



LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

*In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances,
the Secretary-General has the honour to communicate the following legislative text / texts*

ANGUILLA

Communicated by the Government of Anguilla

NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

DRUGS TRAFFICKING OFFENCES ACT Revised Statutes of Anguilla, Chapter D50

Showing the Law as at 15 December 2004

*Note by the Secretariat: These documents are a direct reproduction of the text / texts communicated to the Secretariat.



REVISED STATUTES OF ANGUILLA
CHAPTER D50

DRUGS TRAFFICKING OFFENCES ACT
Showing the Law as at 15 December 2004

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DRUGS TRAFFICKING OFFENCES ACT

Interpretation

1. (1) In this Act, unless the context otherwise requires—

“corresponding law” has the meaning assigned thereto by section 2;

“Court”, except where the High Court is specified, means the High Court or Magistrate’s Court exercising jurisdiction at first instance in a matter to which this Act applies;

“drug money laundering” means doing any act which constitutes an offence under—

(a) section 22 of this Act; or

(b) section 13(1), 13(2) or 14(1) of the Criminal Justice (International Co-operation) (Anguilla) Act;

or, in the case of an act done outside Anguilla, would constitute such an offence if done in Anguilla;

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

(a) importing or exporting a controlled drug where the importation or exportation is prohibited by section 4 of the Drugs (Prevention of Misuse) Act or a corresponding law;

(b) producing or supplying a controlled drug where the production or supply contravenes section 6 of that Act or a corresponding law;

(c) transporting or storing a controlled drug where possession of the drug contravenes section 7 (1) of that Act or a corresponding law;

(d) manufacturing or supplying a scheduled substance within the meaning of section 11 of the Criminal Justice (International Co-operation)(Anguilla) Act¹ where the manufacture or supply is an offence under that section;

(e) entering into or being otherwise concerned in an arrangement whereby—

(i) the retention or control by or on behalf of another person of the other person’s proceeds of drug trafficking is facilitated, or

(ii) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person’s disposal or are used for the other person’s benefit to acquire property by way of investment; and

(f) doing any act which constitutes an offence under section 13(1), 13(2) or 14(1) of the Criminal Justice (International Co-operation) (Anguilla) Act or, in the case of an act done outside Anguilla, which would constitute such an offence if done in Anguilla;

“drug trafficking offence” means any of the following—

(a) an offence under section 4(3), 6(2) or (3), 7(3), 12 or 21 of the Drugs (Prevention of Misuse) Act;

(b) an offence under section 22 of this Act and inciting another to commit such an offence;

(c) conspiracy or an attempt to commit any offence specified in paragraphs (a), (b) or (e);

(d) aiding, abetting, counselling or procuring the commission of any of those offences;

(e) an offence under section 13, 14 or 17 of the Criminal Justice (International Co-operation)(Anguilla) Act; “interest”, in relation to property, includes a right; “property” includes money and all other property, real or personal, heritable or movable, including things in action and other intangible or incorporeal property; “Regulations” means the Anti-Money

¹ Note by the Secereteriat: E/NL.2007/67.

Laundering Regulations made under section 3 of the Money Laundering Reporting Authority Act; “relevant financial business” has the meaning specified in the Regulations;

“Reporting Authority” means the Money Laundering Reporting Authority established under section 2(1) of the Money Laundering Reporting Authority Act.

(2) For the purposes of the definition of drug money laundering in subsection (1), having possession of any property shall be taken to be doing an act in relation to it.

(3) The expressions listed in the left hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provision of this Act listed in the right hand column in relation to those expressions.

Expression	Relevant provision
Benefited from drug trafficking	Section 4(3)
Charging order	Section 11(2)
Confiscation order	Section 4(7)
Dealing with property	Section 10(8)
Defendant	Section 4(7)
Gift caught by this Act	Section 3(8)
Making a gift	Section 3(9)
Proceeds of drug trafficking	Section 5(1)(a)
Realisable property	Section 3(1)
Restraint order	Section 10(1)
Value of gift, payment or reward	Section 3(5)
Value of proceeds of drug trafficking	Section 5(1)(b)
Value of property	Section 3(4)

(4) This Act applies to property whether it is situated in Anguilla or elsewhere.

(5) References in this Act to offences include a reference to offences committed before 3rd January, 1989, but nothing in this Act imposes any duty or confers any power on the Court in or in connection with proceedings against a person for a drug trafficking offence instituted before the coming into operation of this Act.

(6) References in this Act to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection.

(7) The following provisions shall have effect from the interpretation of this Act.

(8) Property is held by any person if he holds any interest in it.

(9) References to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator.

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

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

- (12) Proceedings for an offence are instituted in Anguilla—
- (a) when a summons or warrant is issued in respect of the offence;
 - (b) when a person is charged with the offence after being taken into custody without a warrant;
- or
- (c) when a bill of indictment is preferred;

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

- (13) Proceedings in Anguilla for an offence are concluded—
- (a) when (disregarding any power of the Court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings; or
 - (b) on the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

(14) An order is subject to appeal until (disregarding any power of the Court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

(15) Without prejudice to the provisions of any other law, the powers exercisable by the Court are exercisable by the Court of Appeal on appeal from the Court.

Meaning of “corresponding law”

2. (1) In this Act the expression “corresponding law” means a law stated in a certificate purporting to be issued by or on behalf of the government of a country outside of Anguilla to be a law providing for the control and regulation in that country of the production, supply, use, export and import of drugs and other substances in accordance with the provisions of the Single Convention on Narcotic Drugs signed at New York on 30th March, 1961 or a law providing for the control and regulation in that country of the production, supply, use, export and import of dangerous or otherwise harmful drugs in pursuance of any treaty, convention or other agreement or arrangement to which the Government of Anguilla and the government of that country are for the time being parties or to which the Government of the United Kingdom has acceded on behalf of Anguilla.

(2) A statement in any such certificate as to the effect of the law mentioned in the certificate or a statement in any such certificate that any facts constitute an offence against that law shall be conclusive evidence of the matters stated.

Provisions as to profit

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

- (a) any property held by the defendant; and
- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act.

(2) Property is not realisable property if an order under section 29 of the Drugs (Prevention of Misuse) Act is in force in respect of the property.

(3) For the purposes of sections 6 and 7, the amount that might be realised at the time a confiscation order is made against the defendant is—

(a) the total of the values at that time of all the realisable property held by the defendant;

less—

(b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations;
together with the total of the values at that time of all gifts caught by this Act.

(4) Subject to the following provisions of this section, for the purposes of this Act the value of property (other than cash) in relation to any 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 (other than a charging order) on that interest; and

(b) in any other case, is its market value.

(5) Subject to subsection (9), references in this Act to the value at any time (referred to in subsection (6) as the "material time") of a gift caught by this Act or of any payment or reward are references to—

(a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or

(b) where subsection (6) applies, the value there mentioned; whichever is the greater.

(6) Subject to subsection (9), if at the material time the recipient holds—

(a) the property which he received (not being cash); or

(b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received;

the value referred to in paragraph (5)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it represents the property which he received, but disregarding in either case any charging order.

(7) For the purposes of subsection (3), an obligation has priority at any time if it is an obligation of the defendant to—

(a) pay an amount due in respect of a fine, or other order of the Court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or

(b) pay any sum which, if the defendant had been adjudged bankrupt or was being wound up, would be among the preferential debts.

(8) A gift (including a gift made before the 3rd January, 1989) is caught by this Act if—

(a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him; or

(b) it was made by the defendant at any time and was a gift of property—

(i) received by the defendant in connection with drug trafficking carried on by him or another, or

(ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.

(9) For the purposes of this Act—

(a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration, the value of which is significantly less than the value of the consideration provided by the defendant; and

(b) in those circumstances, the preceding provisions of this section shall apply as if the

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

Confiscation of proceeds of drug trafficking

4. (1) Where a person appears before the Court to be sentenced in respect of one or more drug trafficking offences (and has not previously been sentenced or otherwise dealt with in respect of his conviction for the offence or, as the case may be, any of the offences concerned), the Court shall act as follows.

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

(3) For the purposes of this Act, a person who has at any time (whether before or after 3rd January, 1989) received any payment or other reward in connection with drug trafficking carried on by him or another has benefited from drug trafficking.

(4) If the Court determines that he has so benefited, the Court shall, before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 7 the amount to be recovered in his case by virtue of this section.

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

(a) order him to pay that amount;

(b) take account of the order before—

(i) imposing any fine on him,

(ii) making any order involving any payment by him, or

(iii) making any order under section 29 of the Drugs (Prevention of Misuse) Act; and

(c) subject to paragraph (b), leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

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

(7) In this Act—

(a) an order under this section is referred to as a “confiscation order”; and

(b) a person against whom proceedings have been instituted for a drug trafficking offence is referred to (whether or not he has been convicted) as the “defendant”.

Assessing the proceeds of drug trafficking

5. (1) For the purposes of this Act—

(a) any payments or other rewards received by a person at any time (whether before or after 3rd January, 1989) in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking; and

(b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

(2) The Court may, for the purpose of determining whether the defendant has benefited from

drug trafficking, make the following assumptions, except to the extent that any of the assumptions are shown to be incorrect in the defendant's case.

(3) Those assumptions are—

(a) that any property appearing to the Court—

(i) to have been held by him at any time since his conviction, or

(ii) to have been transferred to him at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him,

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

(b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him; and

(c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such reward, he received the property free of any other interests in it.

(4) Subsection (2) does not apply if the only drug trafficking offence in respect of which the defendant appears before the Court to be sentenced is an offence under section 22 of this Act or section 13 of the Criminal Justice (International Co-operation)(Anguilla) Act.

(5) For the purpose of assessing the value of the defendant's proceeds of drug trafficking in a case where a confiscation order has previously been made against him, the Court shall leave out of account any of his proceeds of drug trafficking that are shown to the Court to have been taken into account in determining the amount to be recovered under that order.

Statements relating to drug trafficking

6. (1) Where—

(a) there is tendered to the Court by the prosecutor a statement as to any matters relevant to the determination whether the defendant has benefited from drug trafficking or to the assessment of the value of his proceeds of drug trafficking; and

(b) the defendant accepts to any extent any allegation in the statement;

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

(2) Where—

(a) a statement is tendered under paragraph (1)(a); and

(b) the Court is satisfied that a copy of the statement has been served on the defendant;

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

(3) If the defendant fails in any respect to comply with a requirement under subsection (2), he may be treated for the purposes of this section as accepting every allegation in the statement apart from—

(a) any allegation in respect of which he has complied with the requirement; and

(b) any allegation that he has benefited from drug trafficking or that any payment or other reward was received by him in connection with drug trafficking carried on by him or another.

(4) Where—

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

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

(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 the rules of court (if any).

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

Amount to be recovered under confiscation order

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

(2) If the Court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under section 6 or otherwise), the Court may issue a certificate giving the Court's opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3).

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

(4) If, on an application by a prosecutor or a receiver appointed under this Act for an increase in the amount to be recovered under a confiscation order, the Court is satisfied that the amount that might be realized in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it is greater than was thought when the order was made or has subsequently increased), the Court may—

- (a) substitute for that amount such amount (not exceeding the amount assessed as the value of his proceeds of drug trafficking) as appears to the Court to be appropriate having regard to the amount now shown to be realizable; and
- (b) increase the term of imprisonment fixed in respect of the confiscation order under section 8(2) if the effect of that provision is to increase the maximum period applicable in relation to the order.

Application of procedure for enforcing fines

8. (1) Where the Court orders the defendant to pay any amount under section 4, the order shall have effect as if that amount was a fine that may be recovered.

(2) Where the whole or any part of an amount ordered to be paid remains unpaid after such period as the Court may determine, the defendant shall be sentenced to imprisonment in accordance with the following table—

Where the amount is \$10,000 or less	6 months
Where the amount exceeds \$10,000 but is not more than \$80,000	12 months
Where the amount exceeds \$80,000 but is not more than \$200,000	18 months
Where the amount exceeds \$200,000 but is not more than \$400,000	2 years
Where the amount exceeds \$400,000 but is not more than \$1,000,000	3 years
Where the amount exceeds \$1,000,000 but is not more than \$4,000,000 ..	5 years
Where the amount exceeds \$4,000,000	10 years

(3) Where—

- (a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under section 4 in respect of an offence or offences; and
- (b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offences;

the term of imprisonment to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b).

(4) The reference in subsection (3) to the term of custody which the defendant is liable to serve in respect of the offence or offences is a reference to the term of imprisonment which he is liable to serve in respect of the offence or offences and consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

Cases in which restraint orders and charging orders may be made

9. (1) The powers conferred on the High Court by sections 10 and 11 are exercisable where—

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

(2) The powers conferred on the High Court by sections 10 and 11 are also exercisable where the High Court is satisfied—

- (a) that a charge is to be laid under the Magistrate's Code of Procedure Act that a person has or is suspected of having committed a drug trafficking offence; and
- (b) that there is reasonable cause to believe that he has benefited from drug trafficking.

(3) For the purposes of sections 10 and 11, at any time when those powers are exercisable before proceedings have been instituted—

- (a) references in this Act to the defendant shall be construed as references to the person referred to in paragraph (2)(a);
- (b) references in this Act to the prosecutor shall be construed as references to the person who the High Court is satisfied is to have the conduct of the proposed proceedings; and
- (c) references in this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in paragraph (2)(a) for a drug trafficking offence.

(4) Where the High Court has made an order under section 10 or 11 by virtue of subsection (2), the High Court shall discharge the order if the proposed proceedings are not instituted within such time as the High Court considers reasonable.

Restraint orders

10. (1) The High Court may by order (in this Act referred to as a “restraint order”) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) A restraint order may apply—

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

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

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 11.

(4) A restraint order—

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

(b) may be made on an ex parte application to a Judge in Chambers; and

(c) shall provide for notice to be given to persons affected by the order.

(5) A restraint order—

(a) may be discharged or varied in relation to any property; and

(b) shall be discharged when proceedings for the offences are concluded.

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

(7) Where the High Court has made a restraint order, the High Court may at any time appoint a receiver—

(a) to take possession of any realisable property; and

(b) in accordance with the High Court’s directions, to manage or otherwise deal with the property in respect of which he is appointed;

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

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

(a) where a debt is owed to that person making a payment to any person in reduction of the amount of the debt; and

(b) removing property from Anguilla.

(9) Where the High Court has made a restraint order, a police officer may, for the purpose of preventing any realisable property being removed from Anguilla, seize the property.

(10) Property seized under subsection (9) shall be dealt with in accordance with the High Court’s directions.

(11) The Registered Land Act shall apply—

- (a) in relation to restraint orders, as it applies in relation to orders affecting land made by the High Court for the purpose of enforcing judgments or recognisances; and
- (b) in relation to applications for restraint orders, as it applies in relation to other pending land actions.

Charging orders in respect of land, securities, etc.

11. (1) The High Court may make a charging order on realisable property for securing the payment to the Crown—

- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
- (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

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

(3) A charging order—

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

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

- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Act—
 - (i) in any asset of a kind mentioned in subsection (5), or
 - (ii) under any trust; or
- (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

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

- (a) land in Anguilla; or
- (b) securities of any of the following kinds—
 - (i) Government stock,
 - (ii) stock of any body (other than a building society) incorporated within Anguilla,
 - (iii) stock of any body incorporated outside of Anguilla, being stock registered in a register kept within Anguilla,
 - (iv) units of any unit trust in respect of which a register of the unit holders is kept within Anguilla.

(6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in paragraph (5)(b), the High Court may provide for the charge to extend to any interest or dividend payable in respect of that asset.

(7) The High Court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings for the offence are concluded or the amount payment of which is secured by the charge is paid into the High Court.

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

Charging orders: supplementary provisions

12. Subject to any provision made under section 13 or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the High Court in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

Realisation of property

13. (1) Where—

- (a) in proceedings instituted for a drug trafficking offence, a confiscation order is made;
- (b) the order is not subject to appeal; and
- (c) the proceedings have not been concluded;

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

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

(3) The High Court may empower a receiver appointed under subsection (2), under section 10 or in pursuance of a charging order—

- (a) to enforce any charge imposed under section 11 on realisable property or on interest or dividends payable in respect of such property; and
- (b) in relation to any realisable property other than property for the time being subject to a charge under section 11, to take possession of the property subject to such conditions or exceptions as may be specified by the High Court.

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

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

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

(7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 11.

(8) The High Court shall not in respect of any property exercise the powers conferred by paragraph (3)(a) or subsection (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the High Court.

Application of proceeds of realisation and other sums

14. (1) Subject to subsection (2), the following sums in the hands of a receiver appointed under section 10 or 11 or in pursuance of a charging order, that is—

- (a) the proceeds of the enforcement of any charge imposed under section 11;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 10 or 13; and
- (c) any other sums, being property held by the defendant;

shall first be applied in payment of expenses incurred by a receiver as are payable under section 19 and then shall, after such payments (if any) as the High Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

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

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

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

(3) The receipt of any sum by the Registrar of the High Court on account of an amount payable under a confiscation order whether the order is made in the Magistrate's Court or the High Court shall reduce the amount so payable but the Registrar of the High Court shall apply the money received for the purposes specified in this section and in the order so specified.

(4) The Registrar of the High Court shall first pay any expenses incurred by a receiver or a liquidator and payable under section 19 but not already paid under subsection (1).

(5) If the money was paid to the Registrar of the High Court by a receiver appointed under section 10 or section 13 or in pursuance of a charging order, the Registrar of the High Court shall next pay the receiver's remuneration and expenses.

(6) After making—

- (a) any payment required by subsection (4); and
- (b) in a case to which subsection (5) applied, any payment required by that subsection;

the Registrar of the High Court shall reimburse any amount paid under section 19.

(7) Any balance in the hands of the Registrar of the High Court after he has made all payments required by the foregoing provisions of this section shall be treated as if it were a fine imposed by the High Court.

Exercise of powers of High Court or receiver

15. (1) The following provisions apply to the powers conferred on the High Court by sections 10 to 14, or on a receiver appointed under section 10 or 13 or in pursuance of a charging order.

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

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

than the value for the time being of the gift.

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

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

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

Variation of confiscation order

16. (1) If, on an application by the defendant in respect of a confiscation order, the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order, the High Court shall issue a certificate to that effect giving the High Court's reasons.

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

(a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated, the High Court shall take into account the extent to which any property held by him may be distributed among the creditors; and

(b) the High Court may disregard any inadequacy in the realisable property which appears to the High Court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Act from any risk of realisation under this Act.

(3) Where a certificate has been issued under subsection (1), the defendant may apply to the High Court for the amount to be recovered under the order to be reduced.

(4) The High Court shall, on an application under subsection (3)—

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

(b) substitute, if necessary, the appropriate term of imprisonment in accordance with section 8.

Bankruptcy of defendant, etc.

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

(a) property for the time being subject to a restraint order made before adjudging him bankrupt; and

(b) any proceeds of property realised by virtue of section 10(7) or 13(5) or (6) for the time being in the hands of a receiver appointed under section 10 or 13;

is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act.

(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 10 to 14 or on a receiver so appointed shall not be exercised on—

(a) property of the bankrupt for the time being for the purposes of the Bankruptcy Act; and

(b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed by section 27(2) of that Act.

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

(a) made before the order adjudging the person bankrupt; or

(b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

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

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

- (a) no order shall be made under section 28 or 44 of the Bankruptcy Act in respect of the making of the gift at any time when proceedings for a drug trafficking offence have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or a charging order; and
- (b) any order made under either of those sections after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.

Winding up of company holding realisable property

18. (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property realised by virtue of section 10(7) or 13(5) or (6) for the time being in the hands of a receiver appointed under section 10 or 13.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by sections 10 to 14 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator) incurred in the winding up in respect of the property.

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

(4) In this section—

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

“relevant time” means—

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

Receivers and liquidators dealing with property subject to restraint order

19. (1) Without prejudice to the Bankruptcy Act or in any other written law, where—
(a) any person acting as a receiver or liquidator seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
(b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the High Court or otherwise) to seize or dispose of that property;

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting, and a person so acting shall have a lien on the property or the proceeds of its sale for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

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

shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 14.

(3) In this Act, the expression “acting as a receiver or liquidator” shall be construed in accordance with the provisions of the Bankruptcy Act and Companies Act respectively.

Receivers: supplementary provisions

20. (1) Where a receiver has been appointed under section 10 or 13 or in pursuance of a charging order takes any action—
(a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property; and
(b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property;

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall be paid by the prosecutor or, in a case where proceedings for a drug trafficking offence are not instituted, by the person on whose application the receiver was appointed.

Compensation

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

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

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

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

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned; 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 High Court under sections 10 to 13.

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

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

Assisting another to retain the benefit of drug trafficking

22. (1) Subject to subsection (3), any person who enters into or is otherwise concerned in an arrangement whereby—

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

knowing, suspecting or having reasonable grounds to suspect that A is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking, is guilty of an offence.

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

(3) Where a person discloses to the Reporting Authority a suspicion or belief that any funds or investments are derived from or used in connection with drug trafficking or any matter on which such a suspicion or belief is based—

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by any contract, enactment, rule of law or otherwise and shall not give rise to any civil proceedings; and
- (b) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if the disclosure is made in accordance with this paragraph, that is—

- (i) it is made before he does the act concerned, being an act done with the consent of the Reporting Authority, or
- (ii) it is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

- (4) In proceedings against a person for an offence under this section, it is a defence to prove—
- (a) that he did not know or suspect that the arrangement related to any person's proceeds of drug trafficking;
 - (b) that he did not know or suspect that by the arrangement, the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1); or
 - (c) that—

(i) he intended to disclose to the Reporting Authority such a suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement,

but—

(ii) there is reasonable excuse for his failure to make disclosure in accordance with paragraph (3)(b).

(5) In the case of a person who was in employment at the relevant time, subsections (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to the Reporting Authority.

(6) Any person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for 14 years and to a fine; and
- (b) on summary conviction, to imprisonment for 2 years and to a fine of \$2,000.

(7) No police officer, member of the Reporting Authority or other person is guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of this Act.

Requirement to disclose knowledge or suspicion of drug money laundering

23. (1) Where a person—

- (a) knows, or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in drug money laundering; and
- (b) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, comes to him in the course of a relevant financial business;

he shall disclose the information or other matter as soon as is practicable after it comes to him to a nominated officer or to the Reporting Authority.

(2) A disclosure under subsection (1) to the Reporting Authority shall be in the form and manner, if any, that may be prescribed in the Regulations.

(3) A person who does not disclose any information or other matter as required by subsection (1) is guilty of an offence.

(4) A person does not commit an offence under subsection (2) if—

- (a) he has a reasonable excuse for not disclosing the information or other matter; or

(b) he is a professional legal advisor and the information or other matter came to him in privileged circumstances.

(5) Without limiting subsection (3)(a), a person has a reasonable excuse for not disclosing information or another matter under subsection (1) if—

(a) he does not know or suspect that another person is engaged in drug money laundering; and
(b) he has not been provided by his employer with anti-money laundering training as required by the Regulations.

(6) Subject to subsection (7), for the purposes of this section, any information or other matter comes to a professional legal advisor in privileged circumstances if it is communicated or given to him—

(a) by, or by a representative of, a client of his in connection with the giving by the advisor of legal advice to the client;
(b) by, or by a representative of, a person seeking legal advice from the advisor; or
(c) by a person in connection with legal proceedings or contemplated legal proceedings.

(7) Subsection (6) does not apply to any information or other matter, which is communicated or given with the intention of furthering a criminal purpose.

(8) A person makes a disclosure to a nominated officer under subsection (1) if he make the disclosure—

(a) to an individual nominated to receive disclosures under this section by his employer; and
(b) is made by in the course of his employment and in accordance with the procedures established by his employer for the purpose.

Tipping off

24. (1) A person is guilty of an offence if—

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

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

(a) he knows or suspects that a disclosure (the “disclosure”) has been made to the Reporting Authority under section 22 or 23 of this Act or under section 14 of the Criminal Justice (International Co-operation) (Anguilla) Act; and
(b) he discloses to any other person information or any other matter that is likely to prejudice any investigation that might be conducted following the disclosure.

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

(a) he knows or suspects that a disclosure (the “disclosure”) has been made—
(i) to the appropriate person under section 22(5) of this Act or under section 14(8) of the Criminal Justice (International Co-operation) (Anguilla) Act, or
(ii) to a nominated officer under section 23(1) of this Act; and
(b) he discloses to any person information or any other matter that is likely to prejudice any investigation that might be conducted following the disclosure.

(4) Nothing in subsections (1) to (3) makes it an offence for any person to disclose information

or any other matter to a professional legal adviser for the purpose of legal advice or for a professional legal adviser to disclose any information or other matter—

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

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

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

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

- (a) on summary conviction, to imprisonment for a term of 12 months or to a fine of \$20,000 or to both; or
- (b) on conviction on indictment, to imprisonment for a term of 5 years or to a fine without limit or to both.

(8) No police officer, member of the Reporting Authority or other person is guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of this Act or the Criminal Justice (International Cooperation) (Anguilla) Act.

Enforcement of other external orders

25. (1) The Governor may by Order—

- (a) direct in relation to a country or territory outside of Anguilla designated by the Order (a “designated country”) that, subject to such modifications as may be specified, this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
- (b) make—
 - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order,
 - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 26, and
 - (iii) such incidental, consequential and transitional provision,

as appears to the Governor to be expedient; and

(c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified, proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.

(2) In this Act—

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

“modifications” includes additions, alterations and omissions.

(3) An Order of the Governor under this section may make different provision for different cases or classes of cases.

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

(5) An Order under this section is a regulation.

Registration of external confiscation orders

26. (1) On an application made by or on behalf of the Government of a designated country, the High Court may register an external confiscation order made there if—

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

(2) In subsection (1), “appeal” includes—

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial or a stay of execution.

(3) The High Court shall cancel the registration of an external confiscation order if it appears to the High Court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

Orders to make material available

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

(2) Subject to section 29(1), if on such an application the High Court is satisfied that the conditions in subsection (4) are fulfilled, the High Court may make an order that the person who appears to the High Court to be in possession of the material to which the application relates shall—

- (a) produce it to a police officer for him to take away; or
- (b) give a police officer access to it, within such period as the order may specify.

(3) The period to be specified in an order under subsection (2) shall be 7 days, unless it appears to the High Court that a longer or shorter period would be appropriate in the particular circumstances of the application.

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

- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
- (b) that there are reasonable grounds for suspecting that the material to which the application relates—
 - (i) is likely to be of substantial value (whether by itself or together with other material)

to the investigation for the purpose of which the application is made, and
(ii) does not consist of or include items subject to legal privilege or excluded material;
and

(c) that there are reasonable grounds for believing that it is in the public interest, having regard—

(i) to the benefit likely to accrue to the investigation if the material is obtained, and
(ii) to the circumstances under which the person in possession of the material holds it,
that the material should be produced or that access to it should be given.

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

(6) Provision may be made by rules of court as to—

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

(7) Where the material to which an application under this section relates consists of information contained in or accessible by means of a computer—

(a) an order under paragraph (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
(b) an order under paragraph (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(8) An order under subsection (2)—

(a) shall not confer any right to production of, or access to, items subject to legal privilege or excluded material;
(b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by written law or otherwise; and
(c) may be made in relation to material in the possession of a government department.

(9) An application under this section may be made ex parte to the judge in Chambers.

(10) A police officer may take copies of any material which is produced, or to which access is given, in compliance with an order under this section.

Authority for search

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

(2) On an application under subsection (1), the High Court may issue a warrant authorising a police officer to enter and search the premises if the High Court is satisfied—

(a) that an order under section 27 in relation to material on the premises has not been complied with;
(b) that the conditions in subsection (3) are fulfilled; or
(c) that the conditions in subsection (4) are fulfilled.

(3) The conditions referred to in paragraph (2)(b) are—

(a) that there are reasonable grounds for suspecting that a specified person has carried on or has

benefited from drug trafficking;

(b) that the conditions in section 27(4)(b) and (c) are fulfilled in relation to any material on the premises; and

(c) that it would not be appropriate to make an order under that section in relation to the material because—

(i) it is not practicable to communicate with any person entitled to produce the material,

(ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or

(iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the material.

(4) The conditions referred to in paragraph (2)(c) are—

(a) that there are reasonable grounds for suspecting that a specified person has carried on, or has benefited from, drug trafficking;

(b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised; and

(c) that—

(i) it is practicable to communicate with any person entitled to grant entry to the premises,

(ii) entry to the premises will not be granted unless a warrant is produced, or

(iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a police officer arriving at the premises could secure immediate entry to them.

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

(6) A police officer may take copies of any material seized under this section.

Meaning of “items subject to legal privilege”

29. (1) Subject to subsection (2), in sections 27 and 28 “items subject to legal privilege” means—

(a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;

(b) communication between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made—

(i) in connection with the giving of legal advice, or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

(2) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

Meaning of “excluded material”

30. (1) Subject to the following provisions of this section, in sections 25 and 26 “excluded material” means—

- (a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;
- (b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence; or
- (c) journalistic material which a person holds in confidence and consists—
 - (i) of documents, or
 - (ii) of records other than documents.

(2) A person holds material other than journalistic material in confidence for the purposes of this section if he holds it subject—

- (a) to an express or implied undertaking to hold it in confidence; or
- (b) to a restriction on disclosure or an obligation of secrecy contained in any written law, including any written law passed or made after this Act.

(3) A person holds journalistic material in confidence for the purposes of this section if—

- (a) he holds it subject to such an undertaking, restriction or obligation; and
- (b) it has been continuously held (by one or more persons) subject to any such undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

Meaning of “personal records”

31. In section 30, “personal records” means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating—

- (a) to his physical or mental health;
- (b) to spiritual counselling or assistance given or to be given to him; or
- (c) to counselling or assistance given or to be given to him for the purposes of his personal welfare, by any voluntary organisation or by any individual who—
 - (i) by reason of his office or occupation has responsibilities for his personal welfare, or
 - (ii) by reason of an order of a court has responsibilities for his supervision.

Meaning of “journalistic material”

32. (1) Subject to subsection (2), in section 30 “journalistic material” means material acquired or created for the purposes of journalism.

(2) Material is only journalistic material if it is in the possession of a person who acquired or created it for the purposes of journalism.

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

Account monitoring orders

33. (1) A police officer or the Attorney General may, for the purpose of an investigation into drug trafficking, apply to the High Court for an account monitoring order under subsection (2).

(2) If on an application under subsection (1), the Court is satisfied that the conditions specified in subsection (5) are fulfilled, he may make an order that the financial institution specified in the application must, for the period stated in the order, which shall not exceed 90 days, provide account information of the description specified in the order to a police officer in the manner, and at or by the time or times, stated in the order.

(3) For the purposes of subsection (2), “account information” is information relating to an account or accounts held at the financial institution specified in the order by the person specified in the order, whether solely or jointly with one or more other persons.

(4) An order under subsection (2) may specify account information relating to—

- (a) all accounts held by the person and at the financial institution specified in the order;
- (b) a particular description, or particular descriptions, of accounts so held; or
- (c) a particular account, or particular accounts, so held.

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

- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
- (b) that there are reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value, whether by itself or with other information or material, to the investigation for the purpose of which the application is made; and
- (c) that there are reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

(6) Provision may be made by rules of court as to—

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

(7) An application under subsection (1) may be made ex parte to a Judge of the High Court in Chambers.

Disclosure of information held by government departments

34. (1) Subject to subsection (4), the High Court may on an application by the prosecutor order any material mentioned in subsection (3) which is in the possession of a government department to be produced to the High Court within such period as the High Court may specify.

(2) The power to make an order under subsection (1) is exercisable if—

- (a) the powers conferred on the High Court by sections 10(1) and 11(1) are exercisable by virtue of section 9(1); or
- (b) those powers are exercisable by virtue of section 9(2) and the High Court has made a restraint or charging order which has not been discharged;

but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph

(b), section 9(3) shall apply for the purposes of this section as it applies for the purposes of sections 10 and 11.

(3) The material referred to in subsection (1) is any material which—

- (a) has been submitted to an officer of a government department by the defendant or by a person who has at any time held property which was realisable property;
- (b) has been made by an officer of a government department in relation to the defendant or such a person; or
- (c) is correspondence which passed between an officer of a government department and the defendant or such a person;

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

(4) An order under subsection (1) shall not require the production of any material that is likely to contain information that would facilitate the exercise of the powers conferred on the High Court by sections 10 to 13 or on a receiver appointed under section 10 or 13 or in pursuance of a charging order.

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

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

(7) The High Court may, by order, authorise the disclosure to a police officer of any material produced under subsection (1) or any part of such material, but the High Court shall not make an order under this subsection unless—

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

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

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

(10) An order under subsection (1) and, in the case of material in the possession of a government department, an order under section 27(2) may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with the order, and such an order shall be served as if the proceedings were civil proceedings against the department.

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

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

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

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

Offence of prejudicing investigation

35. (1) Where in relation to an investigation into drug trafficking, an order under section 27 has been made or has been applied for and not been refused or a warrant under section 28 has been issued, any person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation is guilty of an offence.

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

(a) that he did not know or suspect that the disclosure was likely to prejudice the investigation;
or

(b) that he had lawful authority or reasonable excuse for the disclosure.

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

(a) on conviction on indictment, to imprisonment for 5 years and to a fine; or

(b) on summary conviction, to imprisonment for 2 years and to a fine of \$2,000.

Citation

36. This Act may be cited as the Drugs Trafficking Offences Act, Revised Statutes of Anguilla, Chapter D50.