise than because it may afford evidence as to the commission of a scheduled offence,

- (b) either of the following conditions is satisfied, that is to say,
 - (i) before the property was seized, a person had been convicted of a scheduled offence or an information had been laid in respect of a scheduled offence, or
 - (ii) before the property was seized, an information had not been laid in respect of a scheduled offence, but an information was laid in respect of a scheduled offence within 48 hours after the time when the property was seized, and
- (c) no forfeiture order has been made against the property within the period of 14 days after the property was seized,

the Commissioner shall, subject to subsections (5) and (6), arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

(5) Where

- (a) property has been seized under section 28, otherwise than because it may afford evidence as to the commission of a scheduled offence,
- (b) but for this subsection, the Commissioner would be required to arrange for the property to be returned to a person as soon as practicable after the end of a particular period, and
- (c) before the end of that period, a restraining order is made in relation to the property,

the Commissioner shall

- (d) arrange for the property to be given to the Public Trustee in accordance with the restraining order, if the restraining order directs the Public Trustee to take custody and control of the property;
- (e) arrange for the property to be kept until it is dealt with in accordance with any other provision of this Act, if the Court that made the

restraining order has made an order under subsection (6) in relation to the property.

(6) Where

- (a) property has been seized under section 28, otherwise than because it may afford evidence as to the commission of a scheduled offence,
- (b) a restraining order is made in relation to the property, and
- (c) at the time when the restraining order is made, the property is in the possession of the Commissioner,

the Commissioner may apply to the Court that made the restraining order for an order that he retain possession of the property, and the Court may, if satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of a scheduled offence or any other offence, make an order that the Commissioner retain the property for so long as the property is so required as evidence as to the commission of that offence.

(7) Where the Commissioner applies to the Court for an order under subsection (6), a witness shall not be required to answer any question or to produce any document if the Court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

(8) Where

- (a) property has been seized under section 28, otherwise than because it may afford evidence as to the commission of a scheduled offence,
- (b) an application is made for a restraining order or a forfeiture order in respect of the property,
- (c) the application is refused, and
- (d) at the time when the application is refused, the property is in the possession of the Commissioner,

the Commissioner shall arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the refusal.

- (9) Where
- (a) property has been seized under section 28, and
 - (b) while the property is in the possession of the Commissioner a forfeiture order is made in respect of the property,

the Commissioner shall deal with the property as directed by the order.

Restraining Orders

Application for restraining order

31.(1) Where a person, (in this section and section 32 called “the defendant”)

- (a) has been convicted of a scheduled offence, or
- (b) has been charged with a scheduled offence

the Director of Public Prosecutions may apply to the Court for a restraining order against any realisable property held by the defendant or specified realisable property held by a person other than the defendant.

(2) An application for a restraining order may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating

- (a) where the defendant has been convicted of a scheduled offence, the scheduled offence for which the defendant was convicted, the date of the conviction, the Court before which the conviction was obtained and whether an appeal has been lodged against the conviction;
- (b) where the defendant has not been convicted of a scheduled offence, the scheduled offence for which he is charged and the grounds for believing that the defendant committed the offence;
- (c) a description of the property in respect of which the restraining order is sought;

- (d) the name and address of the person who is believed to be in possession of the property;
- (e) the grounds for the belief that the property is tainted property in relation to the offence;
- (f) the grounds for the belief that the defendant derived a benefit directly or indirectly from the commission of the offence;
- (g) where the application seeks a restraining order against property of a person, other than the defendant, the grounds for the belief that the property is tainted property in relation to the offence and is subject to the effective control of the defendant;
- (h) the grounds for the belief that a forfeiture order or a confiscation order may be or is likely to be made under this Act in respect of the property.

Restraining orders

32.(1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a restraining order against property and the Court is satisfied that

- (a) the defendant has been convicted of a scheduled offence, or has been charged with a scheduled offence;
- (b) there are reasonable grounds for believing that the defendant committed the offence, where the defendant has not been convicted of a scheduled offence;
- (c) there is reasonable cause to believe that the property is tainted property in relation to an offence or that the defendant derived a benefit directly or indirectly from the commission of the offence;
- (d) there are reasonable grounds for believing that the property is tainted property in relation to an offence and that the property is subject to the effective control of the defendant, where the application seeks a

restraining order against property of a person other than the defendant;
and

- (e) there are reasonable grounds for believing that a forfeiture order or a confiscation order is likely to be made under this Act in respect of the property,

the Court may make an order

- (f) prohibiting the defendant or any person from disposing of, or otherwise dealing with, the property or such part thereof or interest therein as is specified in the order, except in such manner as may be specified in the order; and
- (g) at the request of the Director of Public Prosecutions, where the Court is satisfied that the circumstances so require
 - (i) directing the Public Trustee or such other person as the Court may appoint to take custody of the property or such part thereof as is specified in the order and to manage or otherwise deal with all or any part of the property in accordance with the directions of the Court; and
 - (ii) requiring any person having possession of the property to give possession thereof to the Public Trustee or to the person appointed under subparagraph (i) to take custody and control of the property.

(2) An order under subsection (1) may be made subject to such conditions as the Court thinks fit and, without limiting the generality of this, may make provision for meeting, out of the property or a specified part of the property, all or any of the following

- (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants if any) and reasonable business expenses;
- (b) the person's reasonable expenses in defending the criminal charge and any proceedings under this Act.

(3) In determining whether there are reasonable grounds for believing that property is subject to the effective control of the defendant the Court may have regard to the matters referred to in section 23(2).

(4) Where the Public Trustee or other person appointed under subsection (1)(g)(i) is given a direction in relation to any property, the Public Trustee or that other person may apply by summons to the Court for directions on any question respecting the management or preservation of the property under this control.

(5) An application under subsection (4) shall be served upon all persons interested in the application or such of them as the Court thinks expedient and all such persons shall be at liberty to appear at the hearing and be heard.

(6) The Public Trustee or other person appointed under subsection (1)(g)(i) in acting on directions given by the Court shall be deemed to have discharged his duty in the subject matter of the application.

Undertakings by Crown

33.(1) Before making an order under section 32, the Court may require the Crown to give such undertakings as the Court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(2) For the purposes of this section, the Director of Public Prosecutions may, after consultation with the Attorney-General, on behalf of the Crown, give to the Court such undertakings with respect to the payment of damages or costs, or both, as are required by the Court.

Notice of application for restraining order

34. Before making a restraining order, the Court may require notice to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property, unless the Court is of the opinion that giving such notice before making the order would result in the disappearance, dissipation or reduction in value of the property.

Service of restraining order

35. A copy of a restraining order shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by rules of court.

Registration of restraining order

36.(1) A copy of a restraining order which affects lands, tenements or hereditaments in Barbados shall be registered with the Registrar of the Supreme Court in accordance with the *Registration of Judgments Act*, Cap. 210, and with the Registrar of Titles.

(2) A restraining order is of no effect with respect to registered land unless it is registered as a charge under the *Land Registration Act*, Cap. 229.

(3) Where particulars of a restraining order are recorded or registered, as the case may be, in accordance with the *Registration of Judgments Act*, Cap. 210 or the *Land Registration Act*, Cap. 229, a person who subsequently deals with the property shall, for the purposes of section 37, be deemed to have notice of the order at the time of the dealing.

Contravention of restraining order

37.(1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order commits an indictable offence punishable upon conviction by

- (a) a fine of \$100,000 or imprisonment for a period of 5 years or both, in the case of a natural person; or
- (b) a fine of \$500,000, in the case of a body corporate.

(2) Where a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order and the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice, the Director of Public

Prosecutions may apply to the Court that made the restraining order for an order that the disposition or dealing be set aside.

(3) Where the Director of Public Prosecutions makes an application under subsection (2) in relation to a disposition or dealing, the Court may

- (a) set aside the disposition or dealing as from the day on which the disposition or dealing took place; or
- (b) set aside the disposition or dealing as from the day of the order under this subsection and declare the respective rights of any persons who acquired interests in the property on, or after the day on which the disposition or dealing took place, and before the day of the order under this subsection.

Duration of restraining order

38. A restraining order remains in force until

- (a) it is revoked or varied under section 39;
- (b) it ceases to be in force under section 40; or
- (c) a forfeiture order or a confiscation order, as the case may be, is made in respect of property which is the subject of the order; or
- (d) the property which is the subject of the order becomes forfeited to the Crown under any other enactment.

Review of Search Warrants and Restraining Orders

Review of search warrants and restraining orders

39.(1) A person who has an interest in property that was seized under a warrant issued pursuant to section 25 or in respect of which a restraining order was made may, at any time, apply to the Court

- (a) for an order under subsection (4); or

- (b) for permission to examine the property.
- (2) An application under subsection (1) shall not be heard by the Court unless the applicant has given to the Director of Public Prosecutions at least 3 days clear notice in writing of the application.
- (3) The Court may require notice of the application to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property.
- (4) On an application made under subsection (1)(a) in respect of any property, the Court may, after hearing the applicant, the Director of Public Prosecutions and any other person to whom notice was given pursuant to subsection (3), order that the property or any part thereof be returned to the applicant or, in the case of a restraining order, revoke the order or vary the order to exclude the property or any interest in the property or any part thereof from the application of the order, or make the order subject to such conditions as the Court thinks fit,
- (a) if the applicant enters into a recognizance before the Court, with or without sureties, in such amount and with such conditions, as the Court directs and, where the Court considers it appropriate, deposits with the Court such sum of money or other valuable security as the Court directs;
 - (b) if the conditions referred to in subsection (5) are satisfied; or
 - (c) for the purpose of
 - (i) meeting the reasonable living expenses of the person who was in possession of the property at the time the warrant was executed or the order was made or any person who, in the opinion of the Court, has an interest in the property and of the dependants of that person,
 - (ii) meeting the reasonable business or legal expenses of a person referred to in sub-paragraph (i).

(5) Any order under subsection (4)(b) in respect of property may be made by the Court if the Court is satisfied

- (a) that a warrant should not have been issued pursuant to section 25 or a restraining order should not have been made, in respect of that property; or
- (b) that the applicant is the lawful owner of, or lawfully entitled to possession of, the property and appears innocent of any complicity in a scheduled offence or of any collusion in relation to such an offence; and
- (c) that the property will no longer be required for the purpose of any investigation or as evidence in any proceedings.

(6) On an application made to the Court under subsection (1)(b), the Court may order that the applicant be permitted to examine property subject to such terms as appear to the Court to be necessary or desirable to ensure that the property is safeguarded and preserved for the purpose for which it may subsequently be required.

Automatic expiry of restraining orders

40.(1) Subject to this section, where a restraining order has been made in relation to property, the restraining order shall not continue in force for a period of more than 6 months after the time of the making of the order unless before the expiration of that period, the Director of Public Prosecutions applies to the Court that made the order for an extension of the period of operation of the order.

(2) Where the Director of Public Prosecutions applies under subsection (1) for an extension of the period of operation of a restraining order and the Court is satisfied

- (a) that a forfeiture order may be made in respect of the property or part thereof, or
- (b) that a confiscation order may be made against a person in relation to property which is the subject of a restraining order,

the Court may extend for a specific period the period of operation of the restraining order and make such other order as it considers appropriate in relation to the operation of the restraining order.

Disposal of property seized or dealt with

41. Subject to this section, where the Court is satisfied that property will no longer be required for the purposes of section 10, 17 or 18 of this Act or any other enactment providing for forfeiture or for the purpose of any investigation or as evidence in any proceeding, the Court shall, on the application of the Director of Public Prosecutions or any person having an interest in the property or on the Court's own motion,

- (a) where a restraining order has been made in relation to any property, revoke the order;
- (b) where a recognizance has been entered into pursuant to section 39, cancel the recognizance; and
- (c) where property has been seized under a warrant issued pursuant to section 25 or where the property is under the control of a person appointed pursuant to section 32(1)(g),
 - (i) if possession of it by the person from whom it was taken is lawful, order that it be returned to that person;
 - (ii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is known, order that it be returned to the lawful owner or the person who is lawfully entitled to its possession; or
 - (iii) if possession of it by the person from whom it was taken is unlawful and the lawful owner or person who is lawfully entitled to its possession is not known, may order that it be forfeited to the Crown, to be disposed of or otherwise dealt with in accordance with the law.

Production Orders, and other information gathering powers

Production and inspection orders

42.(1) Where

- (a) a person has been convicted of a scheduled offence and a police officer has reasonable grounds for suspecting that a person has possession or control of
 - (i) a document relevant to identifying, locating or quantifying property of the person who committed the offence or to identifying or locating a document necessary for the transfer of property of the person who committed the offence,
 - (ii) a document relevant to identifying, locating or quantifying tainted property in relation to the offence or to identifying or locating a document necessary for the transfer of tainted property in relation to the offence, or
- (b) a police officer has reasonable grounds for suspecting that a person has committed a scheduled offence and that a person has possession or control of any document referred to in paragraph (a),

the police officer may apply to a Judge in Chambers in accordance with subsection (2) for an order under subsection (5) against the person suspected of having possession or control of a document of the kind referred to in paragraph (a) or against the person referred to in paragraph (b).

(2) An application under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit.

(3) Where a police officer applies for an order under subsection (5) in respect of a scheduled offence and includes in the affidavit a statement to the effect that the officer has reasonable grounds to believe that

- (a) the person who was convicted of the offence or who is believed to have committed the offence, derived a benefit directly or indirectly from the commission of the offence; and
- (b) property specified in the affidavit is subject to the effective control of the person referred to in paragraph (a),

the Judge may treat any document relevant to identifying, locating or quantifying that property as a document in respect of which an order may be issued under subsection (5).

(4) In determining whether to treat a document relevant to identifying, locating or quantifying property referred to in subsection (3) as a document in respect of which an order may be issued under subsection (5), the Judge may have regard to the matters referred to in section 23(2).

(5) Where an application is made under subsection (1) for an order against a person, the Judge may, subject to subsections (6) and (7) make an order requiring the person to

- (a) produce to a police officer any documents of the kind referred to in subsection (1) that are in the person's possession or control; or
- (b) make available to a police officer for inspection, any documents of the kind referred to in subsection (1) that are in the person's possession or control.

(6) An order under subsection (5)(a) shall not be made in respect of accounting records used in the ordinary business of banking including ledgers, day-books, cash books and account books.

- (7) A Judge shall not make an order under this section unless
- (a) the applicant or some other person has given the Judge, either orally or by affidavit, such information as the Judge requires concerning the grounds on which the order is sought; and
 - (b) the Judge is satisfied that there are reasonable grounds for making the order.
- (8) An order that a person produce a document or documents to a police officer shall specify the time when, and the place where, the document is or the documents are to be produced.
- (9) An order that a person make a document or documents available to a police officer for inspection shall specify the time or times when the document is or the documents are to be made available.

Scope of police powers under production order etc.

- 43.(1)** Where a document is produced to a police officer pursuant to an order under section 42, the police officer may
- (a) inspect the document;
 - (b) take extracts from the document;
 - (c) make copies of the document; or
 - (d) retain the document if, and for so long as, retention of the document is reasonably necessary for the purposes of this Act.
- (2) Where a document is made available to a police officer for inspection pursuant to an order under section 42, the police officer may
- (a) inspect the document;
 - (b) take extracts from the document; or
 - (c) make copies of the document.

- (3) Where a police officer retains a document pursuant to an order under section 42 the police officer shall
- (a) give the person to whom the order was addressed a copy of the document certified by the police officer in writing to be a true copy of the document retained; and
 - (b) unless the person has received a copy of the document under paragraph (a), permit the person to
 - (i) inspect the document;
 - (ii) take extracts from the document; or
 - (iii) make copies of the document.

Evidential value of information

44.(1) Where a person produces or makes available a document pursuant to an order under section 42 the production or making available of the document, or an information, document or thing obtained as a direct or indirect consequence of the production or making available of the document, is not admissible against the person in any criminal proceedings except a proceeding for an offence against section 46.

(2) For the purposes of subsection (1), proceedings on an application for a restraining order, a forfeiture order or a confiscation order are not criminal proceedings.

(3) A person is not excused from producing or making available a document when required to do so by an order under section 42 on the grounds that

- (a) the production or making available of the document might tend to incriminate the person or make the person liable to a penalty; or
- (b) the production or making available of the document would be in breach of an obligation, whether imposed by enactment or otherwise, of the person not to disclose the existence or contents of the document.

Variation of production order

45. Where a Judge makes a production order requiring a person to produce a document to a police officer, the person may apply to the Judge or another Judge for a variation of the order and if the Judge hearing the application is satisfied that the document is essential to the business activities of the person, the Judge may vary the production order so that it requires the person to make the document available to a police officer for inspection.

Failure to comply with production order

46.(1) Where a person is required by a production order to produce a document to a police officer or make a document available to a police officer for inspection, the person commits an offence against this subsection if the person,

- (a) contravenes the order without reasonable excuse; or
- (b) in purported compliance with the order produces or makes available a document known to the person to be false or misleading in a material particular without
 - (i) indicating to the police officer to whom the document is produced or made available that the document is false or misleading and the respect in which the document is false or misleading; and
 - (ii) providing correct information to the police officer if the person is in possession of, or can reasonably acquire, the correct information.

(2) An offence against subsection (1) is punishable upon summary conviction by

- (a) a fine of \$10,000 or imprisonment for a period of 2 years, or both, where the offender is a natural person;
- (b) a fine of \$50,000, where the offender is a body corporate.

Search warrant to facilitate investigations**47.(1) Where**

- (a) a person is convicted of a scheduled offence and a police officer has reasonable grounds for suspecting that there is in any premises any document of the type specified in section 42; or
- (b) a police officer has reasonable grounds for suspecting that a person has committed a scheduled offence and there is in any premises any document of the type specified in section 42,

the police officer may apply to a Judge for a warrant under subsection (2) to search the premises.

(2) Where an application is made under subsection (1) for a search warrant, the Judge may, subject to subsections (3) and (4), issue a warrant authorising a police officer (whether or not named in the warrant) with such assistance and by such force as is necessary and reasonable

- (a) to enter the premises;
- (b) to search the premises for documents of the kind referred to in subsection (1); and
- (c) to seize and retain any document found in the course of the search that in the opinion of the police officer is likely to be of substantial value (whether by itself or together with other documents) to the investigation in respect of which the application is made.

(3) A Judge shall not issue a search warrant under subsection (2) unless the Judge is satisfied that

- (a) a production order has been made in respect of the document and has not been complied with;

- (b) a production order in respect of the document would be unlikely to be effective because there are reasonable grounds to suspect that such a production order would not be complied with;
 - (c) the document involved cannot be identified or described with sufficient particularity to enable a production order to be made in respect of the document;
 - (d) it is not practicable to communicate with any person having the power to grant entry to the premises; or
 - (e) entry to the premises will not be granted unless a warrant is produced; or
 - (f) the investigation for the purposes of which the application is made might be seriously prejudiced unless the police officer is granted immediate access to the document without notice of any person.
- (4) A Judge shall not issue a search warrant under subsection (2) unless
 - (a) the applicant or some other person has given the Judge, either orally or by affidavit, any further information that the Judge requires concerning the grounds on which the search warrant is sought; and
 - (b) the Judge is satisfied that there are reasonable grounds for issuing the search warrant.
- (5) A search warrant issued under this section shall state
 - (a) the purpose for which the warrant is issued, including a reference to the scheduled offence that has been, or is believed to have been, committed;
 - (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
 - (c) a description of the kind of documents authorised to be seized; and
 - (d) the date, not being later than 28 days after the day of issue of the warrant, upon which the warrant ceases to have effect.

(6) Where a police officer enters premises in execution of a warrant issued under this section, he may seize and retain

- (a) any document, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other documents) to the investigation for the purpose of which the warrant was issued; and
- (b) any thing that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence.

(7) In this section

the expression “item subject to legal privilege” means

- (a) communications between an attorney-at-law and his client; and
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of these proceedings,
being communications which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communications;

“premises” includes any place and in particular any building, receptacle or vehicle.

Monitoring Orders

Monitoring orders

48.(1) A police officer may apply to a Judge in Chambers in accordance with subsection (2) for an order (in this section called a “monitoring order”) directing a financial institution to give information to a police officer.

(2) An application under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit.

(3) A monitoring order shall direct a financial institution to disclose information obtained by the institution about transactions conducted through an account held by a particular person with the institution.

(4) A monitoring order shall apply in relation to transactions conducted during the period specified in the order, being a period commencing not earlier than the day on which notice of the order is given to the financial institution and ending not later than 3 months after the date of the order.

(5) A Judge shall not make a monitoring order unless he is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is sought

(a) has committed, or is about to commit a scheduled offence;

(b) was involved in the commission or is about to be involved in the commission, of a scheduled offence; or

(c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a scheduled offence.

(6) A monitoring order shall specify

(a) the name or names in which the account is believed to be held;

(b) the class of information that the institution is required to give; and

(c) the name or names of the police officer to whom the information is to be given and the manner in which the information is to be given.

(7) Where a financial institution is, or has been, subject to a monitoring order, the fact that the monitoring order has been made shall be disregarded for the purposes of the application of sections 61 and 62 in relation to the institution.

(8) Where a financial institution that has been given notice of a monitoring order knowingly

(a) contravenes the order, or

- (b) provides false or misleading information in purported compliance with the order

the institution commits an offence against this subsection and is liable on summary conviction to a fine of \$500,000.

(9) A reference in this section to a transaction conducted through an account includes a reference to

- (a) the making of a fixed term deposit;
- (b) in relation to a fixed term deposit, the transfer of the amount deposited or any part thereof, at the end of the term; and
- (c) the opening, existence or use of a deposit box held by the institution.

Monitoring orders not to be disclosed

49.(1) A financial institution that is, or has been, subject to a monitoring order shall not disclose the existence or the operation of the order to any person except

- (a) an officer or agent of the institution, for the purpose of ensuring that the order is complied with; or
- (b) an attorney-at-law, for the purpose of obtaining legal advice or representation in relation to the order; or
- (c) the Commissioner or a police officer authorised in writing by the Commissioner to receive the information.

(2) A person referred to in subsection (1)(a), (b) or (c) to whom a disclosure of the existence or operation of a monitoring order has been made, whether in accordance with subsection (1) or a previous application of this subsection or otherwise, shall not

- (a) disclose the existence or operation of the order except to another person referred to in the said subsection (1) for the purposes of
 - (i) the performance of that person's duties, if the disclosure is made by the Commissioner or a police officer,

- (ii) ensuring that the order is complied with or obtaining legal advice or representation in relation to the order, if the disclosure is made by an officer or agent of the institution, or
 - (iii) giving legal advice or making representations in relation to the order, if the disclosure is made by an attorney-at-law; or
 - (b) make a record of, or disclose, the existence of the operation of the order in any circumstances, even when he ceases to be a person referred to in subsection (1).
- (3) Nothing in subsection (2) prevents the disclosure by a person referred to in subsection (1)(c) of the existence or operation of a monitoring order
- (a) for the purposes of, or in connection with, legal proceedings; or
 - (b) in the course of proceedings before a court.
- (4) A person referred to in subsection (1) (b) shall not be required to disclose to any court the existence or operation of a monitoring order.
- (5) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to
- (a) a fine of \$20,000 or imprisonment for a period of 3 years or both, in the case of a natural person; or
 - (b) a fine of \$100,000, in the case of a body corporate.
- (6) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which that person could reasonably be expected to infer the existence or operation of the monitoring order.

*Obligations of Financial Institutions***Retention of records of financial institutions**

50.(1) Subject to this section, and to section 51, a financial institution shall retain, in its original form for the minimum retention period applicable to the document,

- (a) a document that relates to a financial transaction carried out by the institution in its capacity as a financial institution and, without limiting the generality of this, includes a document that relates to
 - (i) the opening or closing by a person of an account with the institution;
 - (ii) the operation by a person of an account with the institution;
 - (iii) the opening or use by a person of a deposit box held by the institution;
 - (iv) the telegraphic or electronic transfer of funds by the institution on behalf of a person to another person;
 - (v) the transmission of funds between Barbados and a foreign country or between foreign countries on behalf of a person; or
 - (vi) an application by a person for a loan from the institution, where a loan is made to the person pursuant to the application; and
- (b) a document that relates to a financial transaction carried out by the institution in its capacity as a financial institution that is given to the institution by or on behalf of the person, whether or not the document is signed by or on behalf of the person.

(2) For the purposes of this section, the expression “minimum retention period” means,

- (a) where the document relates to the opening of an account with the institution, the period of 7 years after the day on which the account is closed;
- (b) where the document relates to the opening by a person of a deposit box held by the institution, the period of 7 years after the day on which the deposit box ceases to be used by the person; and
- (c) in any other case, the period of 7 years after the day on which the transaction takes place.

(3) Subsection (1) does not apply to a financial transaction document that relates to a single deposit, credit, withdrawal, debit or transfer of an amount of money that does not exceed \$5,000 or such larger amount as may be prescribed for purposes of this subsection.

(4) A financial institution required to retain documents under this section shall retain them on microfilm or in such other manner that makes retrieval of the information contained in the documents or the documents as the case may be reasonably practicable.

(5) A financial institution that contravenes subsection (1) or (4) commits an offence against this section and is liable, on summary conviction, to a fine of \$10,000.

(6) This section does not limit any other obligation of a financial institution to retain documents.

Register of original documents

51.(1) Where a financial institution is required by law to release the original of a document before the end of the minimum retention period applicable to the document, the institution shall retain a complete copy of the document until the period has ended or the original document is returned, whichever occurs first.

(2) A financial institution shall maintain a register of documents released under subsection (1).

(3) A financial institution that contravenes subsection (1) or (2) commits an offence against this section and is liable, on summary conviction, to a fine of \$10,000.

Communication of information to law enforcement authorities

52.(1) Where a financial institution has information about an account held with the institution and the institution has reasonable grounds for believing that

- (a) the information may be relevant to an investigation of, or the prosecution of, a person for an offence; or
- (b) the information would otherwise be of assistance in the enforcement of this Act or any regulations made thereunder

the institution may give the information to a police officer or the Director of Public Prosecutions.

(2) An action, suit or proceedings does not lie against

- (a) a financial institution, or
- (b) an officer, employee or agent of the institution acting in the course of the person's employment or agency

in relation to an action taken by the institution or person pursuant to subsection (1).

Protection for financial institution

53. Where a financial institution, or a person who is an officer, employee or agent of the institution gives the information pursuant to section 52(1) as soon as practicable after forming the belief referred to in that subsection, the institution shall be taken for the purposes of sections 61 and 62 not to have been in possession of that information at any time.

Interpretation

- 54.** For the purposes of sections 48 to 53, “financial institution” means
- (a) a bank licensed under the *Banks Act*, Cap. 322;
 - (b) a building society registered under the *Building Societies Act*, Cap. 377;
 - (c) a credit union registered under the *Co-operative Societies Act*, Cap. 378.
 - (d) a trust company, finance company or deposit taking company, recognised by the Minister responsible for Finance as such.

Order for Disclosure of Income Tax Information

Application for disclosure of income tax information

55.(1) The Director of Public Prosecutions may for the purposes of an investigation in relation, to a scheduled offence apply to a Judge in accordance with subsection (2) for an order for disclosure of information under section 56.

(2) An application under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit sworn on the information and belief of the Director of Public Prosecutions or a person specially designated by the Director of Public Prosecutions for that purpose deposing to the following matters, namely

- (a) the scheduled offence under investigation;
- (b) the person in relation to whom the information or documents referred to in paragraph (c) are required;
- (c) the type of information or book, record writing, return or other document in the possession of the Commissioner of Inland Revenue to which access is sought or that is proposed to be examined or communicated; and

- (d) the facts relied on to justify the belief, on reasonable grounds, that the person referred to in paragraph (b) has committed or benefited from the commission of an offence referred to in paragraph (a) and that the information or documents referred to in paragraph (c) are likely to be of substantial value, whether alone or together with other material, to the investigation for the purpose of which the application is made.

Order for disclosure

56.(1) Notwithstanding any provision in any other law, where the Judge to whom an application under section 55 is made is satisfied

- (a) of the matters referred to in paragraph (d) of subsection (2) of section 55; and
- (b) that there are reasonable grounds for believing that it is in the public interest to allow access to the information or documents to which the application relates, having regard to the benefit likely to accrue to the investigation if the access is obtained,

the Judge may, subject to such conditions as the Judge considers advisable in the public interest, order the Commissioner of Inland Revenue

- (c) to allow the Director of Public Prosecutions or any other person named in the order access to all such information and documents and to examine them; or
- (d) where the Judge considers it necessary in the circumstances to produce all such information and documents to a person referred to in paragraph (c) above and allow such person to remove the information and documents from the possession of that person,

within such period as the Judge may specify after the expiration of 7 days following the service of the order on the Commissioner of Inland Revenue pursuant to subsection (2).

(2) A copy of an order made by a Judge under this section shall be served on the Commissioner of Inland Revenue in such manner as the Judge directs.

(3) A Judge who makes an order under this section may, on application of the Commissioner of Inland Revenue or of the Director of Public Prosecutions, extend the period within which the order is to be complied with.

Objection to disclosure of information

57.(1) The Commissioner of Inland Revenue may object to the disclosure of any information or document in respect of which an order under section 56 has been made by certifying in writing that the information or document should not be disclosed on the grounds that

- (a) the Commissioner of Inland Revenue is prohibited from disclosing the information or document by any bilateral or international treaty, convention or other agreement respecting taxation to which Barbados is a signatory;
- (b) a privilege is attached by law to the information or document;
- (c) the information or document has been placed in a sealed package pursuant to law or an order of a court of competent jurisdiction;
- (d) disclosure of the information or document would not for any other reason be in the public interest.

(2) Where an objection to the disclosure of information or a document is made under subsection (1) the objection may be determined on application by the Commissioner of Inland Revenue or the Director of Public Prosecutions to a Judge in Chambers made not later than 14 days from the date of the objection.

(3) A Judge who is to determine an objection pursuant to subsection (2) may, if the Judge considers it necessary, examine the information or document in relation to which the objection is made and shall grant the objection and order that disclosure of the information or document be refused where the Judge is satisfied as to any of the grounds mentioned in subsection (1).

(4) An appeal lies from a determination under subsection (2) to the Court of Appeal and shall be brought within 14 days from the date of the determination

appealed from or within such further time as the Court of Appeal considers appropriate in the circumstances.

Evidential value of copies

58. Where any information or document is examined or provided pursuant to an order under section 56, the person by whom it is examined or to whom it is provided or any officer or person authorised by the Commissioner of Inland Revenue for the purpose, may make or cause to be made one or more copies thereof and any copy purporting to be certified by the Commissioner of Inland Revenue to be a copy made pursuant to this section is evidence of the nature and content of the original information or document and has the same probative force as the original information or document would have had if it had been proved in the ordinary way.

Further disclosure

59. No person to whom information or documents have been disclosed or provided pursuant to an order under section 56 shall further disclose the information or documents except for the purposes of the investigation in relation to which the order was made, and proceedings under this Act.

Access to specified information and documents held by Government departments etc.

Disclosure of information and documents held by Government departments

60. Notwithstanding any provision in this or in any other law, the Court may on an application by the Director of Public Prosecutions order the person in charge of any Government department or statutory body to produce or furnish to the Director of Public Prosecutions or any other person specified in the order any document or information which is in his possession or under his control or to which he may reasonably have access (not being a document readily available to the public), which the Court considers relevant to any investigation into, or

proceedings relating to, a scheduled offence alleged or suspected to have been committed by any person.

PART IV
OFFENCES

61. *[Repealed by 1998-38.]*
62. *[Repealed by 1998-38.]*
63. *[Repealed by 1998-38.]*
64. *[Repealed by 1998-38.]*

PART V
MISCELLANEOUS

Amendment of Schedule

65.(1) The Attorney-General may by order published in the *Official Gazette* amend the *Schedule*.

(2) An order under subsection (1) shall be subject to affirmative resolution.

Standard of proof

66. Save as otherwise provided in this Act, any question of fact to be decided by the Court in proceedings under this Act is to be decided beyond a reasonable doubt.

External forfeiture orders and confiscation orders

67.(1) The Attorney-General may by an order under this section apply this section to an external forfeiture order or external confiscation order of a description specified in the Minister's order.

(2) In this section

- (a) "external forfeiture order" or "external confiscation order", as the case may be, means an order made by a court of a designated country, after the coming into force of an order under this section, for the purpose of recovering proceeds of crime;
- (b) "designated country" means a country or territory outside Barbados designated by an order under this section.

(3) Subject to subsection (4), the Court may, on an application by or on behalf of the government of a designated country, register an external forfeiture order or an external confiscation order made there.

(4) The Court shall not register an external forfeiture order or an external confiscation order unless

- (a) the Court is satisfied that at the time of registration the order is in force in the designated country and is not subject to appeal there; and
- (b) the Court is satisfied, where the person against whom the order was made did not appear in the proceedings in the designated country, that he received notice of those proceedings in sufficient time to enable him to defend them; and
- (c) the Court is of opinion that enforcing the order in Barbados would not be contrary to the interests of justice.

(5) In subsection (4), "appeal" includes

- (a) any proceedings by way of discharging or setting aside a judgment; and

- (b) an application for a new trial or a stay of execution.
- (6) The Court shall cancel the registration of an external forfeiture order or an external confiscation order if it appears to the Court that the order has been satisfied.
- (7) In relation to an external forfeiture order or an external confiscation order registered under this section, sections 31 to 38 have effect, subject to such modifications as may be specified in the order under this section, as they have effect in relation to a forfeiture order or a confiscation order.
- (8) An order under this section may include such provision
- (a) as to evidence or proof of any matter for the purposes of this section; and
 - (b) as to the circumstances in which proceedings are to be treated for those purposes as instituted or concluded in a designated country,
- as the Attorney-General considers expedient.
- (9) An order varying or revoking a previous order under this section may contain such incidental, consequential and transitional provisions as the Attorney-General considers expedient.
- (10) In the case where the Court is satisfied, on an application by or on behalf of the government of a designated country, that proceedings which might result in an external forfeiture order or an external confiscation order being made against a person have been instituted in that country and have not been concluded, sections 31 and 32 have effect in relation to those proceedings
- (a) as they would have effect in relation to proceedings instituted in Barbados against that person for a scheduled offence which have not been concluded; and
 - (b) as if references to a forfeiture order or a confiscation order were references to an external forfeiture order or an external confiscation order and references to an application by the Director of Public

Prosecutions were references to an application by or on behalf of that government; and

- (c) subject to such other modifications as may be specified in an order under this section.

(11) An order under this section is subject to affirmative resolution.

Compensation

68.(1) Where upon the making of an application for a forfeiture order or a confiscation order the Court declines to make such an order, the Court shall on the application of a person who held realisable property order compensation to be paid to him if the requirements of subsection (2) are fulfilled.

- (2) The Court shall order compensation to be paid if the Court is satisfied
 - (a) that there has been some serious default in the investigation or conduct of the matter and that, but for that default, the application 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 Court under section 32.
- (3) The amount of compensation to be paid under this section is such amount as the Court thinks just in all the circumstances.
- (4) Compensation payable under this section shall be paid out of the Consolidated Fund.

Regulations

- 69.(1)** The Attorney-General may make regulations prescribing matters
- (a) required or committed by this Act to be prescribed;
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made under subsection (1) shall be subject to affirmative resolution.

Costs

70. Where

- (a) a person brings, or appears at, proceedings under this Act before the Court in order
 - (i) to prevent a forfeiture, confiscation or restraining order from being made against any property of that person; or
 - (ii) to have property of that person excluded from a forfeiture, confiscation or restraining order;
- (b) the person is successful in those proceedings; and
- (c) the Court is satisfied that that person was not involved in any way in the commission of the offence in respect of which the forfeiture, confiscation or restraining order was sought or made, the Court may order the Crown to pay all costs reasonably incurred by that person in connection with the proceedings or such part of those costs as is determined by the Court.

Non-liability of Public Trustee

71. The Public Trustee shall not be personally liable for anything done or omitted to be done by him in the course of the performance of his functions under this Act.

Operation of other laws not affected

72. Nothing in this Act prejudices, limits or restricts

- (a) the operation of any other law which provides for the forfeiture of property or the imposition of penalties or fines; or

- (b) the remedies available to the Crown, apart from this Act, for the enforcement of its rights and the protection of its interests; or
- (c) any power of search or any power to seize or detain property which is exercisable by a police officer apart from this Act.

SCHEDULE*(Sections 3, 65)**List of Scheduled Offences*

1. Possession of controlled drugs for the purpose of supply contrary to section 6(3) of the *Drug Abuse (Prevention and Control) Act, Cap. 131*.
2. Trafficking in controlled drugs contrary to section 18 of the *Drug Abuse (Prevention and Control) Act, Cap. 131*.
3. Assisting another to retain the benefit of drug trafficking contrary to section 19 of the *Drug Abuse (Prevention and Control) Act, Cap. 131*.
4. Terrorism offences under section 3 or 4 of the *Anti-Terrorism Act (Act 2002-6)*.
5. *[Repealed by virtue of 1998-38.]*