Isle of Man

Ellan Vannin

AT 13 of 2008

PROCEEDS OF CRIME ACT 2008

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Isle of Man

Ellan Vannin

PROCEEDS OF CRIME ACT 2008

Received Royal Assent: *21 October 2008*
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AN ACT to allow the recovery of property which is or represents property obtained through unlawful conduct or which is intended to be used in unlawful conduct; to provide for confiscation orders in relation to persons who benefit from criminal conduct and for restraint orders to prohibit dealing with property; to make provision about money laundering; to make provision about investigations relating to benefit from criminal conduct or to property which is or represents property obtained through unlawful conduct or to money laundering; to make provision concerning the importation and exportation of cash; to make provision to give effect to overseas requests and orders made where property is found or believed to be obtained through criminal conduct; to make provision for hearing evidence through television or telephone links, for obtaining evidence for use outside the Island and for the transfer of prisoners to assist in investigations; to make miscellaneous modifications to certain enactments; and for connected purposes.

PART 1 – CIVIL RECOVERY OF THE PROCEEDS ETC. OF UNLAWFUL CONDUCT

CHAPTER 1

Introductory

1 General purpose of Part 1

[P2002/29/240]

(1) This Part has effect for the purposes of —

(a) enabling the Attorney General to recover, in civil proceedings before the High Court, property which is, or represents, property obtained through unlawful conduct;

(b) enabling cash which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before a court of summary jurisdiction.

(2) The powers conferred by this Part are exercisable in relation to any property (including cash) whether or not any proceedings have been brought for an offence in connection with the property.

2 "Unlawful conduct"

[P2002/29/241]

(1) Conduct occurring in the Island is unlawful conduct if it is unlawful under the criminal law.

(2) Conduct which —

(a) occurs in a country outside the Island and is unlawful under the criminal law of that country; and

(b) if it occurred in the Island, would be unlawful under the criminal law of the Island,

is also unlawful conduct.

(3) The court must decide on a balance of probabilities whether it is proved —

(a) that any matters alleged to constitute unlawful conduct have occurred; or

(b) that any person intended to use any cash in unlawful conduct.

3 "Property obtained through unlawful conduct"

[P2002/29/242]

(1) A person obtains property through unlawful conduct (whether that person's own conduct or another's) if the property is obtained by or in return for the conduct.

(2) In deciding whether any property was obtained through unlawful conduct —

(a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct;

(b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

CHAPTER 2

Civil recovery in the High Court

Proceedings for recovery orders

4 Proceedings for recovery orders

[P2002/29/243]

(1) Proceedings for a recovery order may be taken by the Attorney General in the High Court against any person who the Attorney General thinks holds recoverable property.

(2) The Attorney General must serve the claim form —

(a) on the respondent; and

(b) unless the court dispenses with service, on any other person who the Attorney General thinks holds any associated property which the Attorney General wishes to be subject to a recovery order,

wherever domiciled, resident or present.

(3) If any property which the Attorney General wishes to be subject to a recovery order is not specified in the application it must be described in the application in general terms; and the application must state whether it is alleged to be recoverable property or associated property.

(4) References in this section to the claim form include the particulars of claim, where they are served subsequently.

5 "Associated property"

[P2002/29/245]

(1) "**Associated property**" means property of any of the following descriptions (including property held by the respondent) which is not itself the recoverable property —

(a) any interest in the recoverable property;

(b) any other interest in the property in which the recoverable property subsists;

(c) if the recoverable property is a tenancy in common, the tenancy of the other tenant;

(d) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property.

(2) References to property being associated with recoverable property are to be read accordingly.

(3) No property is to be treated as associated with recoverable property consisting of rights under a pension scheme (within the meaning of sections 28 to 30).

Property freezing orders

6 Application for property freezing order

[P2002/29/245A]

(1) Where the Attorney General may take proceedings for a recovery order in the High Court, the Attorney General may apply to the court for a property freezing order (whether before or after starting the proceedings).

(2) A property freezing order is an order that —

(a) specifies or describes the property to which it applies; and

(b) subject to any exclusions (see section 8(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.

(3) An application for a property freezing order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Attorney General to obtain a recovery order in respect of any property.

(4) The court may make a property freezing order on an application if it is satisfied that the condition in subsection (5) is met and, where applicable, that the condition in subsection (6) is met.

(5) The first condition is that there is a good arguable case —

(a) that the property to which the application for the order relates is or includes recoverable property; and

(b) that, if any of it is not recoverable property, it is associated property.

(6) The second condition is that, if —

(a) the property to which the application for the order relates includes property alleged to be associated property; and

(b) the Attorney General has not established the identity of the person who holds it,

the Attorney General has taken all reasonable steps to do so.

7 Variation and setting aside of property freezing order

[P2002/29/245B]

(1) The court may at any time vary or set aside a property freezing order.

(2) If the court makes an interim receiving order that applies to all of the property to which a property freezing order applies, it must set aside the property freezing order.

(3) If the court makes an interim receiving order that applies to some but not all of the property to which a property freezing order applies, it must vary the property freezing order so as to exclude any property to which the interim receiving order applies.

(4) If the court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.

(5) Before exercising any power under this Chapter to vary or set aside a property freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(6) Subsection (5) does not apply where the court is acting as required by subsection (2) or (3).

8 Exclusions in connection with property freezing order

[P2002/29/245C]

(1) The power to vary a property freezing order includes (in particular) power to make exclusions as follows —

(a) power to exclude property from the order; and

(b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may, in particular, make provision for the purpose of enabling any person —

(a) to meet that person's reasonable living expenses; or

(b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses which that person has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion —

(a) is limited to reasonable legal expenses that the person has reasonably incurred or that the person reasonably incurs;

(b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion; and

(c) is made subject to the required conditions (section 39) in addition to any conditions imposed under subsection (4).

(6) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet that person's legal expenses in respect of proceedings under this Part —

(a) must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which the person is a participant; and

(b) must, where the person is the respondent, disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be funded under the *Legal Aid Act 1986*.

(7) If the excluded property is not specified in the order it must be described in the order in general terms.

(8) The power to make exclusions must, subject to subsection (6), be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Attorney General to recover the property obtained through unlawful conduct is not unduly prejudiced.

(9) Subsection (8) does not apply where the court is acting as required by section 7(3) or (4).

9 Restriction on proceedings and remedies while property freezing order has effect

[P2002/29/245D]

(1) While a property freezing order has effect —

(a) the court may stay any action, execution or other legal process in respect of the property to which the order applies; and

(b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

(2) If any court in which proceedings are pending in respect of any property is satisfied that a property freezing order has been applied for or made in respect of the property, it may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) If a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

(4) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings concerned an

opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

10 Receivers in connection with property freezing orders

[P2002/29/245E]

(1) Subsection (2) applies if —

(a) the High Court makes a property freezing order on an application by the Attorney General; and

(b) the Attorney General applies to the court to proceed under subsection (2) (whether as part of the application for the property freezing order or at any time afterwards).

(2) The High Court may by order appoint a receiver in respect of any property to which the property freezing order applies.

(3) An application for an order under this section may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Attorney General to obtain a recovery order in respect of any property.

(4) In an application for an order under this section, the Attorney General must nominate a suitably qualified person for appointment as a receiver.

(5) Such a person may be a member of staff of the Attorney General's Chambers.

(6) The Attorney General may apply a sum received under section 35(2) in making payment of the remuneration and expenses of a receiver appointed under this section.

(7) Subsection (6) does not apply in relation to the remuneration of the receiver if the receiver is a member of staff of the Attorney General's Chambers (but it does apply in relation to such remuneration if the receiver is a person providing services under arrangements made by the Attorney General).

11 Powers of receivers appointed under section 10

[P2002/29/245F]

(1) If the High Court appoints a receiver under section 10 on an application by the Attorney General, the court may act under this section on the application of the Attorney General.

(2) The court may by order authorise or require the receiver —

(a) to exercise any of the powers mentioned in paragraph 5 of Schedule 1 (management powers) in relation to any property in respect of which the receiver is appointed;

(b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing

the detention, custody or preservation of the property in order to manage it).

(3) The court may by order require any person in respect of whose property the receiver is appointed —

(a) to bring the property to a place (in the Island) specified by the receiver or to place it in the custody of the receiver (if, in either case, the person is able to do so);

(b) to do anything the person is reasonably required to do by the receiver for the preservation of the property.

(4) The court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in that person's possession or control to a place (in the Island) specified by the receiver or to place them in the custody of the receiver.

(5) In subsection (4) "document" means anything in which information of any description is recorded.

(6) Any prohibition on dealing with property imposed by a property freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.

(7) If —

(a) the receiver deals with any property which is not property in respect of which the receiver is appointed under section 10; and

(b) at the time the receiver deals with the property the receiver believes on reasonable grounds that the receiver is entitled to do so by virtue of the receiver's appointment,

the receiver is not liable to any person in respect of any loss or damage resulting from the receiver's dealing with the property except so far as the loss or damage is caused by the receiver's negligence.

12 Supervision of section 10 receiver and variations

[P2002/29/245G]

(1) Any of the following persons may at any time apply to the High Court for directions as to the exercise of the functions of a receiver appointed under section 10 —

(a) the receiver;

(b) any party to the proceedings for the appointment of the receiver or the property freezing order concerned;

(c) any person affected by any action taken by the receiver;

(d) any person who may be affected by any action proposed to be taken by the receiver.

(2) Before giving any directions under subsection (1), the court must give an opportunity to be heard to —

(a) the receiver;

(b) the parties to the proceedings for the appointment of the receiver and for the property freezing order concerned;

(c) any person who may be interested in the application under subsection (1).

(3) The court may at any time vary or set aside the appointment of a receiver under section 10, any order under section 11 or any directions under this section.

(4) Before exercising any power under subsection (3), the court must give an opportunity to be heard to —

(a) the receiver;

(b) the parties to the proceedings for the appointment of the receiver, for the order under section 11 or, as the case may be, for the directions under this section;

(c) the parties to the proceedings for the property freezing order concerned;

(d) any person who may be affected by the court's decision.

Interim receiving orders

13 Application for interim receiving order

[P2002/29/246]

(1) Where the Attorney General may take proceedings for a recovery order in the High Court, the Attorney General may apply to the court for an interim receiving order (whether before or after starting the proceedings).

(2) An interim receiving order is an order for —

(a) the detention, custody or preservation of property; and

(b) the appointment of an interim receiver.

(3) An application for an interim receiving order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Attorney General to obtain a recovery order in respect of any property.

(4) The court may make an interim receiving order on the application if it is satisfied that the conditions in subsections (5) and, where applicable, (6) are met.

(5) The first condition is that there is a good arguable case —

(a) that the property to which the application for the order relates is or includes recoverable property; and

(b) that, if any of it is not recoverable property, it is associated property.

(6) The second condition is that, if —

(a) the property to which the application for the order relates includes property alleged to be associated property; and

(b) the Attorney General has not established the identity of the person who holds it,

the Attorney General has taken all reasonable steps to do so.

(7) In an application for an interim receiving order, the Attorney General must nominate a suitably qualified person for appointment as interim receiver.

(8) The extent of the power to make an interim receiving order is not limited by sections 14 to 21.

14 Functions of interim receiver

[P2002/29/247 & Sch 6]

(1) An interim receiving order may authorise or require the interim receiver —

(a) to exercise any of the powers mentioned in Schedule 1;

(b) to take any other steps the court thinks appropriate,

for the purpose of securing the detention, custody, preservation or management of the property to which the order applies or of taking any steps under subsection (2).

(2) An interim receiving order must require the interim receiver to take any steps which the court thinks necessary to establish —

(a) whether or not the property to which the order applies is recoverable property or associated property;

(b) whether or not any other property is recoverable property (in relation to the same unlawful conduct) and, if it is, who holds it.

(3) If —

(a) the interim receiver deals with any property which is not property to which the order applies; and

(b) at the time the property is dealt with the interim receiver believes on reasonable grounds that the receiver is entitled to do so in pursuance of the order,

the interim receiver is not liable to any person in respect of any loss or damage resulting from the receiver dealing with the property except so far as the loss or damage is caused by the negligence of the receiver.

Property freezing orders and interim receiving orders: registered land

15 Property freezing orders and interim receiving orders: registered land

[P2002/29/249]

(1) A person applying for a property freezing order or an interim receiving order must be treated for the purposes of section 61 of the *Land Registration Act 1982* (cautions) as a person interested in relation to any registered land to which —

(a) the application relates; or

(b) a property freezing order or an interim receiving order made in pursuance of the application relates.

(2) Upon being served with a copy of a property freezing order, the Chief Registrar must, in respect of any registered land to which a property freezing order or an application for a property freezing order relates, make an entry inhibiting any dealing with the land without the consent of the High Court.

(3) Upon being served with a copy of an interim receiving order, the Chief Registrar must, in respect of any registered land to which an interim receiving order or an application for an interim receiving order relates, make an entry inhibiting any dealing with the land without the consent of the High Court.

(4) Section 62(2) and (4) of the *Land Registration Act 1982* (inhibitions) apply to an entry made under subsection (2) or (3) as it applies to an entry made on the application of any person interested in the registered land under subsection (1) of that section.

(5) Where a property freezing order or an interim receiving order has been protected by an entry registered under the *Land Registration Act 1982* or by registration of a memorial in the Deeds Registry, an order setting aside the property freezing order or interim receiving order may require that entry to be vacated.

(6) In this section, "entry" has the same meanings as in the *Land Registration Act 1982*.

Interim receiving orders: further provisions

16 Interim receiving order: duties of respondent, etc.

[P2002/29/250]

(1) An interim receiving order may require any person to whose property the order applies —

(a) to bring the property to a place in the Island specified by the interim receiver or place it in the custody of the interim receiver (if, in either case, that person is able to do so);

(b) to do anything that the person is reasonably required to do by the interim receiver for the preservation of the property.

(2) An interim receiving order may require any person to whose property the order applies to bring any documents relating to the property which are in that person's possession or control to a place in the Island specified by the interim receiver or to place them in the custody of the interim receiver.

(3) In subsection (2), "document" means anything in which information of any description is recorded.

17 Supervision of interim receiver and variation of interim receiving order

[P2002/29/251]

(1) The interim receiver, any party to the proceedings and any person affected by any action taken by the interim receiver, or who may be affected by any action proposed to be taken by the interim receiver, may at any time apply to the court for directions as to the exercise of the interim receiver's functions.

(2) Before giving any directions under subsection (1), the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be interested in the application.

(3) The court may at any time vary or set aside an interim receiving order.

(4) Before exercising any power under this Chapter to vary or set aside an interim receiving order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be affected by the court's decision.

18 Interim receiving order: restrictions on dealing etc. with property

[P2002/29/252]

(1) An interim receiving order must, subject to any exclusions made in accordance with this section, prohibit any person to whose property the order applies from dealing with the property.

(2) Exclusions may be made when the interim receiving order is made or on an application to vary the order.

(3) An exclusion may, in particular, make provision for the purpose of enabling any person —

(a) to meet that person's reasonable living expenses; or

(b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses which that person has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion —

(a) is limited to reasonable legal expenses that the person has reasonably incurred or that such person reasonably incurs;

(b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion; and

(c) is made subject to the required conditions (section 39) in addition to any conditions imposed under subsection (4).

(6) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses of that person in respect of proceedings under this Part —

(a) must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which that person is a participant; and

(b) must, where the person is the respondent, disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be funded under the *Legal Aid Act 1986*.

(7) If the excluded property is not specified in the order it must be described in the order in general terms.

(8) The power to make exclusions must, subject to subsection (6), be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Attorney General to recover the property obtained through unlawful conduct is not unduly prejudiced.

19 Restriction on proceedings and remedies while interim receiving order has effect

[P2002/29/253]

(1) While an interim receiving order has effect —

(a) the court may stay any action, execution or other legal process in respect of the property to which the order applies;

(b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

(2) If a court (whether the High Court or any other court) in which proceedings are pending in respect of any property is satisfied that an interim receiving order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) If the interim receiving order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

(4) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings in question an opportunity to be heard) give such an opportunity to the interim receiver (if appointed) and any person who may be affected by the court's decision.

20 Interim receiving order: exclusion of property which is not recoverable, etc.

[P2002/29/254]

(1) If the court decides that any property to which an interim receiving order applies is neither recoverable property nor associated property, it must vary the order so as to exclude it.

(2) The court may vary an interim receiving order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the court thinks that the satisfaction of any right of the Attorney General to recover the property obtained through unlawful conduct will not be prejudiced.

(3) The court may exclude any property within subsection (2) on any terms or conditions, applying while the interim receiving order has effect, which the court thinks necessary or expedient.

21 Interim receiving order: reporting

[P2002/29/255]

(1) An interim receiving order must require the interim receiver to inform the Attorney General and the court as soon as reasonably practicable if the interim receiver thinks that —

(a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property;

(b) any property to which the order applies by virtue of a claim that it is associated property is not associated property;

(c) any property to which the order does not apply is recoverable property (in relation to the same unlawful conduct) or associated property; or

(d) any property to which the order applies is held by a person who is different from the person it is claimed holds it,

or if the interim receiver thinks that there has been any other material change of circumstances.

(2) An interim receiving order must require —

(a) the findings of the interim receiver to be reported to the court;

(b) the interim receiver to serve copies of the report on the Attorney General and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

Vesting and realisation of recoverable property

22 Recovery orders

[P2002/29/266]

(1) If in proceedings under this Chapter the court is satisfied that any property is recoverable, the court must make a recovery order.

(2) The recovery order must vest the recoverable property in the trustee for civil recovery.

(3) But the court may not make in a recovery order —

(a) any provision in respect of any recoverable property if each of the conditions in subsection (4) is met and it would not be just and equitable to do so; or

(b) any provision which is incompatible with any of the Convention rights (within the meaning of the *Human Rights Act 2001*).

(4) The conditions referred to in subsection (3)(a) are that —

(a) the respondent ("A") obtained the recoverable property in good faith;

(b) A took steps after obtaining the property which A would not have taken if A had not obtained it or A took steps before obtaining the property which A would not have taken if A had not believed A was going to obtain it;

(c) when A took the steps, A had no notice that the property was recoverable;

(d) if a recovery order were made in respect of the property, it would, by reason of the steps, be detrimental to A.

(5) In deciding whether it would be just and equitable to make the provision in the recovery order where the conditions in subsection (4) are met, the court must have regard to —

(a) the degree of detriment that would be suffered by the respondent if the provision were made;

(b) the Attorney General's interest in receiving the realised proceeds of the recoverable property.

(6) A recovery order may sever any property.

(7) A recovery order may impose conditions as to the manner in which the trustee for civil recovery may deal with any property vested by the order for the purpose of realising it.

(8) A recovery order may provide for payment under section 35 of reasonable living expenses that a person has reasonably incurred, or may reasonably incur, in respect of —

(a) the proceedings under this Part in which the order is made; or

(b) any related proceedings under this Part.

(9) If regulations made under section 40 apply to an item of expenditure, a sum in respect of the item is not payable under section 35 in pursuance of provision under subsection (8) unless —

(a) the Attorney General agrees to its payment; or

(b) the court has assessed the amount allowed by the regulations in respect of that item and the sum is paid in respect of the assessed amount.

(10) This section is subject to sections 25 to 33.

23 Functions of the trustee for civil recovery

[P2002/29/267 & Sch 7]

(1) The trustee for civil recovery is a person appointed by the court to give effect to a recovery order.

(2) The Attorney General must nominate a suitably qualified person for appointment as the trustee.

(3) The functions of the trustee are —

(a) to secure the detention, custody or preservation of any property vested in the trustee by the recovery order;

(b) in the case of property other than money, to realise the value of the property for the benefit of the Attorney General; and

(c) to perform any other functions conferred on the trustee by virtue of this Chapter.

(4) In performing the functions of trustee, the trustee acts on behalf of the Attorney General and must comply with any directions given by the Attorney General.

(5) The trustee is to realise the value of property vested in the trustee by the recovery order, so far as practicable, in the manner best calculated to maximise the amount payable to the Attorney General.

(6) The trustee has the powers mentioned in Schedule 2.

(7) References in this section to a recovery order include an order under section 31 and references to property vested in the trustee by a recovery

order include property vested in the trustee in pursuance of an order under section 31.

24 Recovery order: rights of pre-emption, etc.

[P2002/29/269]

(1) A recovery order is to have effect in relation to any property despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the vesting of the property.

(2) A right of pre-emption, right of return or other similar right does not operate or become exercisable as a result of the vesting of any property under a recovery order.

(3) In subsection (2), a right of return means any right under a provision for the return or reversion of property in specified circumstances.

(4) Where property is vested under a recovery order, any such right is to have effect as if the person in whom the property is vested were the same person in law as the person who held the property and as if no transfer of the property had taken place.

(5) References to rights in subsections (2) to (4) do not include any rights in respect of which the recovery order was made.

(6) This section applies in relation to the creation of interests, or the doing of anything else, by a recovery order as it applies in relation to the vesting of property.

25 Recovery orders: associated and joint property

[P2002/29/270]

(1) Sections 26 and 27 apply if the court makes a recovery order in respect of any recoverable property in a case within subsection (2) or (3).

(2) A case is within this subsection if —

(a) the property to which the proceedings relate includes property which is associated with the recoverable property and is specified or described in the application; and

(b) if the associated property is not the respondent's property, the application has been served on the person whose property it is or the court has dispensed with service.

(3) A case is within this subsection if —

(a) the recoverable property belongs to joint tenants; and

(b) one of the tenants is an excepted joint owner.

(4) An excepted joint owner is a person who obtained the property in circumstances in which it would not be recoverable as against that owner; and references to the excepted joint owner's share of the

recoverable property are to so much of the recoverable property as would have been that owner's if the joint tenancy had been severed.

26 Recovery order: agreements about associated and joint property

[P2002/29/271]

(1) Where —

(a) this section applies; and

(b) the Attorney General (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other) agree,

the recovery order may, instead of vesting the recoverable property in the trustee for civil recovery, require the person who holds the associated property or who is the excepted joint owner to make a payment to the trustee.

(2) A recovery order which makes any requirement under subsection (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in property.

(3) The amount of the payment is to be the amount which the Attorney General and that person agree represents —

(a) in a case within section 25(2), the value of the recoverable property;

(b) in a case within section 25(3), the value of the recoverable property less the value of the excepted joint owner's share.

(4) But if —

(a) a property freezing order or an interim receiving order applied at any time to the associated property or joint tenancy; and

(b) the Attorney General agrees that the person has suffered loss as a result of the property freezing order or interim receiving order,

the amount of the payment may be reduced by any amount the Attorney General and that person agree is reasonable, having regard to that loss and to any other relevant circumstances.

(5) If there is more than one such item of associated property or excepted joint owner, the total amount to be paid to the trustee, and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both (or all) of them and the Attorney General.

(6) A recovery order which makes any requirement under subsection (1) must make provision for any recoverable property to cease to be recoverable.

27 Associated and joint property: default of agreement

[P2002/29/272]

(1) Where this section applies, the court may make the following provision if —

(a) there is no agreement under section 26; and

(b) the court thinks it just and equitable to do so.

(2) The recovery order may provide —

(a) for the associated property to vest in the trustee for civil recovery or (as the case may be) for the excepted joint owner's interest to be extinguished; or

(b) in the case of an excepted joint owner, for the severance of that joint owner's interest.

(3) A recovery order making any provision by virtue of subsection (2)(a) may provide —

(a) for the trustee to pay an amount to the person who holds the associated property or who is an excepted joint owner; or

(b) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee,

or for both.

(4) In making any provision in a recovery order by virtue of subsection (2) or (3), the court must have regard to —

(a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to that person of that property or, as the case may be, of that person's share (including any value which cannot be assessed in terms of money);

(b) the Attorney General's interest in receiving the realised proceeds of the recoverable property.

(5) If —

(a) a property freezing order or an interim receiving order applied at any time to the associated property or joint tenancy; and

(b) the court is satisfied that the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the order mentioned in paragraph (a),

a recovery order making any provision by virtue of subsection (2) or (3) may require the Attorney General to pay compensation to that person.

(6) The amount of compensation to be paid under subsection (5) is the amount the court thinks reasonable, having regard to the person's loss and to any other relevant circumstances.

(7) Compensation is to be a charge on and paid out of the General Revenue of the Island.

28 Payments in respect of rights under pension schemes

[P2002/29/273]

(1) This section applies to recoverable property consisting of rights under a pension scheme.

(2) A recovery order in respect of the property must, instead of vesting the property in the trustee for civil recovery, require the trustees or managers of the pension scheme —

(a) to pay to the trustee for civil recovery within a prescribed period the amount determined by the trustees or managers to be equal to the value of the rights; and

(b) to give effect to any other provision made by virtue of this section and the two following sections in respect of the scheme.

(3) Subsection (2) is subject to sections 31 to 33.

(4) A recovery order made by virtue of subsection (2) overrides the provisions of the pension scheme to the extent that they conflict with the provisions of the order.

(5) A recovery order made by virtue of subsection (2) may provide for the recovery by the trustees or managers of the scheme (whether by deduction from any amount which they are required to pay to the trustee for civil recovery or otherwise) of costs incurred by them in —

(a) complying with the recovery order; or

(b) providing information, before the order was made, to the Attorney General, a receiver appointed under section 10 or an interim receiver.

(6) None of the following provisions applies to a court making a recovery order by virtue of subsection (2) —

(a) any statutory provision (whenever made or passed) invalidating or preventing the assignment of or a charge on any interest or benefit in or under a pension scheme;

(b) any provision of the pension scheme in question or any agreement corresponding to any of those provisions.

29 Consequential adjustment of liabilities under pension schemes

[P2002/29/274]

(1) A recovery order made by virtue of section 28(2) must require the trustees or managers of the pension scheme to make such reduction in the liabilities of the scheme as they think necessary in consequence of the payment made in pursuance of that subsection.

(2) Accordingly, the order must require the trustees or managers to provide for the liabilities of the pension scheme in respect of the respondent's recoverable property to which section 28 applies to cease.

(3) So far as the trustees or managers are required by the recovery order to provide for the liabilities of the pension scheme in respect of the respondent's recoverable property to which section 28 applies to cease, their powers include (in particular) power to reduce the amount of —

(a) any benefit or future benefit to which the respondent is or may be entitled under the scheme;

(b) any future benefit to which any other person may be entitled under the scheme in respect of that property.

30 Pension schemes: supplementary

[P2002/29/275]

(1) Regulations may make provision as to the exercise by trustees or managers of their powers under sections 28 and 29, including provision about the calculation and verification of the value at any time of rights or liabilities.

(2) The power conferred by subsection (1) includes power to provide for any values to be calculated or verified —

(a) in a manner which, in the particular case, is approved by a prescribed person; or

(b) in accordance with guidance from time to time prepared by a prescribed person.

(3) "**Regulations**" means regulations made by the Department of Home Affairs after consultation with such persons as it considers appropriate; and "**prescribed**" means prescribed by regulations.

(4) A pension scheme means an occupational pension scheme or a personal scheme; and those expressions have the same meaning as in the *Retirement Benefits Schemes Act 2000*.

(5) In relation to an occupational pension scheme or a personal scheme, the trustees or managers means —

(a) in the case of a scheme established under a trust, the trustees;

(b) in any other case, the managers.

(6) References to a pension scheme include —

(a) a retirement annuity contract;

(b) an annuity or insurance policy purchased, or transferred,

for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme.

(7) References to the trustees or managers —

(a) in relation to a retirement annuity contract or other annuity, are to the provider of the annuity;

(b) in relation to an insurance policy, are to the insurer.

(8) Subsections (3) to (7) have effect for the purposes of sections 28 and 29 and this section.

31 Consent orders

[P2002/29/276]

(1) The court may make an order staying any proceedings for a recovery order on terms agreed by the parties for the disposal of the proceedings if each person to whose property the proceedings, or the agreement, relates is a party both to the proceedings and the agreement.

(2) An order under subsection (1) may, as well as staying the proceedings on terms —

(a) make provision for any property which may be recoverable property to cease to be recoverable;

(b) make any further provision which the court thinks appropriate.

(3) Section 35 applies to property vested in the trustee for civil recovery, or money paid to the trustee, in pursuance of the agreement as it applies to property vested in the trustee by a recovery order or money paid under section 26.

32 Consent orders: pensions

[P2002/29/277]

(1) This section applies where recoverable property to which proceedings under this Chapter relate includes rights under a pension scheme.

(2) An order made under section 31 —

(a) may not stay the proceedings on terms that the rights are vested in any other person; but

(b) may include provision imposing the requirement in subsection (3), if the trustees or managers of the scheme are parties to the agreement by virtue of which the order is made.

(3) The requirement is that the trustees or managers of the pension scheme —

(a) make a payment in accordance with the agreement; and

(b) give effect to any other provision made by virtue of this section in respect of the scheme.

(4) The trustees or managers of the pension scheme have power to enter into an agreement in respect of the proceedings on any terms on which an order made under section 31 may stay the proceedings.

(5) The following provisions apply in respect of an order under section 31, so far as it includes the requirement mentioned in subsection (3).

(6) The order overrides the provisions of the pension scheme to the extent that they conflict with the requirement.

(7) The order may provide for the recovery by the trustees or managers of the scheme (whether by deduction from any amount which they are required to pay in pursuance of the agreement or otherwise) of costs incurred by them in —

(a) complying with the order; or

(b) providing information, before the order was made, to the Attorney General, a receiver appointed under section 10 or an interim receiver.

(8) Sections 28(6) and 29 (read with section 30) apply as if the requirement were included in an order made by virtue of section 28(2).

(9) Section 30(4) to (7) has effect for the purposes of this section.

33 Limit on recovery

[P2002/29/278]

(1) This section applies if the Attorney General seeks a recovery order —

(a) in respect of both property which is or represents property obtained through unlawful conduct and related property; or

(b) in respect of property which is or represents property obtained through unlawful conduct where such an order, or an order under section 31, has previously been made in respect of related property.

(2) For the purposes of this section —

(a) the original property means the property obtained through unlawful conduct;

(b) the original property, and any items of property which represent the original property, are to be treated as related to each other.

(3) The court is not to make a recovery order if it thinks that the Attorney General's right to recover the original property has been satisfied by a previous recovery order or order under section 31.

(4) Subject to subsection (3), the court may act under subsection (5) if it thinks that —

(a) a recovery order may be made in respect of two or more related items of recoverable property; but

(b) the making of a recovery order in respect of both or all of them is not required in order to satisfy the Attorney General's right to recover the original property.

(5) The court may in order to satisfy that right to the extent required make a recovery order in respect of —

(a) only some of the related items of property; or

(b) only a part of any of the related items of property,

or both.

(6) Where the court may make a recovery order in respect of any property, this section does not prevent the recovery of any profits which have accrued in respect of the property.

(7) If —

(a) an order is made under section 50 for the forfeiture of recoverable property; and

(b) the Attorney General subsequently seeks a recovery order in respect of related property,

the order under section 50 is to be treated for the purposes of this section as if it were a recovery order obtained by the Attorney General in respect of the forfeited property.

(8) If —

(a) in pursuance of a judgment in civil proceedings (whether in the Island or elsewhere), the claimant has obtained property from the defendant ("the judgment property");

(b) the claim was based on the defendant's having obtained the judgment property or related property through unlawful conduct; and

(c) the Attorney General subsequently seeks a recovery order in respect of property which is related to the judgment property,

the judgment is to be treated for the purposes of this section as if it were a recovery order obtained by the Attorney General in respect of the judgment property.

(9) If —

(a) property has been taken into account in deciding the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order; and

(b) the Attorney General subsequently seeks a recovery order in respect of related property,

the confiscation order is to be treated for the purposes of this section as if it were a recovery order obtained by the Attorney General in respect of the property referred to in paragraph (a).

(10) In subsection (9), a confiscation order means —

(a) a confiscation order under section 66; or

(b) an order under any other corresponding provision of an enactment referred to in section 68(7)(a) to (c),

and, in relation to an order mentioned in paragraph (b), the reference to the amount of a person's benefit from criminal conduct is to be read as a reference to the corresponding amount under the enactment in question.

34 Limit on recovery: supplementary

[P2002/29/279]

(1) Subsections (2) and (3) give examples of the satisfaction of the Attorney General's right to recover the original property.

(2) If —

(a) there is a disposal, other than a part disposal, of the original property; and

(b) other property (the representative property) is obtained in its place,

the Attorney General's right to recover the original property is satisfied by the making of a recovery order in respect of either the original property or the representative property.

(3) If —

(a) there is a part disposal of the original property; and

(b) other property (the representative property) is obtained in place of the property disposed of,

the Attorney General's right to recover the original property is satisfied by the making of a recovery order in respect of the remainder of the original property together with either the representative property or the property disposed of.

(4) In this section —

(a) a part disposal means a disposal to which section 64(1) applies;

(b) the original property has the same meaning as in section 33.

35 Applying realised proceeds

[P2002/29/280]

(1) This section applies to —

(a) sums which represent the realised proceeds of property which was vested in the trustee for civil recovery by a recovery order or which the trustee obtained in pursuance of a recovery order;

(b) sums vested in the trustee by a recovery order or obtained by the trustee in pursuance of a recovery order.

(2) The trustee is to make out of the sums —

(a) first, any payment required to be made by the trustee by virtue of section 27;

(b) next, any payment of legal expenses which, after giving effect to section 22(9), are payable under this subsection in pursuance of provision under section 22(8) contained in the recovery order;

(c) then, any payment of expenses incurred by a person acting as an insolvency practitioner which are payable under this subsection by virtue of section 208(10),

and any sum which remains is to be paid to the Attorney General.

Exemptions, etc.

36 Recovery orders: victims of theft, etc.

[P2002/29/281]

(1) In proceedings for a recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to that person may apply for a declaration under this section.

(2) If the applicant appears to the court to meet the following condition, the court may make a declaration to that effect.

(3) The condition is that —

(a) the person was deprived of the property which is claimed, or of property which it represents, by unlawful conduct;

(b) the property the person was deprived of was not recoverable property immediately before the deprivation; and

(c) the property claimed belongs to that person.

(4) Property to which a declaration under this section applies is not recoverable property.

37 Recovery orders: other exemptions

[P2002/29/282]

(1) Proceedings for a recovery order may not be taken against any person in circumstances of a prescribed description; and the circumstances may relate to the person or to the property or to any other matter.

(2) In subsection (1), "prescribed" means prescribed by an order made by the Department of Home Affairs after consultation with such persons as it considers appropriate.

(3) Proceedings for a recovery order may not be taken in respect of cash found at any place in the Island unless the proceedings are also taken in respect of property other than cash which is property of the same person.

(4) Proceedings for a recovery order may not be taken against any person in respect of any recoverable property which that person holds by reason of acting, or having acted, as an insolvency practitioner.

Miscellaneous

38 Compensation

[P2002/29/283]

(1) If, in the case of any property to which a property freezing order or an interim receiving order has at any time applied, the court does not in the course of the proceedings decide that the property is recoverable property or associated property, the person whose property it is may make an application to the court for compensation.

(2) Subsection (1) does not apply if the court —

(a) has made a declaration in respect of the property by virtue of section 36; or

(b) makes an order under section 31.

(3) If the court has made a decision by reason of which no recovery order could be made in respect of the property, the application for compensation must be made within the period of 3 months beginning, in relation to a decision of the High Court, with the date of the decision or, if there is any application for appeal, with the date on which the application is withdrawn or refused or (if the application is granted) on which any proceedings on appeal are finally concluded.

(4) If the proceedings in respect of the property have been discontinued, the application for compensation must be made within the period of 3 months beginning with the discontinuance.

(5) If the court is satisfied that the applicant has suffered loss as a result of the order mentioned in subsection (1), it may require the Attorney General to pay compensation to the applicant.

(6) If, but for section 24(2), any right mentioned there would have operated in favour of, or become exercisable by, any person, that person may make an application to the court for compensation.

(7) The application for compensation under subsection (6) must be made within the period of 3 months beginning with the vesting referred to in section 24(2).

(8) If the court is satisfied that, in consequence of the operation of section 24, the right in question cannot subsequently operate in favour of the applicant or (as the case may be) become exercisable by the applicant, it may require the Attorney General to pay compensation to the applicant.

(9) The amount of compensation to be paid under this section is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(10) Compensation is to be a charge on and paid out of the General Revenue of the Island.

39 Legal expenses excluded from freezing: required conditions

[P2002/29/286A]

(1) The Department of Home Affairs may by regulations specify the required conditions for the purposes of section 8(5) or 18(5).

(2) A required condition may (in particular) —

(a) restrict who may receive sums released in pursuance of the exclusion (by, for example, requiring released sums to be paid to professional legal advisers); or

(b) be made for the purpose of controlling the amount of any sum released in pursuance of the exclusion in respect of an item of expenditure.

(3) A required condition made for the purpose mentioned in subsection (2)(b) may (for example) —

(a) provide for sums to be released only with the agreement of the Attorney General;

(b) provide for a sum to be released in respect of an item of expenditure only if the court has assessed the amount allowed by regulations under section 40 in respect of that item and the sum is released for payment of the assessed amount;

(c) provide for a sum to be released in respect of an item of expenditure only if —

(i) the Attorney General agrees to its release; or

(ii) the court has assessed the amount allowed by regulations under section 40 in respect of that item and the sum is released for payment of the assessed amount.

(4) Before making regulations under this section, the Department of Home Affairs must consult such persons as it considers appropriate.

40 Legal expenses: regulations for purposes of section 22(9) or 39(3)

[P2002/29/286B]

(1) The Department of Home Affairs may by regulations —

(a) make provision for the purposes of section 22(9);

(b) make provision for the purposes of required conditions that make provision of the kind mentioned in section 39(3)(b) or (c).

(2) Regulations under this section may (in particular) —

(a) limit the amount of remuneration allowable to representatives for a unit of time worked;

(b) limit the total amount of remuneration allowable to representatives for work done in connection with proceedings or a step in proceedings;

(c) limit the amount allowable in respect of an item of expense incurred by a representative or incurred, otherwise than in respect of the remuneration of a representative, by a party to proceedings.

(3) Before making regulations under this section, the Department of Home Affairs must consult such persons as it considers appropriate.

41 Recoverable property: financial threshold

[P2002/29/287]

(1) At any time when an order specifying an amount for the purposes of this section has effect, the Attorney General may not start proceedings for a recovery order unless the Attorney General reasonably believes that the aggregate value of the recoverable property which he or she wishes to be subject to a recovery order is not less than the specified amount.

(2) The power to make an order under subsection (1) is exercisable by the Department of Home Affairs.

(3) If the Attorney General applies for a property freezing order or an interim receiving order before starting the proceedings, subsection (1) applies to the application instead of to the start of the proceedings.

(4) This section does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of a property freezing order or an interim receiving order which has been properly applied for.

42 Limitation period for recovery

[Inserts section 10A in the *Limitation Act 1984*.]

CHAPTER 3

Recovery of cash in summary proceedings

Searches

43 Searches

[P2002/29/289]

(1) If a customs officer or constable who is lawfully on any premises has reasonable grounds for suspecting that there is on the premises cash —

(a) which is recoverable property or is intended by any person for use in unlawful conduct; and

(b) the amount of which is not less than the minimum amount,

the customs officer or constable may search for the cash there.

(1A) If a customs officer or constable has reasonable grounds for suspecting that aboard any means of transport there is cash in respect of which the conditions in paragraphs (a) and (b) of subsection (1) are satisfied, the customs officer or constable may search that means of transport for the cash.[1]

(2) If a customs officer or constable has reasonable grounds for suspecting that a person (the suspect) is carrying cash —

(a) which is recoverable property or is intended by any person for use in unlawful conduct; and

(b) the amount of which is not less than the minimum amount,

the customs officer or constable may exercise the following powers.

(3) The officer or constable may, so far as the constable or officer thinks it necessary or expedient, require the suspect —

(a) to permit a search of any article the suspect has with him or her;

(b) to permit a search of the suspect's person.

(4) An officer or constable exercising powers by virtue of subsection (3)(b) may detain the suspect for so long as is necessary for their exercise.

(5) The powers conferred by this section —

(a) are exercisable only so far as reasonably required for the purpose of finding cash;

(b) are exercisable by a customs officer only if the officer has reasonable grounds for suspecting that the unlawful conduct in question relates to an assigned matter (within the meaning of the *Customs and Excise Management Act 1986*).

(6) Cash means —

(a) notes and coins in any currency;

(b) postal orders;

(c) cheques of any kind, including travellers' cheques;

(d) bankers' drafts;

(e) bearer bonds and bearer shares, or

(f) a forged or counterfeit version of any instrument or notes and coins in any currency mentioned in —

(i) paragraphs (a) to (e) of this definition; or

(ii) subsection (7),[2]

found in the Island.

(7) Cash also includes any kind of monetary instrument which is found in the Island, if the instrument is prescribed by an order of the Department of Home Affairs.

(7A) Where cash consists of a forged or counterfeit version of any instrument or notes and coins in any currency, it shall be taken, for the purposes of this Chapter, to have the value it would have had were it genuine.[3]

(8) This section does not require a person to submit to an intimate search or strip search (within the meaning of section 171 of the *Customs and Excise Management Act 1986*).

(9) In subsection (1A) "means of transport" means any aircraft, hovercraft, vehicle or vessel and here —

"aircraft" has the meaning given in the Air Navigation (Isle of Man) Order 2007;

"hovercraft" has the meaning given in the Hovercraft Act 1968 (of Parliament); and

"vehicle" and "vessel" have the same meaning as in the *Police Powers and Procedures Act 1998*.[4]

43A Searches: postal packets

(1) If a customs officer or constable has reasonable grounds for suspecting that a postal packet contains cash in respect of which the conditions in section 43(1)(a) and (b) are satisfied, the customs officer or constable may—

(a) request that the Isle of Man Post Office detain and open that postal packet; and

(b) examine its contents.

(2) Where a postal packet is opened and examined under subsection (1) but does not contain cash in respect of which the conditions in section 43(1)(a) and (b) are satisfied, the Isle of Man Post Office must reseal the packet with all of its original contents and forward it to the addressee.

(3) Where a postal packet is opened and examined under subsection (1) and is found to contain cash in respect of which the conditions in section 43(1)(a) and (b) are satisfied, the Isle of Man Post Office may continue to detain the cash but the postal packet and the rest of its contents must be forwarded to the addressee.

(4) In this section "postal packet" has the same meaning as in section 58(1) of the *Post Office Act 1993*.

(5) This section does not affect the operation of any other statutory provision.[5]

44 Searches: prior approval

[P2002/29/290]

(1) The powers conferred by section 43 or section 43A may be exercised only with the appropriate approval unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.[6]

(2) The appropriate approval means the approval of —

(a) the High Bailiff or a justice of the peace; or

(b) (if that is not practicable in any case) the approval of a senior officer.

(3) A senior officer means —

(a) in relation to the exercise of the power by a constable, a police officer of at least the rank of inspector;

(b) in relation to the exercise of the power by a customs officer, a customs officer who is not below such grade as is designated by the Collector of Customs and Excise as equivalent to the rank of chief inspector.

(4) If the powers are exercised without the approval of the High Bailiff or a justice of the peace in a case where —

(a) no cash is seized under section 46; or

(b) any cash so seized is not detained for more than 48 hours,

the constable or customs officer who exercised the powers must give a written report to the Chief Constable or, as the case may be, the Collector.

(5) The report must give particulars of the circumstances which led the constable or customs officer to believe that —

(a) the powers were exercisable; and

(b) it was not practicable to obtain the approval of the High Bailiff or a justice of the peace.

45 Searches: codes of practice[7]

[P2002/29/292]

(1) The Department of Home Affairs must make a code of practice in connection with the exercise of the powers conferred by section 43 and bring it into operation by order.

(1A) The Department of Home Affairs, after consulting the Isle of Man Post Office, must make a code of practice in connection with the exercise of the powers conferred by section 43A and bring it into operation by order.[8]

(2) It may revise the whole or any part of a code issued by it and issue the code as revised.

(3) A failure by a customs officer or constable to comply with a provision of a code does not of itself make that officer or constable liable to criminal or civil proceedings.[9]

(4) A code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.[10]

Seizure and detention

46 Seizure of cash

[P2002/29/294]

(1) A customs officer or constable may seize any cash if the officer or constable has reasonable grounds for suspecting that it is —

(a) recoverable property; or

(b) intended by any person for use in unlawful conduct.

(2) A customs officer or constable may also seize cash part of which the officer or constable has reasonable grounds for suspecting to be —

(a) recoverable property; or

(b) intended by any person for use in unlawful conduct,

if it is not reasonably practicable to seize only that part.

(3) This section does not authorise the seizure of an amount of cash if it or, as the case may be, the part to which the suspicion relates, is less than the minimum amount.

47 Detention of seized cash

[P2002/29/295]

(1) While the customs officer or constable continues to have reasonable grounds for suspicion, cash seized under section 46 may be detained initially for a period of 48 hours.

(2) The period of 48 hours mentioned in subsection (1) is to be calculated in accordance with subsection (3).

(3) In calculating a period of 48 hours in accordance with this subsection, no account shall be taken of —

(a) any Saturday or Sunday;

(b) Christmas Day;

(c) Good Friday;

(d) any day that is a bank holiday under the *Bank Holidays Act 1989*.

(4) The period for which the cash or any part of it may be detained may be extended by an order made by the High Bailiff.

(5) The order may not authorise the detention of any of the cash —

(a) beyond the end of the period of 3 months beginning with the date of the order;

(b) in the case of any further order under this section, beyond the end of the period of 2 years beginning with the date of the first order.

(6) An application for an order under subsection (4) may be made by a customs officer or a constable.

(7) The High Bailiff may make the order if satisfied, in relation to any cash to be further detained, that either of the following conditions is met.

(8) The first condition is that there are reasonable grounds for suspecting that the cash is recoverable property and that either —

(a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in the Island or elsewhere) proceedings against any person for an offence with which the cash is connected; or

(b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(9) The second condition is that there are reasonable grounds for suspecting that the cash is intended to be used in unlawful conduct and that either —

(a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in the Island or elsewhere) proceedings against any person for an offence with which the cash is connected; or

(b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(10) An application for an order under subsection (4) may also be made in respect of any cash seized under section 46(2).

(11) The High Bailiff may make the order in respect of any cash seized under section 46(2) if satisfied that —

(a) the condition in subsection (8) or (9) is met in respect of part of the cash; and

(b) it is not reasonably practicable to detain only that part.

(12) An order under subsection (4) must provide for notice to be given to persons affected by it.

48 Detained cash: interest

[P2002/29/296]

(1) If cash is detained under section 47 for more than 48 hours (calculated in accordance with section 47(3)), it is at the first opportunity to be paid into

an interest-bearing account and held there; and the interest accruing on it is to be added to it on its forfeiture or release.

(2) In the case of cash detained under section 47 which was seized under section 46(2), the customs officer or constable must, on paying it into the account, release the part of the cash to which the suspicion does not relate.

(3) Subsection (1) does not apply if the cash or, as the case may be, the part to which the suspicion relates is required as evidence of an offence or evidence in proceedings under this Chapter.

(4) Where the detained cash is required for forensic examination, an opportunity to pay that cash into an interest bearing account for the purposes of subsection (1) does not arise until the completion of that examination.

49 Release of detained cash

[P2002/29/297]

(1) This section applies while any cash is detained under section 47.

(2) The High Bailiff may direct the release of the whole or any part of the cash if the following condition is met.

(3) The condition is that the High Bailiff is satisfied, on an application by the person from whom the cash was seized or, in the case of cash contained in a postal packet, upon an application by the sender or the person to whom the packet is addressed, that the conditions in section 47 for the detention of the cash are no longer met in relation to the cash to be released.[11]

(4) A customs officer or constable may, after notifying the High Bailiff, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.

(5) In subsection (3) "sender", in relation to any postal packet, means the person whose communication it is.[12]

Forfeiture

50 Detained cash: forfeiture

[P2002/29/298]

(1) While cash is detained under section 47, an application for the forfeiture of the whole or any part of it may be made to the High Bailiff by the Attorney General.

(2) The High Bailiff may order the forfeiture of the cash or any part of it if satisfied that the cash or part —

(a) is recoverable property; or

(b) is intended by any person for use in unlawful conduct.

(3) But in the case of recoverable property which belongs to joint tenants, one of whom is an excepted joint owner, the order may not apply to so much of it as the court thinks is attributable to the excepted joint owner's share.

(4) Where an application for the forfeiture of any cash is made under this section, the cash is to be detained (and may not be released under any power conferred by this Chapter) until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.

51 Appeal against forfeiture

[P2002/29/299]

(1) Any party to proceedings in which an order is made under section 50 for the forfeiture of cash who is aggrieved by the order may appeal to the High Court.

(2) An appeal under subsection (1) must be made within the period of 30 days beginning with the date on which the order is made.

(3) The appeal is to be by way of a rehearing.

(4) The court hearing the appeal may make any order it thinks appropriate.

(5) If the court upholds the appeal, it may order the release of the cash.

52 Application of forfeited cash

[P2002/29/300]

(1) Cash forfeited under this Chapter, and any accrued interest on it is to be paid into the General Revenue of the Island.

(2) But it is not to be paid in —

(a) before the end of the period within which an appeal under section 51 may be made; or

(b) if a person appeals under that section, before the appeal is determined or otherwise disposed of.

Supplementary

53 Detained cash: victims and other owners

[P2002/29/301]

(1) A person who claims that any cash detained under this Chapter, or any part of it, belongs to that person may apply to the High Bailiff for the cash or part to be released to that person.

(2) The application may be made in the course of proceedings under section 47 or 50 or at any other time.

(3) If it appears to the High Bailiff that —

(a) the applicant was deprived of the cash to which the application relates, or of property which it represents, by unlawful conduct;

(b) the property the applicant was deprived of was not, immediately before the applicant was deprived of it, recoverable property; and

(c) that cash belongs to that person,

the High Bailiff may order the cash to which the application relates to be released to the applicant.

(4) If —

(a) the applicant is not the person from whom the cash to which the application relates was seized;

(b) it appears to the High Bailiff that the cash belongs to the applicant;

(c) the High Bailiff is satisfied that the conditions in section 47 for the detention of that cash are no longer met or, if an application has been made under section 50, the High Bailiff decides not to make an order under that section in relation to that cash; and

(d) no objection to the making of an order under this subsection has been made by the person from whom that cash was seized,

the High Bailiff may order the cash to which the application relates to be released to the applicant or to the person from whom it was seized.

54 Compensation where no forfeiture order made

[P2002/29/302]

(1) If no forfeiture order is made in respect of any cash detained under this Chapter —

(a) the person to whom the cash belongs;

(b) the person from whom the cash was seized; or

(c) in the case of cash contained in a postal packet, the sender or the person to whom the packet is addressed,

may make an application to the High Bailiff for compensation.[13]

(2) If, for any period beginning with the first opportunity to place the cash in an interest-bearing account after the initial detention of the cash for 48 hours (calculated in accordance with section 47(3)), the cash was not held in an interest-bearing account while detained, the High Bailiff may order an amount of compensation to be paid to the applicant.

(3) The amount of compensation to be paid under subsection (2) is the amount the High Bailiff thinks would have been earned in interest in the period in question if the cash had been held in an interest-bearing account.

(4) If the High Bailiff is satisfied that, taking account of any interest to be paid under section 48 or any amount to be paid under subsection (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the High Bailiff may order compensation (or additional compensation) to be paid to the applicant.

(5) The amount of compensation to be paid under subsection (4) is the amount the High Bailiff thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(6) Compensation is to be a charge on and paid out of the General Revenue of the Island.

(7) If a forfeiture order is made in respect only of a part of any cash detained under this Chapter, this section has effect in relation to the other part.

(8) In subsection (1) "sender", in relation to any postal packet, means the person whose communication it is.[14]

55 "The minimum amount"

[P2002/29/303]

(1) In this Chapter, the minimum amount is the amount in sterling specified in an order made by the Department of Home Affairs.

(2) For that purpose the amount of any cash held in a currency other than sterling must be taken to be its sterling equivalent, calculated in accordance with the prevailing rate of exchange.

CHAPTER 4

General

Recoverable property

56 Property obtained through unlawful conduct

[P2002/29/304]

(1) Property obtained through unlawful conduct is recoverable property.

(2) But if property obtained through unlawful conduct has been disposed of (since it was so obtained), it is recoverable property only if it is held by a person into whose hands it may be followed.

(3) Recoverable property obtained through unlawful conduct may be followed into the hands of a person obtaining it on a disposal by —

(a) the person who through the conduct obtained the property; or

(b) a person into whose hands it may (by virtue of this subsection) be followed.

57 Tracing property, etc

[P2002/29/305]

(1) Where property obtained through unlawful conduct ("the original property") is or has been recoverable, property which represents the original property is also recoverable property.

(2) If a person enters into a transaction by which —

(a) that person disposes of recoverable property, whether the original property or property which (by virtue of this Chapter) represents the original property; and

(b) that person obtains other property in place of it,

the other property represents the original property.

(3) If a person disposes of recoverable property which represents the original property, the property may be followed into the hands of the person who obtains it (and it continues to represent the original property).

58 Mixing property

[P2002/29/306]

(1) Subsection (2) applies if a person's recoverable property is mixed with other property (whether that person's property or another's).

(2) The portion of the mixed property which is attributable to the recoverable property represents the property obtained through unlawful conduct.

(3) Recoverable property is mixed with other property if (for example) it is used —

(a) to increase funds held in a bank account;

(b) in part payment for the acquisition of an asset;

(c) for the restoration or improvement of land;

(d) by a person holding a leasehold interest in the property to acquire the freehold.

59 Recoverable property: accruing profits

[P2002/29/307]

(1) This section applies where a person who has recoverable property obtains further property consisting of profits accruing in respect of the recoverable property.

(2) The further property is to be treated as representing the property obtained through unlawful conduct.

60 Recoverable property: general exceptions

[P2002/29/308]

(1) If —

(a) a person disposes of recoverable property; and

(b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property,

the property may not be followed into that person's hands and, accordingly, it ceases to be recoverable.

(2) If recoverable property is vested, forfeited or otherwise disposed of in pursuance of powers conferred under this Part, it ceases to be recoverable.

(3) If —

(a) in pursuance of a judgment in civil proceedings (whether in the Island or elsewhere), the defendant makes a payment to the claimant or the claimant otherwise obtains property from the defendant;

(b) the claimant's claim is based on the defendant's unlawful conduct; and

(c) apart from this subsection, the sum received, or the property obtained, by the claimant would be recoverable property,

the property ceases to be recoverable.

(4) If —

(a) a payment is made to a person in pursuance of a compensation order under Schedule 6 to the *Criminal Law Act 1981*; and

(b) apart from this subsection, the sum received would be recoverable property,

the property ceases to be recoverable.

(5) If —

(a) a payment is made to a person in pursuance of a restitution order under section 30 of the *Theft Act 1981* or a person otherwise obtains any property in pursuance of such an order; and

(b) apart from this subsection, the sum received, or the property obtained, would be recoverable property,

the property ceases to be recoverable.

(6) If —

(a) in pursuance of an order made by the court under section 39 of the *Insurance Act 2008* or section 20 of the *Financial Services Act 2008* (injunctions, etc), an amount is paid to or distributed among any persons in accordance with the court's directions; and[15]

(b) apart from this subsection, the sum received by them would be recoverable property,

the property ceases to be recoverable.

(7) Property is not recoverable while a restraint order applies to it, that is —

(a) an order under section 97; or

(b) an order under any corresponding provision of an enactment mentioned in section 68(7)(a) to (c).

(8) Property is not recoverable if it has been taken into account in deciding the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order, that is —

(a) an order under section 66; or

(b) an order under a corresponding provision of an enactment mentioned in section 68(7)(a) to (c),

and, in relation to an order mentioned in paragraph (b), the reference to the amount of a person's benefit from criminal conduct is to be read as a reference to the corresponding amount under the enactment in question.

(9) Where —

(a) a person enters into a transaction to which section 57(2) applies; and

(b) the disposal is one to which subsection (1) or (2) applies,

this section does not affect the recoverability (by virtue of section 57(2)) of any property obtained on the transaction in place of the property disposed of.

61 Recoverable property: other exemptions

[P2002/29/309]

(1) An order may provide that property is not recoverable or (as the case may be) associated property if —

(a) it is prescribed property; or

(b) it is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description.

(2) An order may provide that if property is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description, it is to be treated for the purposes of section 33 as if it had been disposed of in pursuance of a recovery order.

(3) An order under this section may be made so as to apply to property, or a disposal of property, only in prescribed circumstances; and the circumstances may relate to the property or disposal itself or to a person who holds or has held the property or to any other matter.

(4) In this section, an order means an order made by the Department of Home Affairs, and prescribed means prescribed by the order.

62 Recoverable property: granting interests

[P2002/29/310]

(1) If a person grants an interest in the recoverable property of that person, the question whether the interest is also recoverable is to be determined in the same manner as it is on any other disposal of recoverable property.

(2) Accordingly, on that person granting an interest in the property ("the property in question") —

(a) where the property in question is property obtained through unlawful conduct, the interest is also to be treated as obtained through that conduct;

(b) where the property in question represents in that person's hands property obtained through unlawful conduct, the interest is also to be treated as representing in that person's hands the property so obtained.

63 Recoverable property: proceeds

Subject to the provisions of this Part, monies representing any property recovered by the Attorney General under this Part are to be paid into the General Revenue of the Island.

Interpretation

64 Obtaining and disposing of property

[P2002/29/314]

(1) References to a person disposing of that person's property include a reference —

(a) to disposing of a part of it; or

(b) to granting an interest in it,

(or to both); and references to the property disposed of are to any property obtained on the disposal.

(2) A person who makes a payment to another is to be treated as making a disposal of that person's property to the other, whatever form the payment takes.

(3) Where a person's property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by that person to the other.

(4) A person is only to be treated as having obtained property for value in a case where the person gave unexecuted consideration if the consideration has become executed consideration.

65 General interpretation of Part 1

[P2002/29/316]

(1) In this Part —

"**associated property**" has the meaning given by section 5;

"**the Attorney General**" includes, unless the context otherwise requires, a person who acts on behalf of, or is otherwise authorised by, the Attorney General;

"**cash**" has the meaning given by section 43(6) or (7);

"**country**" includes territory;

"**the court**" (except in section 19(2) and (3) and Chapter 3) means the High Court;

"**dealing**" with property includes disposing of it, taking possession of it or removing it from the Island;

"**excepted joint owner**" has the meaning given by section 25(4);

"**interest**", in relation to land in the Island, means any legal estate and any equitable interest or power;

"**interest**", in relation to property other than land, includes any right (including a right to possession of the property);

"**interim receiving order**" has the meaning given by section 13(2);

"**the minimum amount**" (in Chapter 3) has the meaning given by section 55;

"**part**", in relation to property, includes a portion;

"**premises**" has the same meaning as in the *Police Powers and Procedures Act 1998*;

"**property freezing order**" has the meaning given by section 6(2);

"**property obtained through unlawful conduct**" has the meaning given by section 3;

"**recoverable property**" is to be read in accordance with sections 56 to 62;

"**recovery order**" means an order made under section 22;

"**respondent**" means —

(a) where proceedings are brought by the Attorney General by virtue of Chapter 2, the person against whom the proceedings are brought;

(b) where no such proceedings have been brought but the Attorney General has applied for a property freezing order or an interim

receiving order, the person against whom the Attorney General intends to bring such proceedings;

"**share**", in relation to an excepted joint owner, has the meaning given by section 25(4);

"**unlawful conduct**" has the meaning given by section 2;

"**value**" means market value.

(2) The following provisions apply for the purposes of this Part.

(3) For the purpose of deciding whether or not property was recoverable at any time (including times before commencement), it is to be assumed that this Part was in force at that and any other relevant time.

(4) Property is all property wherever situated and includes —

(a) money;

(b) all forms of property, real or personal, heritable or moveable;

(c) things in action and other intangible or incorporeal property.

(5) Any reference to a person's property (whether expressed as a reference to the property that person holds or otherwise) is to be read as follows.

(6) In relation to land, it is a reference to any interest which the person holds in the land.

(7) In relation to property other than land, it is a reference —

(a) to the property (if it belongs to that person); or

(b) to any other interest which that person holds in the property.

(8) References to the satisfaction of the Attorney General's right to recover property obtained through unlawful conduct are to be read in accordance with section 34.

(9) Proceedings against any person for an offence are concluded when —

(a) the person is convicted or acquitted;

(b) the prosecution is discontinued; or

(c) the jury is discharged without a finding.

PART 2 – CONFISCATION AND RESTRAINT

Confiscation orders

66 Making of confiscation order

[P2002/29/6]

(1) The Court of General Gaol Delivery must proceed under this section if the following two conditions are satisfied.

(2) The first condition is that a defendant falls within any of the following paragraphs —

(a) the defendant is convicted of an offence or offences in proceedings before the Court of General Gaol Delivery;

(b) the defendant is committed to the Court of General Gaol Delivery for sentence in respect of an offence or offences under section 17 of the *Summary Jurisdiction Act 1989* (committal for sentence);

(c) the defendant is committed to the Court of General Gaol Delivery in respect of an offence or offences under section 118 (committal with a view to a confiscation order being considered).

(3) The second condition is that —

(a) the prosecutor asks the court to proceed under this section; or

(b) the court believes it is appropriate for it to do so.

(4) The court must proceed as follows —

(a) it must decide whether the defendant has a criminal lifestyle;

(b) if it decides that the defendant has a criminal lifestyle it must decide whether the defendant has benefited from his or her general criminal conduct;

(c) if it decides that the defendant does not have a criminal lifestyle it must decide whether the defendant has benefited from his or her particular criminal conduct.

(5) If the court decides under subsection (4)(b) or (c) that the defendant has benefited from the conduct referred to it must —

(a) decide the recoverable amount; and

(b) make an order (a confiscation order) requiring the defendant to pay that amount.

(6) But the court must treat the duty in subsection (5) as a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against the defendant in respect of loss, injury or damage sustained in connection with the conduct.

(7) The court must decide any question arising under subsection (4) or (5) on a balance of probabilities.

(8) The first condition is not satisfied if the defendant absconds (but section 87 may apply).

(9) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2).

67 Confiscation orders: recoverable amount

[P2002/29/7]

(1) The recoverable amount for the purposes of section 66 is an amount equal to the defendant's benefit from the conduct concerned.

(2) But if the defendant shows that the available amount is less than that benefit the recoverable amount is —

(a) the available amount; or

(b) a nominal amount, if the available amount is nil.

(3) But if section 66(6) applies the recoverable amount is such amount as —

(a) the court believes is just; but

(b) does not exceed the amount found under subsection (1) or (2) (as the case may be).

(4) In calculating the defendant's benefit from the conduct concerned for the purposes of subsection (1), any property in respect of which —

(a) a recovery order is in force under section 22; or

(b) a forfeiture order is in force under section 50(2),

must be ignored.

(5) If the court decides the available amount, it must include in the confiscation order a statement of its findings as to the matters relevant for deciding that amount.

68 Confiscation orders: defendant's benefit

[P2002/29/8]

(1) If the court is proceeding under section 66 this section applies for the purpose of —

(a) deciding whether the defendant has benefited from conduct; and

(b) deciding the defendant's benefit from the conduct.

(2) The court must —

(a) take account of conduct occurring up to the time it makes its decision;

(b) take account of property obtained up to that time.

(3) Subsection (4) applies if —

(a) the conduct concerned is general criminal conduct;

(b) a confiscation order mentioned in subsection (5) has at an earlier time been made against the defendant; and

(c) the defendant's benefit for the purposes of that order was benefit from the defendant's general criminal conduct.

(4) The defendant's benefit found at the time the last confiscation order mentioned in subsection (3)(c) was made against the defendant must be taken for the purposes of this section to be the defendant's benefit from the defendant's general criminal conduct at that time.

(5) If the conduct concerned is general criminal conduct the court must deduct the aggregate of the following amounts —

(a) the amount ordered to be paid under each confiscation order previously made against the defendant;

(b) the amount ordered to be paid under each confiscation order previously made against the defendant under any of the provisions listed in subsection (7).

(6) But subsection (5) does not apply to an amount which has been taken into account for the purposes of a deduction under that subsection on any earlier occasion.

(7) These are the provisions —

(a) the *Drug Trafficking Offences Act 1987*;

(b) Part 1 of the *Criminal Justice Act 1990*;

(c) Part I of the *Drug Trafficking Act 1996*.

(8) The reference to general criminal conduct in the case of a confiscation order made under any of the provisions listed in subsection (7) is a reference to conduct in respect of which a court is required or entitled to make one or more assumptions for the purpose of assessing a person's benefit from the conduct.

69 Confiscation orders: available amount

[P2002/29/9]

(1) For the purposes of deciding the recoverable amount, the available amount is the aggregate of —

(a) the total of the values (at the time the confiscation order is made) of all the free property then held by the defendant minus the total amount payable in pursuance of obligations which then have priority; and

(b) the total of the values (at that time) of all tainted gifts.

(2) An obligation has priority if it is an obligation of the defendant —

(a) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the confiscation order is made; or

(b) to pay a sum which would be included among the preferential debts if the defendant's bankruptcy had commenced on the date of the confiscation order or the defendant's winding up had been ordered on that date.

(3) "Preferential debts" means the debts specified in the *Preferential Payments Act 1908*.

70 Confiscation orders: assumptions to be made in case of criminal lifestyle

[P2002/29/10]

(1) If the court decides under section 66 that the defendant has a criminal lifestyle it must make the following four assumptions for the purpose of —

(a) deciding whether the defendant has benefited from the defendant's general criminal conduct; and

(b) deciding the defendant's benefit from the conduct.

(2) The first assumption is that any property transferred to the defendant at any time after the relevant day was obtained by the defendant —

(a) as a result of the defendant's general criminal conduct; and

(b) at the earliest time the defendant appears to have held it.

(3) The second assumption is that any property held by the defendant at any time after the date of conviction was obtained by the defendant —

(a) as a result of the defendant's general criminal conduct; and

(b) at the earliest time the defendant appears to have held it.

(4) The third assumption is that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by the defendant as a result of the defendant's general criminal conduct.

(5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the defendant, the defendant obtained it free of any other interests in it.

(6) But the court must not make a required assumption in relation to particular property or expenditure if —

(a) the assumption is shown to be incorrect; or

(b) there would be a serious risk of injustice if the assumption were made.

(7) If the court does not make one or more of the required assumptions it must state its reasons.

(8) The relevant day is the first day of the period of 6 years ending with —

(a) the day when proceedings for the offence concerned were started against the defendant; or

(b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.

(9) But if a confiscation order mentioned in section 68(3)(c) has been made against the defendant at any time during the period mentioned in subsection (8) —

(a) the relevant day is the day when the defendant's benefit was calculated for the purposes of the last such confiscation order;

(b) the second assumption does not apply to any property which was held by the defendant on or before the relevant day.

(10) The date of conviction is —

(a) the date on which the defendant was convicted of the offence concerned; or

(b) if there are two or more offences and the convictions were on different dates, the date of the latest.

71 Confiscation orders: time for payment

[P2002/29/11]

(1) The amount ordered to be paid under a confiscation order must be paid on the making of the order; but this is subject to the following provisions of this section.

(2) If the defendant shows that the defendant needs time to pay the amount ordered to be paid, the court making the confiscation order may make an order allowing payment to be made in a specified period.

(3) The specified period —

(a) must start with the day on which the confiscation order is made; and

(b) must not exceed 6 months.

(4) If within the specified period the defendant applies to the Court of General Gaol Delivery for the period to be extended and the court believes there are exceptional circumstances, it may make an order extending the period.

(5) The extended period —

(a) must start with the day on which the confiscation order is made; and

(b) must not exceed 12 months.

(6) An order under subsection (4) —

(a) may be made after the end of the specified period; but

(b) must not be made after the end of the period of 12 months starting with the day on which the confiscation order is made.

(7) The court must not make an order under subsection (2) or (4) unless it gives the prosecutor an opportunity to make representations.

72 Confiscation orders: interest on unpaid sums

[P2002/29/12]

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

(2) The rate of interest is the same rate as that for the time being specified in section 9 of the *Administration of Justice Act 1981* (interest on judgment debts).

(3) For the purposes of this section no amount is required to be paid under a confiscation order if —

(a) an application has been made under section 71(4);

(b) the application has not been determined by the court; and

(c) the period of 12 months starting with the day on which the confiscation order was made has not ended.

(4) In applying this Part the amount of the interest must be treated as part of the amount to be paid under the confiscation order.

73 Confiscation orders: effect of order on court's other powers

[P2002/29/13]

(1) If the court makes a confiscation order it must proceed as mentioned in subsections (2) and (4) in respect of the offence or offences concerned.

(2) The court must take account of the confiscation order before —

(a) it imposes a fine on the defendant; or

(b) it makes an order falling within subsection (3).

(3) These orders fall within this subsection —

(a) an order involving payment by the defendant, other than an order under Schedule 6 to the *Criminal Law Act 1981* (compensation orders);

(b) an order under section 27 of the *Misuse of Drugs Act 1976* (forfeiture orders);

(c) an order under section 16 of the *Criminal Law Act 1981* (deprivation orders);

(d) an order under section 16, 16A or 16B of the *Anti-Terrorism and Crime Act 2003* (forfeiture orders).[16]

(4) Subject to subsection (2), the court must leave the confiscation order out of account in deciding the appropriate sentence for the defendant.

(5) Subsection (6) applies if —

(a) the Court of General Gaol Delivery makes both a confiscation order and an order for the payment of compensation under

Schedule 6 to the *Criminal Law Act 1981* against the same person in the same proceedings; and

(b) the court believes the person will not have sufficient means to satisfy both the orders in full.

(6) In such a case the court must direct that so much of the compensation as it specifies is to be paid out of any sums recovered under the confiscation order; and the amount it specifies must be the amount it believes will not be recoverable because of the insufficiency of the person's means.

Procedural matters

74 Confiscation orders: postponement

[P2002/29/14]

(1) The court may —

(a) proceed under section 66 before it sentences the defendant for the offence (or any of the offences) concerned; or

(b) postpone proceedings under section 66 for a specified period.

(2) A period of postponement may be extended.

(3) A period of postponement (including one as extended) must not end after the permitted period ends.

(4) But subsection (3) does not apply if there are exceptional circumstances.

(5) The permitted period is the period of 2 years starting with the date of conviction.

(6) But if —

(a) the defendant appeals against conviction for the offence (or any of the offences) concerned; and

(b) the period of 3 months (starting with the day when the appeal is determined or otherwise disposed of) ends after the period found under subsection (5),

the permitted period is that period of 3 months.

(7) A postponement or extension may be made —

(a) on application by the defendant;

(b) on application by the prosecutor;

(c) by the court of its own motion.

(8) If —

(a) proceedings are postponed for a period; and

(b) an application to extend the period is made before it ends,

the application may be granted even after the period ends.

(9) The date of conviction is —

(a) the date on which the defendant was convicted of the offence concerned; or

(b) if there are two or more offences and the convictions were on different dates, the date of the latest.

(10) References to appealing include references to applying under section 109 of the *Summary Jurisdiction Act 1989* (statement of case).

(11) A confiscation order must not be quashed only on the ground that there was a defect or omission in the procedure connected with the application for or the granting of a postponement.

(12) But subsection (11) does not apply if before it made the confiscation order the court —

(a) imposed a fine on the defendant;

(b) made an order falling within section 73(3);

(c) made an order under Schedule 6 to the *Criminal Law Act 1981* (compensation orders).

75 Confiscation orders: effect of postponement

[P2002/29/15]

(1) If the court postpones proceedings under section 66 it may proceed to sentence the defendant for the offence (or any of the offences) concerned.

(2) In sentencing the defendant for the offence (or any of the offences) concerned in the postponement period the court must not —

(a) impose a fine on the defendant;

(b) make an order falling within section 73(3); or

(c) make an order for the payment of compensation under Schedule 6 to the *Criminal Law Act 1981*.

(3) If the court sentences the defendant for the offence (or any of the offences) concerned in the postponement period, after that period ends it may vary the sentence by —

(a) imposing a fine on the defendant;

(b) making an order falling within section 73(3); or

(c) making an order for the payment of compensation under Schedule 6 to the *Criminal Law Act 1981*.

(4) But the court may proceed under subsection (3) only within the period of 28 days which starts with the last day of the postponement period.

(5) For the purposes of section 31 of the *Criminal Jurisdiction Act 1993* (time limit for notice of appeal or of application for leave to appeal), the sentence must be regarded as imposed or made on the day on which it is varied under subsection (3).

(6) If the court proceeds to sentence the defendant under subsection (1), section 66 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding the defendant's sentence for the offence or offences concerned.

(7) The postponement period is the period for which proceedings under section 66 are postponed.

76 Confiscation orders: statement of information

[P2002/29/16]

(1) If the court is proceeding under section 66 in a case where section 66(3)(a) applies, the prosecutor must give the court a statement of information within the period the court orders.

(2) If the court is proceeding under section 66 in a case where section 66(3)(b) applies and it orders the prosecutor to give it a statement of information, the prosecutor must give it such a statement within the period the court orders.

(3) If the prosecutor believes the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding these issues —

(a) whether the defendant has a criminal lifestyle;

(b) whether the defendant has benefited from the defendant's general criminal conduct;

(c) the defendant's benefit from the conduct.

(4) A statement under subsection (3) must include information the prosecutor believes is relevant —

(a) in connection with the making by the court of a required assumption under section 70;

(b) for the purpose of enabling the court to decide if the circumstances are such that it must not make such an assumption.

(5) If the prosecutor does not believe the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding these issues —

(a) whether the defendant has benefited from the defendant's particular criminal conduct;

(b) the defendant's benefit from the conduct.

(6) If the prosecutor gives the court a statement of information —

(a) the prosecutor may at any time give the court a further statement of information;

(b) the prosecutor must give the court a further statement of information if it orders the prosecutor to do so, and the prosecutor must give it within the period the court orders.

(7) If the court makes an order under this section it may at any time vary it by making another one.

77 Defendant's response to statement of information

[P2002/29/17]

(1) If the prosecutor gives the court a statement of information and a copy is served on the defendant, the court may order the defendant —

(a) to indicate (within the period it orders) the extent to which the defendant accepts each allegation in the statement; and

(b) so far as the defendant does not accept such an allegation, to give particulars of any matters the defendant proposes to rely on.

(2) If the defendant accepts to any extent an allegation in a statement of information the court may treat the defendant's acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 76(3) or (5) (as the case may be).

(3) If the defendant fails in any respect to comply with an order under subsection (1) the defendant may be treated for the purposes of subsection (2) as accepting every allegation in the statement of information apart from —

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

(b) any allegation that the defendant has benefited from the defendant's general or particular criminal conduct.

(4) For the purposes of this section an allegation may be accepted or particulars may be given in a manner ordered by the court.

(5) If the court makes an order under this section it may at any time vary it by making another one.

(6) No acceptance under this section that the defendant has benefited from conduct is admissible in evidence in proceedings for an offence.

78 Provision of information by defendant

[P2002/29/18]

(1) This section applies if —

(a) the court is proceeding under section 66 in a case where section 66(3)(a) applies; or

(b) it is proceeding under section 66 in a case where section 66(3)(b) applies or it is considering whether to proceed.

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

(3) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.

(4) If the defendant fails without reasonable excuse to comply with an order under this section the court may draw such inference as it believes is appropriate.

(5) Subsection (4) does not affect any power of the court to deal with the defendant in respect of a failure to comply with an order under this section.

(6) If the prosecutor accepts to any extent an allegation made by the defendant —

(a) in giving information required by an order under this section; or

(b) in any other statement given to the court in relation to any matter relevant to deciding the available amount under section 69,

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

(7) For the purposes of this section an allegation may be accepted in a manner ordered by the court.

(8) If the court makes an order under this section it may at any time vary it by making another one.

(9) No information given under this section which amounts to an admission by the defendant that the defendant has benefited from criminal conduct is admissible in evidence in proceedings for an offence.

Reconsideration

79 No confiscation order made: reconsideration of case

[P2002/29/19]

(1) This section applies if —

(a) the first condition in section 66 is satisfied but no court has proceeded under that section;

(b) there is evidence which was not available to the prosecutor on the relevant date;

(c) before the end of the period of 6 years starting with the date of conviction the prosecutor applies to the Court of General Gaol Delivery to consider the evidence; and

(d) after considering the evidence the court believes it is appropriate for it to proceed under section 66.

(2) If this section applies the court must proceed under section 66, and when it does so subsections (3) to (8) apply.

(3) If the court has already sentenced the defendant for the offence (or any of the offences) concerned, section 66 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding the defendant's sentence for the offence or offences concerned.

(4) Section 68(2) does not apply, and the rules applying instead are that the court must —

(a) take account of conduct occurring before the relevant date;

(b) take account of property obtained before that date;

(c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(5) In section 70 —

(a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date;

(b) the third assumption does not apply with regard to expenditure incurred by the defendant on or after that date;

(c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by the defendant on or after that date.

(6) The recoverable amount for the purposes of section 66 is such amount as —

(a) the court believes is just; but

(b) does not exceed the amount found under section 67.

(7) In arriving at the just amount the court must have regard in particular to —

(a) the amount found under section 67;

(b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;

(c) any order which falls within section 73(3) and has been made against the defendant in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by the defendant for the purposes of section 69;

(d) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under Schedule 6 to the *Criminal Law Act 1981* (compensation orders).

(8) If an order for the payment of compensation under Schedule 6 to the *Criminal Law Act 1981* has been made against the defendant in respect of the offence or offences concerned, section 73(5) and (6) do not apply.

(9) The relevant date is —

(a) if the court made a decision not to proceed under section 66, the date of the decision;

(b) if the court did not make such a decision, the date of conviction.

(10) The date of conviction is —

(a) the date on which the defendant was convicted of the offence concerned; or

(b) if there are two or more offences and the convictions were on different dates, the date of the latest.

80 No confiscation order made: reconsideration of benefit

[P2002/29/20]

(1) This section applies if the following two conditions are satisfied.

(2) The first condition is that in proceeding under section 66 the court has decided that —

(a) the defendant has a criminal lifestyle but has not benefited from the defendant's general criminal conduct; or

(b) the defendant does not have a criminal lifestyle and has not benefited from the defendant's particular criminal conduct.

(3) If the court proceeded under section 66 because the prosecutor asked it to, or because it believed it was appropriate for it to do so, the second condition is that —

(a) there is evidence which was not available to the prosecutor when the court decided that the defendant had not benefited from the defendant's general or particular criminal conduct;

(b) before the end of the period of 6 years starting with the date of conviction the prosecutor applies to the Court of General Gaol Delivery to consider the evidence; and

(c) after considering the evidence the court concludes that it would have decided that the defendant had benefited from the defendant's general or particular criminal conduct (as the case may be) if the evidence had been available to it.

(4) If this section applies the court —

(a) must make a fresh decision under section 66(4)(b) or (c) whether the defendant has benefited from the defendant's general or particular criminal conduct (as the case may be);

(b) may make a confiscation order under that section.

(5) Subsections (6) to (11) apply if the court proceeds under section 66 in pursuance of this section.

(6) If the court has already sentenced the defendant for the offence (or any of the offences) concerned, section 66 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding the defendant's sentence for the offence or offences concerned.

(7) Section 68(2) does not apply, and the rules applying instead are that the court must —

(a) take account of conduct occurring before the date of the original decision that the defendant had not benefited from the defendant's general or particular criminal conduct;

(b) take account of property obtained before that date;

(c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(8) In section 70 —

(a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the date of the original decision that the defendant had not benefited from the defendant's general or particular criminal conduct;

(b) the third assumption does not apply with regard to expenditure incurred by the defendant on or after that date;

(c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by the defendant on or after that date.

(9) The recoverable amount for the purposes of section 66 is such amount as —

(a) the court believes is just; but

(b) does not exceed the amount found under section 67.

(10) In arriving at the just amount the court must have regard in particular to —

(a) the amount found under section 67;

(b) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;

(c) any order which falls within section 73(3) and has been made against the defendant in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by the defendant for the purposes of section 69;

(d) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under Schedule 6 to the *Criminal Law Act 1981* (compensation orders).

(11) If an order for the payment of compensation under Schedule 6 to the *Criminal Law Act 1981* has been made against the defendant in respect of the offence or offences concerned, section 73(5) and (6) do not apply.

(12) The date of conviction is the date found by applying section 79(10).

81 Confiscation order made: reconsideration of benefit

[P2002/29/21]

(1) This section applies if —

(a) a court has made a confiscation order;

(b) there is evidence which was not available to the prosecutor at the relevant time;

(c) the prosecutor believes that if the court were to find the amount of the defendant's benefit in pursuance of this section it would exceed the relevant amount;

(d) before the end of the period of 6 years starting with the date of conviction the prosecutor applies to the Court of General Gaol Delivery to consider the evidence; and

(e) after considering the evidence the court believes it is appropriate for it to proceed under this section.

(2) The court must make a new calculation of the defendant's benefit from the conduct concerned, and when it does so subsections (3) to (6) apply.

(3) If a court has already sentenced the defendant for the offence (or any of the offences) concerned section 66 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding the defendant's sentence for the offence or offences concerned.

(4) Section 68(2) does not apply, and the rules applying instead are that the court must —

(a) take account of conduct occurring up to the time it decided the defendant's benefit for the purposes of the confiscation order;

(b) take account of property obtained up to that time;

(c) take account of property obtained after that time if it was obtained as a result of or in connection with conduct occurring before that time.

(5) In applying section 68(5) the confiscation order must be ignored.

(6) In section 70 —

(a) the first and second assumptions do not apply with regard to property first held by the defendant after the time the court decided the defendant's benefit for the purposes of the confiscation order;

(b) the third assumption does not apply with regard to expenditure incurred by the defendant after that time;

(c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by the defendant after that time.

(7) If the amount found under the new calculation of the defendant's benefit exceeds the relevant amount the court —

(a) must make a new calculation of the recoverable amount for the purposes of section 66; and

(b) if it exceeds the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid such amount as it believes is just.

(8) In applying subsection (7)(a) the court must —

(a) take the new calculation of the defendant's benefit;

(b) apply section 69 as if references to the time the confiscation order is made were to the time of the new calculation of the recoverable amount and as if references to the date of the confiscation order were to the date of that new calculation.

(9) In applying subsection (7)(b) the court must have regard in particular to —

(a) any fine imposed on the defendant for the offence (or any of the offences) concerned;

(b) any order which falls within section 73(3) and has been made against the defendant in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by the defendant for the purposes of section 69;

(c) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under Schedule 6 to the *Criminal Law Act 1981* (compensation orders).

(10) But in applying subsection (7)(b) the court must not have regard to an order falling within subsection (9)(c) if a court has made a direction under section 73(6).

(11) In deciding under this section whether one amount exceeds another, the court must take account of any change in the value of money.

(12) The relevant time is —

(a) when the court calculated the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously;

(b) when the court last calculated the defendant's benefit in pursuance of this section, if this section has applied previously.

(13) The relevant amount is —

(a) the amount found as the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously;

(b) the amount last found as the defendant's benefit in pursuance of this section, if this section has applied previously.

(14) The date of conviction is the date found by applying section 79(10).

82 Confiscation order made: reconsideration of available amount

[P2002/29/22]

(1) This section applies if —

(a) a court has made a confiscation order;

(b) the amount required to be paid was the amount found under section 67(2); and

(c) an applicant falling within subsection (2) applies to the Court of General Gaol Delivery to make a new calculation of the available amount.

(2) These applicants fall within this subsection —

(a) the prosecutor;

(b) a receiver appointed under section 105.

(3) In a case where this section applies the court must make the new calculation, and in doing, so it must apply section 69 as if references to the time the confiscation order is made were to the time of the new calculation and as if references to the date of the confiscation order were to the date of the new calculation.

(4) If the amount found under the new calculation exceeds the relevant amount the court may vary the order by substituting for the amount required to be paid such amount as —

(a) it believes is just; but

(b) does not exceed the amount found as the defendant's benefit from the conduct concerned.

(5) In deciding what is just the court must have regard in particular to —

(a) any fine imposed on the defendant for the offence (or any of the offences) concerned;

(b) any order which falls within section 73(3) and has been made against the defendant in respect of the offence (or any of the

offences) concerned and has not already been taken into account by the court in deciding what is the free property held by the defendant for the purposes of section 69;

(c) any order which has been made against the defendant in respect of the offence (or any of the offences) concerned under Schedule 6 to the *Criminal Law Act 1981* (compensation orders).

(6) But in deciding what is just the court must not have regard to an order falling within subsection (5)(c) if a court has made a direction under section 73(6).

(7) In deciding under this section whether one amount exceeds another, the court must take account of any change in the value of money.

(8) The relevant amount is —

(a) the amount found as the available amount for the purposes of the confiscation order, if this section has not applied previously;

(b) the amount last found as the available amount in pursuance of this section, if this section has applied previously.

(9) The amount found as the defendant's benefit from the conduct concerned is —

(a) the amount so found when the confiscation order was made; or

(b) if one or more new calculations of the defendant's benefit have been made under section 81 the amount found on the occasion of the last such calculation.

83 Inadequacy of available amount: variation of confiscation order

[P2002/29/23]

(1) This section applies if —

(a) a court has made a confiscation order; and

(b) the defendant, or a receiver appointed under section 105, applies to the Court of General Gaol Delivery to vary the order under this section.

(2) In such a case the court must calculate the available amount, and in doing so it must apply section 69 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(3) If the court finds that the available amount (as so calculated) is inadequate for the payment of any amount remaining to be paid under the confiscation order it may vary the order by substituting for the amount required to be paid such smaller amount as the court believes is just.

(4) If a person has been adjudged bankrupt or the person's estate has been sequestrated, or if an order for the winding up of a company has been made, the court must take into account the extent to which realisable property held by that person or that company may be distributed among creditors.

(5) The court may disregard any inadequacy which it believes is attributable (wholly or partly) to anything done by the defendant for the purpose of preserving property held by the recipient of a tainted gift from any risk of realisation under this Part.

(6) In subsection (4) "company" means any company which may be wound up under —

(a) the *Companies Act 1931*;

(b) the *Limited Liability Companies Act 1996*; or

(c) the *Companies Act 2006*.

84 Inadequacy of available amount: discharge of confiscation order

[P2002/29/24]

(1) This section applies if —

(a) a court has made a confiscation order;

(b) the Chief Registrar applies to the Court of General Gaol Delivery for the discharge of the order; and

(c) the amount remaining to be paid under the order is less than £1,000.

(2) In such a case the court must calculate the available amount, and in doing so it must apply section 69 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(3) If the court —

(a) finds that the available amount (as so calculated) is inadequate to meet the amount remaining to be paid; and

(b) is satisfied that the inadequacy is due wholly to a specified reason or a combination of specified reasons,

it may discharge the confiscation order.

(4) The specified reasons are —

(a) in a case where any of the realisable property consists of money in a currency other than sterling, that fluctuations in currency exchange rates have occurred;

(b) any reason specified by the Department of Home Affairs by order.

(5) The Department of Home Affairs may by order vary the amount for the time being specified in subsection (1)(c).

85 Small amount outstanding: discharge of confiscation order

[P2002/29/25]

(1) This section applies if —

(a) a court has made a confiscation order;

(b) the Chief Registrar applies to the Court of General Gaol Delivery for the discharge of the order; and

(c) the amount remaining to be paid under the order is £50 or less.

(2) In such a case the court may discharge the order.

(3) The Department of Home Affairs may by order vary the amount for the time being specified in subsection (1)(c).

86 Information

[P2002/29/26]

(1) This section applies if —

(a) the court proceeds under section 66 in pursuance of section 79 or 80; or

(b) the prosecutor applies under section 81.

(2) In such a case —

(a) the prosecutor must give the court a statement of information within the period the court orders;

(b) section 76 applies accordingly (with appropriate modifications where the prosecutor applies under section 81);

(c) section 77 applies accordingly;

(d) section 78 applies as it applies in the circumstances mentioned in section 78(1).

Defendant absconds

87 Defendant convicted or committed

[P2002/29/27]

(1) This section applies if the following two conditions are satisfied.

(2) The first condition is that a defendant absconds after —

(a) being convicted of an offence or offences in proceedings before the Court of General Gaol Delivery;

(b) being committed to the Court of General Gaol Delivery for sentence in respect of an offence or offences under section 17 of the *Summary Jurisdiction Act 1989*; or

(c) being committed to the Court of General Gaol Delivery in respect of an offence or offences under section 118 (committal with a view to a confiscation order being considered).

(3) The second condition is that —

(a) the prosecutor applies to the Court of General Gaol Delivery to proceed under this section; and

(b) the court believes it is appropriate for it to do so.

(4) If this section applies the court must proceed under section 66 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5).

(5) If the court proceeds under section 66 as applied by this section, this Part has effect with these modifications —

(a) any person the court believes is likely to be affected by an order under section 66 is entitled to appear before the court and make representations;

(b) the court must not make an order under section 66 unless the prosecutor has taken reasonable steps to contact the defendant;

(c) section 66(9) applies as if the reference to subsection (2) were to subsection (2) of this section;

(d) sections 70, 76(4), 77 and 78 must be ignored;

(e) sections 79, 80 and 81 must be ignored while the defendant is still an absconder.

(6) Once the defendant ceases to be an absconder section 79 has effect as if subsection (1)(a) read —

"(a) at a time when the first condition in section 87 was satisfied the court did not proceed under section 66,".

(7) If the court does not believe it is appropriate for it to proceed under this section, once the defendant ceases to be an absconder section 79 has effect as if subsection (1)(b) read —

"(b) there is evidence which was not available to the prosecutor on the relevant date,".

88 Defendant neither convicted nor acquitted

[P2002/29/28]

(1) This section applies if the following two conditions are satisfied.

(2) The first condition is that —

(a) proceedings for an offence or offences are started against a defendant but are not concluded;

(b) the defendant absconds; and

(c) the period of 2 years (starting with the day the court believes the defendant absconded) has ended.

(3) The second condition is that —

(a) the prosecutor applies to the Court of General Gaol Delivery to proceed under this section; and

(b) the court believes it is appropriate for it to do so.

(4) If this section applies the court must proceed under section 66 in the same way as it must proceed if the two conditions there mentioned are satisfied; but this is subject to subsection (5).

(5) If the court proceeds under section 66 as applied by this section, this Part has effect with these modifications —

(a) any person the court believes is likely to be affected by an order under section 6 is entitled to appear before the court and make representations;

(b) the court must not make an order under section 66 unless the prosecutor has taken reasonable steps to contact the defendant;

(c) section 66(9) applies as if the reference to subsection (2) were to subsection (2) of this section;

(d) sections 70, 76(4) and 77 to 80 must be ignored;

(e) section 81 must be ignored while the defendant is still an absconder.

(6) Once the defendant has ceased to be an absconder section 81 has effect as if references to the date of conviction were to —

(a) the day when proceedings for the offence concerned were started against the defendant; or

(b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.

(7) If —

(a) the court makes an order under section 66 as applied by this section; and

(b) the defendant is later convicted in proceedings before the Court of General Gaol Delivery of the offence (or any of the offences) concerned,

section 66 does not apply so far as that conviction is concerned.

89 Variation of confiscation order

[P2002/29/29]

(1) This section applies if —

(a) the court makes a confiscation order under section 66 as applied by section 88;

(b) the defendant ceases to be an absconder;

(c) the defendant is convicted of an offence (or any of the offences) mentioned in section 88(2)(a);

(d) the defendant believes that the amount required to be paid was too large (taking the circumstances prevailing when the amount was found for the purposes of the order); and

(e) before the end of the relevant period the defendant applies to the Court of General Gaol Delivery to consider the evidence on which the defendant's belief is based.

(2) If (after considering the evidence) the court concludes that the defendant's belief is well founded —

(a) it must find the amount which should have been the amount required to be paid (taking the circumstances prevailing when the amount was found for the purposes of the order); and

(b) it may vary the order by substituting for the amount required to be paid such amount as it believes is just.

(3) The relevant period is the period of 28 days starting with —

(a) the date on which the defendant was convicted of the offence mentioned in section 88(2)(a); or

(b) if there are two or more offences and the convictions were on different dates, the date of the latest.

(4) But in a case where section 88(2)(a) applies to more than one offence the court must not make an order under this section unless it is satisfied that there is no possibility of any further proceedings being taken or continued in relation to any such offence in respect of which the defendant has not been convicted.

90 Discharge of confiscation order

[P2002/29/30]

(1) Subsection (2) applies if —

(a) the court makes a confiscation order under section 66 as applied by section 88;

(b) the defendant is later tried for the offence or offences concerned and acquitted on all counts; and

(c) the defendant applies to the Court of General Gaol Delivery to discharge the order.

(2) In such a case the court must discharge the order.

(3) Subsection (4) applies if —

(a) the court makes a confiscation order under section 66 as applied by section 88;

(b) the defendant ceases to be an absconder;

(c) subsection (1)(b) does not apply; and

(d) the defendant applies to the Court of General Gaol Delivery to discharge the order.

(4) In such a case the court may discharge the order if it finds that —

(a) there has been undue delay in continuing the proceedings mentioned in section 88(2); or

(b) the prosecutor does not intend to proceed with the prosecution.

(5) If the court discharges a confiscation order under this section it may make such a consequential or incidental order as it believes is appropriate.

Appeals

91 Confiscation orders: appeal by prosecutor

[P2002/29/31]

(1) If the Court of General Gaol Delivery makes a confiscation order the prosecutor may appeal to the Staff of Government Division in respect of the order.

(2) If the Court of General Gaol Delivery decides not to make a confiscation order the prosecutor may appeal to the Staff of Government Division against the decision.

(3) Subsections (1) and (2) do not apply to an order or decision made by virtue of section 79, 80, 87 or 88.

92 Confiscation orders: court's powers on appeal

[P2002/29/32]

(1) On an appeal under section 91(1) the Staff of Government Division may confirm, quash or vary the confiscation order.

(2) On an appeal under section 91(2) the Staff of Government Division may confirm the decision, or if it believes the decision was wrong it may —

(a) itself proceed under section 66 (ignoring subsections (1) to (3)); or

(b) direct the Court of General Gaol Delivery to proceed afresh under section 66.

(3) In proceeding afresh in pursuance of this section the Court of General Gaol Delivery must comply with any directions the Staff of Government Division may make.

(4) If a court makes or varies a confiscation order under this section or in pursuance of a direction under this section it must —

(a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned;

(b) have regard to any order which falls within section 73(3) and has been made against the defendant in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property held by the defendant for the purposes of section 69.

(5) If the Staff of Government Division proceeds under section 66 or the Court of General Gaol Delivery proceeds afresh under that section in pursuance of a direction under this section subsections (6) to (10) apply.

(6) If a court has already sentenced the defendant for the offence (or any of the offences) concerned, section 66 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding the defendant's sentence for the offence or offences concerned.

(7) If an order has been made against the defendant in respect of the offence (or any of the offences) concerned under Schedule 6 to the *Criminal Law Act 1981* (compensation orders) —

(a) the court must have regard to it; and

(b) section 73(5) and (6) do not apply.

(8) Section 68(2) does not apply, and the rules applying instead are that the court must —

(a) take account of conduct occurring before the relevant date;

(b) take account of property obtained before that date;

(c) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(9) In section 70 —

(a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date;

(b) the third assumption does not apply with regard to expenditure incurred by the defendant on or after that date;

(c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by the defendant on or after that date.

(10) Section 86 applies as it applies in the circumstances mentioned in subsection (1) of that section.

(11) The relevant date is the date on which the Court of General Gaol Delivery decided not to make a confiscation order.

Enforcement as fines etc

93 Confiscation orders: enforcement provisions

[P2002/29/35]

(1) This section applies if a court makes a confiscation order.

(2) Sections 27 and 28 of the *Criminal Jurisdiction Act 1993* (custody for non-payment of fine etc) and the provisions of the *Collection of Fines etc. Act 1985* apply as if the amount ordered to be paid were a fine imposed on the defendant by the court making the confiscation order.

(3) In the application of Part VIII of the *Summary Jurisdiction Act 1989* to an amount payable under a confiscation order —

(a) ignore section 92 of that Act (power to dispense with immediate payment);

(b) such an amount is not a sum adjudged to be a fine for the purposes of section 100 (remission of fines) of that Act.

(4) The court may grant execution in favour of the Department of Home Affairs for the amount of any sum payable under a confiscation order.

(5) Any sum in the hands of a coroner in pursuance of an execution under subsection (4), after deduction of the coroner's charges and costs, must be applied by the coroner towards the satisfaction of the confiscation order.

94 Provisions about custody

[P2002/29/38]

(1) Subsection (2) applies if —

(a) a warrant committing the defendant to custody is issued for a default in payment of an amount ordered to be paid under a confiscation order 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 offence (or any of the offences).

(2) In such a case the term of custody to be served in default of payment of the amount does not begin to run until after the term mentioned in subsection (1)(b).

(3) The reference in subsection (1)(b) to the term of custody the defendant is liable to serve in respect of the offence (or any of the offences) is a reference to the term of custody, which the defendant is liable to serve in respect of the offence (or any of the offences).

(4) For the purposes of subsection (3) consecutive terms and terms which are wholly or partly concurrent must be treated as a single term and the following must be ignored —

(a) any sentence suspended under Part I of Schedule 1 to the *Criminal Law Act 1981* or Schedule 1 to the *Custody Act 1995* which has not taken effect at the time the warrant is issued;

(b) in the case of a sentence of imprisonment passed with an order under paragraph 36 of Schedule 1 to the *Criminal Law Act 1981* (sentences of imprisonment partly served and partly suspended) any part of the sentence which the defendant has not at that time been required to serve in prison;

(c) any term of custody fixed under section 27 of the *Criminal Jurisdiction Act 1993* (custody for non-payment of fine etc.) for which a warrant committing the defendant to custody has not been issued at that time.

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

95 Reconsideration etc: variation of custody

[P2002/29/39]

(1) Subsection (2) applies if —

(a) a court varies a confiscation order under section 81, 82, 83, 89 or 92;

(b) the effect of the variation is to vary the maximum period applicable in relation to the order under Schedule 1 to the *Criminal Jurisdiction Act 1993*; and

(c) the result is that that maximum period is less than the term of custody fixed in respect of the order under section 27(1) of the *Criminal Jurisdiction Act 1993*.

(2) In such a case the court must fix a reduced term of custody in respect of the confiscation order under section 27(1) of the *Criminal Jurisdiction Act 1993* in place of the term previously fixed.

(3) Subsection (4) applies if paragraphs (a) and (b) of subsection (1) apply but paragraph (c) does not.

(4) In such a case the court may amend the term of custody fixed in respect of the confiscation order under section 27(1) of the *Criminal Jurisdiction Act 1993*.

(5) If the effect of section 72 is to increase the maximum period applicable in relation to a confiscation order under Schedule 1 to the *Criminal Jurisdiction Act 1993*, on the application of the prosecutor the Court of

General Gaol Delivery may amend the term of custody fixed in respect of the order under section 27(1) of that Act.

Restraint orders

96 Restraint orders: conditions for exercise of powers

[P2002/29/40]

(1) The Court of General Gaol Delivery may exercise the powers conferred by section 97 if any of the following conditions is satisfied.

(2) The first condition is that —

(a) a criminal investigation has been started in the Island with regard to an offence; and

(b) there is reasonable cause to believe that the alleged offender has benefited from the alleged offender's criminal conduct.

(3) The second condition is that —

(a) proceedings for an offence have been started in the Island and not concluded; and

(b) there is reasonable cause to believe that the defendant has benefited from the defendant's criminal conduct.

(4) The third condition is that —

(a) an application by the prosecutor has been made under section 79, 80, 87 or 88 and not concluded, or the court believes that such an application is to be made; and

(b) there is reasonable cause to believe that the defendant has benefited from the defendant's criminal conduct.

(5) The fourth condition is that —

(a) an application by the prosecutor has been made under section 81 and not concluded, or the court believes that such an application is to be made; and

(b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the defendant's benefit exceeds the relevant amount (as defined in that section).

(6) The fifth condition is that —

(a) an application by the prosecutor has been made under section 82 and not concluded, or the court believes that such an application is to be made; and

(b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in that section).

(7) The second condition is not satisfied if the court believes that —

(a) there has been undue delay in continuing the proceedings; or

(b) the prosecutor does not intend to proceed.

(8) If an application mentioned in the third, fourth or fifth condition has been made the condition is not satisfied if the court believes that —

(a) there has been undue delay in continuing the application; or

(b) the prosecutor does not intend to proceed.

(9) If the first condition is satisfied —

(a) references in this Part to the defendant are to the alleged offender;

(b) references in this Part to the prosecutor are to the person the court believes is to have conduct of any proceedings for the offence;

(c) section 125(9) has effect as if proceedings for the offence had been started against the defendant when the investigation was started.

97 Making of restraint orders

[P2002/29/41]

(1) If any condition set out in section 96 is satisfied the Court of General Gaol Delivery may make an order (a restraint order) prohibiting any specified person from dealing with any realisable property held by that person.

(2) A restraint order may provide that it applies —

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

(b) to realisable property transferred to the specified person after the order is made.

(3) A restraint order may be made subject to exceptions, and an exception may in particular —

(a) make provision for reasonable living expenses and reasonable legal expenses;

(b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;

(c) be made subject to conditions.

(4) But an exception to a restraint order must not make provision for any legal expenses which —

(a) relate to an offence which falls within subsection (5); and

(b) are incurred by the defendant or by a recipient of a tainted gift.

(5) These offences fall within this subsection —

(a) the offence mentioned in section 96(2) or (3), if the first or second condition (as the case may be) is satisfied;

(b) the offence (or any of the offences) concerned, if the third, fourth or fifth condition is satisfied.

(6) Subsection (7) applies if —

(a) a court makes a restraint order; and

(b) the applicant for the order applies to the court to proceed under subsection (7) (whether as part of the application for the restraint order or at any time afterwards).

(7) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

(8) A restraint order does not affect property for the time being subject to a charge under any of these provisions —

(a) section 9 of the *Drug Trafficking Offences Act 1987*;

(b) section 8 of the *Criminal Justice Act 1990*;

(c) section 27 of the *Drug Trafficking Act 1996*.

(9) Dealing with property includes removing it from the Island.

98 Application, discharge and variation of restraint orders

[P2002/29/42]

(1) A restraint order —

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

(b) may be made on an ex parte application to a Deemster in chambers.

(2) An application to discharge or vary a restraint order or an order under section 97(7) may be made to the Court of General Gaol Delivery by —

(a) the person who applied for the order;

(b) any person affected by the order.

(3) Subsections (4) to (6) apply to an application under subsection (2).

(4) The court —

(a) may discharge the order;

(b) may vary the order.

(5) If the condition in section 96 which was satisfied was that proceedings were started or an application was made, the court must discharge the order on the conclusion of the proceedings or of the application (as the case may be).

(6) If the condition in section 96 which was satisfied was that an investigation was started or an application was to be made, the court must discharge the order if within a reasonable time proceedings for the offence are not started or the application is not made (as the case may be).

99 Restraint orders: appeal to Staff of Government Division

[P2002/29/43]

(1) If on an application for a restraint order the court decides not to make one, the person who applied for the order may appeal to the Staff of Government Division against the decision.

(2) If an application is made under section 98(2) in relation to a restraint order or an order under section 97(7) the following persons may appeal to the Staff of Government Division in respect of the Court of General Gaol Delivery's decision on the application —

(a) the person who applied for the order;

(b) any person affected by the order.

(3) On an appeal under subsection (1) or (2) the Staff of Government Division may —

(a) confirm the decision; or

(b) make such order as it believes is appropriate.

100 Restraint orders: seizure

[P2002/29/45]

(1) If a restraint order is in force a constable or a customs officer may seize any realisable property to which it applies to prevent its removal from the Island.

(2) Property seized under subsection (1) must be dealt with in accordance with the directions of the court which made the order.

101 Restraint proceedings: hearsay evidence

[P2002/29/46]

(1) Evidence must not be excluded in restraint proceedings on the ground that it is hearsay (of whatever degree).

(2) Restraint proceedings are proceedings —

(a) for a restraint order;

(b) for the discharge or variation of a restraint order;

(c) on an appeal under section 99.

(3) Hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.

(4) Nothing in this section affects the admissibility of evidence which is admissible apart from this section.

(5) Sections 9 to 11 of the *Administration of Justice Act 2008* apply in relation to restraint proceedings as they apply in relation to civil proceedings.[17]

102 Restraint orders: supplementary

[P2002/29/47]

(1) The registration Acts —

(a) apply in relation to restraint orders as they apply in relation to orders which affect land and are made by the court for the purpose of enforcing judgments or recognisances;

(b) apply in relation to applications for restraint orders as they apply in relation to other pending land actions.

(2) The registration Acts are —

(a) the *Registration of Deeds Act 1961*;

(b) the *Land Registration Act 1982*.

(3) But no notice may be entered in the register of title under the *Land Registration Act 1982* in respect of a restraint order.

(4) The person applying for a restraint order must be treated for the purposes of section 62 of the *Land Registration Act 1982* (inhibitions) as a person interested in relation to any registered land to which —

(a) the application relates; or

(b) a restraint order made in pursuance of the application relates.

Management receivers

103 Appointment of management receiver

[P2002/29/48]

(1) Subsection (2) applies if —

(a) the Court of General Gaol Delivery makes a restraint order; and

(b) the applicant for the restraint order applies to the court to proceed under subsection (2) (whether as part of the application for the restraint order or at any time afterwards).

(2) The Court of General Gaol Delivery may by order appoint a receiver in respect of any realisable property to which the restraint order applies.

104 Powers of management receiver

[P2002/29/49]

(1) If the court appoints a receiver under section 103 it may act under this section on the application of the person who applied for the restraint order.

(2) The court may by order confer on the receiver the following powers in relation to any realisable property to which the restraint order applies —

(a) power to take possession of the property;

(b) power to manage or otherwise deal with the property;

(c) power to start, carry on or defend any legal proceedings in respect of the property;

(d) power to realise so much of the property as is necessary to meet the receiver's remuneration and expenses.

(3) The court may by order confer on the receiver power to enter any premises in the Island and to do any of the following —

(a) search for or inspect anything authorised by the court;

(b) make or obtain a copy, photograph or other record of anything so authorised;

(c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.

(4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of the receiver's functions —

(a) hold property;

(b) enter into contracts;

(c) sue and be sued;

(d) employ agents;

(e) execute powers of attorney, deeds or other instruments;

(f) take any other steps the court thinks appropriate.

(5) The court may order any person who has possession of realisable property to which the restraint order applies to give possession of it to the receiver.

(6) The court —

(a) may order a person holding an interest in realisable property to which the restraint order applies to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;

(b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions —

(a) section 9 of the *Drug Trafficking Offences Act 1987* ;

(b) section 8 of the *Criminal Justice Act 1990*;

(c) section 27 of the *Drug Trafficking Act 1996*.

(8) The court must not —

(a) confer the power mentioned in subsection (2)(b) or (d) in respect of property; or

(b) exercise the power conferred on it by subsection (6) in respect of property,

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(9) Subsection (8), so far as relating to a power in subsection (2)(b), does not apply to property which —

(a) is perishable; or

(b) ought to be disposed of before its value diminishes.

(10) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

(11) Managing or otherwise dealing with property includes —

(a) selling the property or any part of it or interest in it;

(b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;

(c) incurring capital expenditure in respect of the property.

Enforcement receivers

105 Appointment of enforcement receiver

[P2002/29/50]

(1) This section applies if —

(a) a confiscation order is made;

(b) it is not satisfied; and

(c) it is not subject to appeal.

(2) On the application of the prosecutor the Court of General Gaol Delivery may by order appoint a receiver in respect of realisable property.

106 Powers of enforcement receiver

[P2002/29/51]

(1) If the court appoints a receiver under section 105 it may act under this section on the application of the prosecutor.

(2) The court may by order confer on the receiver the following powers in relation to the realisable property —

(a) power to take possession of the property;

(b) power to manage or otherwise deal with the property;

(c) power to realise the property, in such manner as the court may specify;

(d) power to start, carry on or defend any legal proceedings in respect of the property.

(3) The court may by order confer on the receiver power to enter any premises in the Island and to do any of the following —

(a) search for or inspect anything authorised by the court;

(b) make or obtain a copy, photograph or other record of anything so authorised;

(c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.

(4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of the receiver's functions —

(a) hold property;

(b) enter into contracts;

(c) sue and be sued;

(d) employ agents;

(e) execute powers of attorney, deeds or other instruments;

(f) take any other steps the court thinks appropriate.

(5) The court may order any person who has possession of realisable property to give possession of it to the receiver.

(6) The court —

(a) may order a person holding an interest in realisable property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;

(b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions —

(a) section 9 of the *Drug Trafficking Offences Act 1987*;

(b) section 8 of the *Criminal Justice Act 1990*;

(c) section 27 of the *Drug Trafficking Act 1996*.

(8) The court must not —

(a) confer the power mentioned in subsection (2)(b) or (c) in respect of property; or

(b) exercise the power conferred on it by subsection (6) in respect of property,

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(9) Subsection (8), so far as relating to a power in subsection (2)(b), does not apply to property which —

(a) is perishable; or

(b) ought to be disposed of before its value diminishes.

(10) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

(11) Managing or otherwise dealing with property includes —

(a) selling the property or any part of it or interest in it;

(b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;

(c) incurring capital expenditure in respect of the property.

Application of sums

107 Sums in hands of enforcement receivers

[P2002/29/54]

(1) This section applies to sums which are in the hands of a receiver appointed under section 105 if they are —

(a) the proceeds of the realisation of property under section 106;

(b) sums (other than those mentioned in paragraph (a)) in which the defendant holds an interest.

(2) The sums must be applied as follows —

(a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under this subsection by virtue of section 208;

(b) second, they must be applied in making any payments directed by the Court of General Gaol Delivery;

(c) third, they must be applied on the defendant's behalf towards satisfaction of the confiscation order.

(3) If the amount payable under the confiscation order has been fully paid and any sums remain in the receiver's hands the receiver must distribute them —

(a) among such persons who held (or hold) interests in the property concerned as the Court of General Gaol Delivery directs; and

(b) in such proportions as it directs.

(4) Before making a direction under subsection (3) the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.

(5) For the purposes of subsections (3) and (4) the property concerned is —

(a) the property represented by the proceeds mentioned in subsection (1)(a);

(b) the sums mentioned in subsection (1)(b).

(6) The receiver applies sums as mentioned in subsection (2)(c) by paying them to the Chief Registrar on account of the amount payable under the order.

(7) The Chief Registrar is responsible for enforcing the confiscation order as if the amount ordered to be paid were a fine.

108 Sums received by Chief Registrar

[P2002/29/55]

(1) This section applies if the Chief Registrar receives sums on account of the amount payable under a confiscation order (whether the sums are received under section 107 or otherwise).

(2) The Chief Registrar's receipt of the sums reduces the amount payable under the order, but the Chief Registrar must apply the sums received as follows.

(3) First the Chief Registrar must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as —

(a) are payable under this subsection by virtue of section 208; but

(b) are not already paid under section 107(2)(a).

(4) If the Chief Registrar received the sums under section 107 the Chief Registrar must next apply them —

(a) first, in payment of the remuneration and expenses of a receiver appointed under section 103, to the extent that they have not been met by virtue of the exercise by that receiver of a power conferred under section 104(2)(d);

(b) second, in payment of the remuneration and expenses of the receiver appointed under section 105.

(5) If a direction was made under section 73(6) for an amount of compensation to be paid out of sums recovered under the confiscation order, the Chief Registrar must next apply the sums in payment of that amount.

(6) If any amount remains after the Chief Registrar makes any payments required by the preceding provisions of this section, the amount must be treated for the purposes of the *Collection of Fines etc. Act 1985* as if it were a fine imposed by a criminal court.

(7) Subsection (4) does not apply if the receiver is a civil servant or other public servant; and it is immaterial whether the receiver is a permanent or temporary civil or public servant or the receiver is on secondment from elsewhere.

Restrictions

109 Restraint orders: restrictions

[P2002/29/58]

(1) Subsections (2) to (4) apply if a court makes a restraint order.

(2) No distress may be levied against any realisable property to which the order applies except with the leave of the Court of General Gaol Delivery and subject to any terms the Court of General Gaol Delivery may impose.

(3) If the order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (4) except with the leave of the Court of General Gaol Delivery and subject to any terms the Court of General Gaol Delivery may impose.

(4) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.

(5) If a court in which proceedings are pending in respect of any property is satisfied that a restraint order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(6) Before exercising any power conferred by subsection (5), the court must give an opportunity to be heard to —

(a) the applicant for the restraint order; and

(b) any receiver appointed in respect of the property under section 103 or 105.

110 Enforcement receivers: restrictions

[P2002/29/59]

(1) Subsections (2) to (4) apply if a court makes an order under section 105 appointing a receiver in respect of any realisable property.

(2) No distress may be levied against the property except with the leave of the Court of General Gaol Delivery and subject to any terms the Court of General Gaol Delivery may impose.

(3) If the receiver is appointed in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (4) except with the leave of the Court of General Gaol Delivery and subject to any terms the Court of General Gaol Delivery may impose.

(4) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.

(5) If a court in which proceedings are pending in respect of any property is satisfied that an order under section 105 appointing a receiver in respect of the property has been applied for or made, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(6) Before exercising any power conferred by subsection (5), the court must give an opportunity to be heard to —

(a) the prosecutor; and

(b) the receiver (if the order under section 105 has been made).

Receivers: further provisions

111 Protection of receivers

[P2002/29/61]

If a receiver appointed under section 103 or 105 —

(a) takes action in relation to property which is not realisable property;

(b) would be entitled to take the action if it were realisable property; and

(c) believes on reasonable grounds that the receiver is entitled to take the action,

the receiver is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by the receiver's negligence.

112 Further applications

[P2002/29/62]

(1) This section applies to a receiver appointed under section 103 or 105.

(2) The receiver may apply to the Court of General Gaol Delivery for an order giving directions as to the exercise of the receiver's powers.

(3) The following persons may apply to the Court of General Gaol Delivery —

(a) any person affected by action taken by the receiver;

(b) any person who may be affected by action the receiver proposes to take.

(4) On an application under this section the court may make such order as it believes is appropriate.

113 Discharge and variation

[P2002/29/63]

(1) The following persons may apply to the Court of General Gaol Delivery to vary or discharge an order made under any of sections 103 to 106 —

(a) the receiver;

(b) the person who applied for the order;

(c) any person affected by the order.

(2) On an application under this section the court —

(a) may discharge the order;

(b) may vary the order.

(3) But in the case of an order under section 103 or 104 —

(a) if the condition in section 96 which was satisfied was that proceedings were started or an application was made, the court must discharge the order on the conclusion of the proceedings or of the application (as the case may be);

(b) if the condition which was satisfied was that an investigation was started or an application was to be made, the court must discharge the order if within a reasonable time proceedings for the offence are not started or the application is not made (as the case may be).

114 Management receivers: discharge

[P2002/29/64]

(1) This section applies if —

(a) a receiver stands appointed under section 103 in respect of realisable property (the management receiver); and

(b) the court appoints a receiver under section 105.

(2) The court must order the management receiver to transfer to the other receiver all property held by the management receiver by virtue of the powers conferred on the management receiver by section 104.

(3) Subsection (2) does not apply to property which the management receiver holds by virtue of the exercise by the management receiver of the receiver's power under section 104(2)(d).

(4) If the management receiver complies with an order under subsection (2) the management receiver is discharged —

(a) from the appointment as management receiver under section 103;

(b) from any obligation under this Act arising from that appointment.

(5) If this section applies the court may make such a consequential or incidental order as it believes is appropriate.

115 Receivers: appeal to Staff of Government Division

[P2002/29/65]

(1) If on an application for an order under any of sections 103 to 106 the court decides not to make one, the person who applied for the order may appeal to the Staff of Government Division against the decision.

(2) If the court makes an order under any of sections 103 to 106, the following persons may appeal to the Staff of Government Division in respect of the court's decision —

(a) the person who applied for the order;

(b) any person affected by the order.

(3) If on an application for an order under section 112 the court decides not to make one, the person who applied for the order may appeal to the Staff of Government Division against the decision.

(4) If the court makes an order under section 112, the following persons may appeal to the Staff of Government Division in respect of the court's decision —

(a) the person who applied for the order;

(b) any person affected by the order;

(c) the receiver.

(5) The following persons may appeal to the Staff of Government Division against a decision of the court on an application under section 113 —

(a) the person who applied for the order in respect of which the application was made;

(b) any person affected by the court's decision;

(c) the receiver.

(6) On an appeal under this section the Staff of Government Division may —

(a) confirm the decision; or

(b) make such order as it believes is appropriate.

Seized money

116 Seized money

[P2002/29/67]

(1) This section applies to money which —

(a) is held by a person; and

(b) is held in an account maintained by that person with a bank or a building society.

(2) This section also applies to money which is held by a person and which —

(a) has been seized by a constable under section 22 of the *Police Powers and Procedures Act 1998* (general power of seizure); and

(b) is held in an account maintained by the Isle of Man Constabulary (or otherwise) with a bank or a building society.

(3) This section also applies to money which is held by a person and which —

(a) has been seized by a customs officer under section 22 of the *Police Powers and Procedures Act 1998* as applied by order made under section 77(2) of that Act; and

(b) is held following the seizure in an account maintained with a bank or a building society.

(4) This section applies if the following conditions are satisfied —

(a) a restraint order has effect in relation to money to which this section applies;

(b) a confiscation order is made against the person by whom the money is held;

(c) a receiver has not been appointed under section 105 in relation to the money;

(d) any period allowed under section 71 for payment of the amount ordered to be paid under the confiscation order has ended.

(5) In such a case a court of summary jurisdiction may order the bank or building society to pay the money to the Chief Registrar on account of the amount payable under the confiscation order.

(6) If a bank or building society fails to comply with an order under subsection (4) —

(a) a court of summary jurisdiction may order it to pay an amount not exceeding £5,000; and

(b) the sum is to be treated as adjudged to be paid by a conviction of the court.

(7) In order to take account of changes in the value of money the Department of Home Affairs may by order substitute another sum for the sum for the time being specified in subsection (6)(a).

(8) For the purposes of this section —

(a) a bank is a deposit-taking business within the meaning of the *Financial Services Act 2008*;[18]

(b) "building society" has the same meaning as in section 7 of the *Industrial and Building Societies Act 1892*.

Exercise of powers

117 Powers of court and receiver

[P2002/29/69]

(1) This section applies to —

(a) the powers conferred on a court by sections 97 to 110 and sections 112 to 116;

(b) the powers of a receiver appointed under section 103 or 105.

(2) The powers —

(a) must be exercised with a view to the value for the time being of realisable property being made available (by the property's realisation) for satisfying any confiscation order that has been or may be made against the defendant;

(b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property;

(c) must be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the defendant;

(d) may be exercised in respect of a debt owed by the Crown.

(3) Subsection (2) has effect subject to the following rules —

(a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by that person;

(b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift;

(c) in a case where a confiscation order has not been made against the defendant, property must not be sold if the court so orders under subsection (4).

(4) If on an application by the defendant, or by the recipient of a tainted gift, the court decides that property cannot be replaced it may order that it must not be sold.

(5) An order under subsection (4) may be revoked or varied.

Committal

118 Committal by court of summary jurisdiction

[P2002/29/70]

(1) This section applies if —

(a) a defendant is convicted of an offence by a court of summary jurisdiction; and

(b) the prosecutor asks the court to commit the defendant to the Court of General Gaol Delivery with a view to a confiscation order being considered under section 66.

(2) In such a case the court of summary jurisdiction —

(a) must commit the defendant to the Court of General Gaol Delivery in respect of the offence; and

(b) may commit the defendant to the Court of General Gaol Delivery in respect of any other offence falling within subsection (3).

(3) An offence falls within this subsection if —

(a) the defendant has been convicted of it by a court of summary jurisdiction or any other court; and

(b) the court of summary jurisdiction has power to deal with the defendant in respect of it.

(4) If a committal is made under this section in respect of an offence or offences —

(a) section 66 applies accordingly; and

(b) the committal operates as a committal of the defendant to be dealt with by the Court of General Gaol Delivery in accordance with section 119.

(5) If a committal is made under this section in respect of an offence for which (apart from this section) the court of summary jurisdiction could have committed the defendant for sentence under section 18 of the *Summary Jurisdiction Act 1989* (offences triable either way) the court must state whether it would have done so.

(6) A committal under this section may be in custody or on bail.

119 Sentencing by Court of General Gaol Delivery

[P2002/29/71]

(1) If a defendant is committed to the Court of General Gaol Delivery under section 118 in respect of an offence or offences, this section applies (whether or not the court proceeds under section 66).

(2) In the case of an offence in respect of which a court of summary jurisdiction has stated under section 118(5) that it would have committed the defendant for sentence, the Court of General Gaol Delivery —

(a) must inquire into the circumstances of the case; and

(b) may deal with the defendant in any way in which it could deal with the defendant if the defendant had just been convicted of the offence on information before it.

(3) In the case of any other offence the Court of General Gaol Delivery —

(a) must inquire into the circumstances of the case; and

(b) may deal with the defendant in any way in which the court of summary jurisdiction could deal with the defendant if it had just convicted the defendant of the offence.

Compensation

120 Serious default

[P2002/29/72]

(1) If the following three conditions are satisfied the Court of General Gaol Delivery may order the payment of such compensation as it believes is just.

(2) The first condition is satisfied if a criminal investigation has been started with regard to an offence and proceedings are not started for the offence.

(3) The first condition is also satisfied if proceedings for an offence are started against a person and —

(a) they do not result in the conviction of that person for the offence; or

(b) that person is convicted of the offence but the conviction is quashed or the person is pardoned in respect of it.

(4) If subsection (2) applies the second condition is that —

(a) in the criminal investigation there has been a serious default by a prosecutor, constable or customs officer; and

(b) the investigation would not have continued if the default had not occurred.

(5) If subsection (3) applies the second condition is that —

(a) in the criminal investigation with regard to the offence or in its prosecution there has been a serious default by a prosecutor, constable or customs officer; and

(b) the proceedings would not have been started or continued if the default had not occurred.

(6) The third condition is that an application is made under this section by a person who held realisable property and has suffered loss in consequence of anything done in relation to it by or in pursuance of an order under this Part.

(7) The offence referred to in subsection (2) may be one of a number of offences with regard to which the investigation is started.

(8) The offence referred to in subsection (3) may be one of a number of offences for which the proceedings are started.

(9) Compensation under this section is payable to the applicant and is payable by the Treasury.

121 Confiscation orders varied or discharged

[P2002/29/73]

(1) This section applies if —

(a) the court varies a confiscation order under section 89 or discharges one under section 90; and

(b) an application is made to the Court of General Gaol Delivery by a person who held realisable property and has suffered loss as a result of the making of the order.

(2) The court may order the payment of such compensation as it believes is just.

(3) Compensation under this section is payable —

(a) to the applicant;

(b) by the Treasury.

Enforcement abroad

122 Enforcement abroad

[P2002/29/74]

(1) This section applies if —

(a) any of the conditions in section 96 is satisfied;

(b) the prosecutor believes that realisable property is situated in a country or territory outside the Island (the receiving country); and

(c) the prosecutor sends a request for assistance to the Attorney General with a view to it being forwarded under this section.

(2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property.

(3) In a case where a confiscation order has been made and has not been satisfied, discharged or quashed, a request for assistance is a request to the government of the receiving country to secure that —

(a) any person is prohibited from dealing with realisable property;

(b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.

(4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or quashed.

(5) If the Attorney General believes it is appropriate to do so the Attorney General may forward the request for assistance to the government of the receiving country.

(6) If property is realised in pursuance of a request under subsection (3) the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of realisation.

(7) A certificate purporting to be issued by or on behalf of the requested government is admissible as evidence of the facts it states if it states —

(a) that property has been realised in pursuance of a request under subsection (3);

(b) the date of realisation; and

(c) the proceeds of realisation.

(8) If the proceeds of realisation made in pursuance of a request under subsection (3) are expressed in a currency other than sterling, they must be taken to be the sterling equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation.

Interpretation

123 Criminal lifestyle

[P2002/29/75 & Sch2]

(1) A defendant has a criminal lifestyle if (and only if) the following condition is satisfied.

(2) The condition is that the offence (or any of the offences) concerned satisfies any of these tests —

(a) it is specified in Schedule 3;

(b) it constitutes conduct forming part of a course of criminal activity;

(c) it is an offence committed over a period of at least 6 months and the defendant has benefited from the conduct which constitutes the offence.

(3) Conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and —

(a) in the proceedings in which the defendant was convicted the defendant was convicted of three or more other offences, each of three or more of them constituting conduct from which the defendant has benefited; or

(b) in the period of 6 years ending with the day when those proceedings were started (or, if there is more than one such day, the earliest day) the defendant was convicted on at least two separate occasions of an offence constituting conduct from which the defendant has benefited.

(4) But an offence does not satisfy the test in subsection (2)(b) or (c) unless the defendant obtains relevant benefit of not less than £5,000.

(5) Relevant benefit for the purposes of subsection (2)(b) is —

(a) benefit from conduct which constitutes the offence;

(b) benefit from any other conduct which forms part of the course of criminal activity and which constitutes an offence of which the defendant has been convicted;

(c) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for an offence mentioned in paragraph (a) or (b).

(6) Relevant benefit for the purposes of subsection (2)(c) is —

(a) benefit from conduct which constitutes the offence;

(b) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for the offence mentioned in paragraph (a).

(7) The Department of Home Affairs may by order amend Schedule 3.

(8) The Department of Home Affairs may by order vary the amount for the time being specified in subsection (4).

124 Conduct and benefit

[P2002/29/76]

(1) Criminal conduct is conduct which —

(a) constitutes an offence in the Island; or

(b) would constitute such an offence if it occurred in the Island.

(2) General criminal conduct of the defendant is all the defendant's criminal conduct, and it is immaterial —

(a) whether conduct occurred before or after the passing of this Act;

(b) whether property constituting a benefit from conduct was obtained before or after the passing of this Act.

(3) Particular criminal conduct of the defendant is all the defendant's criminal conduct which falls within the following paragraphs —

(a) conduct which constitutes the offence or offences concerned;

(b) conduct which constitutes offences of which the defendant was convicted in the same proceedings as those in which the defendant was convicted of the offence or offences concerned;

(c) conduct which constitutes offences which the court will be taking into consideration in deciding the defendant's sentence for the offence or offences concerned.

(4) A person benefits from conduct if that person obtains property as a result of or in connection with the conduct.

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

(6) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other.

(7) If a person benefits from conduct the person's benefit is the value of the property obtained.

125 Tainted gifts

[P2002/29/77]

(1) Subsections (2) and (3) apply if —

(a) no court has made a decision as to whether the defendant has a criminal lifestyle; or

(b) a court has decided that the defendant has a criminal lifestyle.

(2) A gift is tainted if it was made by the defendant at any time after the relevant day.

(3) A gift is also tainted if it was made by the defendant at any time and was of property —

(a) which was obtained by the defendant as a result of or in connection with the defendant's general criminal conduct; or

(b) which (in whole or part and whether directly or indirectly) represented in the defendant's hands property obtained by the defendant as a result of or in connection with the defendant's general criminal conduct.

(4) Subsection (5) applies if a court has decided that the defendant does not have a criminal lifestyle.

(5) A gift is tainted if it was made by the defendant at any time after —

(a) the date on which the offence concerned was committed; or

(b) if the defendant's particular criminal conduct consists of two or more offences and they were committed on different dates, the date of the earliest.

(6) For the purposes of subsection (5) an offence which is a continuing offence is committed on the first occasion when it is committed.

(7) For the purposes of subsection (5) the defendant's particular criminal conduct includes any conduct which constitutes offences which the court has taken into consideration in deciding the defendant's sentence for the offence or offences concerned.

(8) A gift may be a tainted gift whether it was made before or after the passing of this Act.

(9) The relevant day is the first day of the period of 6 years ending with —

(a) the day when proceedings for the offence concerned were started against the defendant; or

(b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.

126 Gifts and their recipients

[P2002/29/78]

(1) If the defendant transfers property to another person for a consideration whose value is significantly less than the value of the property at the time of the transfer, the defendant is to be treated as making a gift.

(2) If subsection (1) applies the property given is to be treated as such share in the property transferred as is represented by the fraction —

(a) whose numerator is the difference between the two values mentioned in subsection (1); and

(b) whose denominator is the value of the property at the time of the transfer.

(3) References to a recipient of a tainted gift are to a person to whom the defendant has made the gift.

127 Value: the basic rule

[P2002/29/79]

(1) This section applies for the purpose of deciding the value at any time of property then held by a person.

(2) Its value is the market value of the property at that time.

(3) But if at that time another person holds an interest in the property its value, in relation to the person mentioned in subsection (1), is the market value of that person's interest at that time, ignoring any charging order under a provision listed in subsection (4).

(4) The provisions are —

(a) section 9 of the *Drug Trafficking Offences Act 1987*;

(b) section 8 of the *Criminal Justice Act 1990*;

(c) section 27 of the *Drug Trafficking Act 1996*.

(5) This section has effect subject to sections 128 and 129.

128 Value of property obtained from conduct

[P2002/29/80]

(1) This section applies for the purpose of deciding the value of property obtained by a person as a result of or in connection with the person's criminal conduct; and the material time is the time the court makes its decision.

(2) The value of the property at the material time is the greater of the following —

(a) the value of the property (at the time the person obtained it) adjusted to take account of later changes in the value of money;

(b) the value (at the material time) of the property found under subsection (3).

(3) The property found under this subsection is as follows —

(a) if the person holds the property obtained, the property found under this subsection is that property;

(b) if the person holds no part of the property obtained, the property found under this subsection is any property which directly or indirectly represents it in the hands of that person;

(c) if the person holds part of the property obtained, the property found under this subsection is that part and any property which directly or indirectly represents the other part in the hands of that person.

(4) The references in subsection (2)(a) and (b) to the value are to the value found in accordance with section 127.

129 Value of tainted gifts

[P2002/29/81]

(1) The value at any time (the material time) of a tainted gift is the greater of the following —

(a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money;

(b) the value (at the material time) of the property found under subsection (2).

(2) The property found under this subsection is as follows —

(a) if the recipient holds the property given, the property found under this subsection is that property;

(b) if the recipient holds no part of the property given, the property found under this subsection is any property which directly or indirectly represents it in the hands of the recipient;

(c) if the recipient holds part of the property given, the property found under this subsection is that part and any property which

directly or indirectly represents the other part in the hands of the recipient.

(3) The references in subsection (1)(a) and (b) to the value are to the value found in accordance with section 127.

130 Free property

[P2002/29/82]

Property is free unless an order is in force in respect of it under any of these provisions —

(a) section 27 of the *Misuse of Drugs Act 1976* (forfeiture orders);

(b) section 16 of the *Criminal Law Act 1981* (deprivation orders);

(c) section 16, 16A or 16B of the *Anti-Terrorism and Crime Act 2003* (forfeiture orders);[19]

(d) section 6, 13, 22, 47(4) or 50(2) of this Act.

131 Realisable property

[P2002/29/83]

Realisable property is —

(a) any free property held by the defendant;

(b) any free property held by the recipient of a tainted gift.

132 Property: general provisions

[P2002/29/84]

(1) Property is all property wherever situated and includes —

(a) money;

(b) all forms of real or personal property;

(c) things in action and other intangible or incorporeal property.

(2) The following rules apply in relation to property —

(a) property is held by a person if the person holds an interest in it;

(b) property is obtained by a person if the person obtains an interest in it;

(c) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;

(d) references to property held by a person include references to property vested in the person's trustee in bankruptcy or liquidator;

(e) references to an interest held by a person beneficially in property include references to an interest which would be held by that person beneficially if the property were not so vested;

(f) references to an interest in relation to land in the Island are to any legal estate or equitable interest or power;

(g) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

133 Proceedings

[P2002/29/85]

(1) Proceedings for an offence are started —

(a) when a justice of the peace issues a summons or warrant under section 4 of the *Summary Jurisdiction Act 1989* (issue of summons to, or warrant for arrest of, accused) in respect of the offence;

(b) when a person is charged with the offence after being taken into custody without a warrant.

(2) If more than one time is found under subsection (1) in relation to proceedings they are started at the earliest of them.

(3) If the defendant is acquitted on all counts in proceedings for an offence, the proceedings are concluded when the defendant is acquitted.

(4) If the defendant is convicted in proceedings for an offence and the conviction is quashed or the defendant is pardoned before a confiscation order is made, the proceedings are concluded when the conviction is quashed or the defendant is pardoned.

(5) If a confiscation order is made against the defendant in proceedings for an offence (whether the order is made by the Court of General Gaol Delivery or the Staff of Government Division) the proceedings are concluded —

(a) when the order is satisfied or discharged; or

(b) when the order is quashed and there is no further possibility of an appeal against the decision to quash the order.

(6) If the defendant is convicted in proceedings for an offence but the Court of General Gaol Delivery decides not to make a confiscation order against the defendant, the following rules apply —

(a) if an application for leave to appeal under section 91(2) is refused, the proceedings are concluded when the decision to refuse is made;

(b) if the time for applying for leave to appeal under section 91(2) expires without an application being made, the proceedings are concluded when the time expires;

(c) if on appeal under section 91(2) the Staff of Government Division confirms the Court of General Gaol Delivery's decision, and an application for leave to appeal to the Privy Council is refused, the proceedings are concluded when the decision to refuse is made;

(d) if on appeal under section 91(2) the Staff of Government Division confirms the Court of General Gaol Delivery's decision, and the time for applying for leave to appeal to the Privy Council expires without an application being made, the proceedings are concluded when the time expires;

(e) if on appeal under section 91(2) the Staff of Government Division confirms the Court of General Gaol Delivery's decision, and on appeal to the Privy Council, the Privy Council confirms the Staff of Government Division's decision, the proceedings are concluded when the Privy Council confirms the decision;

(f) if on appeal under section 91(2) the Staff of Government Division directs the Court of General Gaol Delivery to reconsider the case, and on reconsideration the Court of General Gaol Delivery decides not to make a confiscation order against the defendant, the proceedings are concluded when the Court of General Gaol Delivery makes that decision;

(g) if on appeal to the Privy Council, the Privy Council directs the Court of General Gaol Delivery to reconsider the case, and on reconsideration the Court of General Gaol Delivery decides not to make a confiscation order against the defendant, the proceedings are concluded when the Court of General Gaol Delivery makes that decision.

(7) In applying subsection (6) any power to extend the time for making an application for leave to appeal must be ignored.

(8) In applying subsection (6) the fact that a court may decide on a later occasion to make a confiscation order against the defendant must be ignored.

134 Applications

[P2002/29/86]

(1) An application under section 79, 80, 87 or 88 is concluded —

(a) in a case where the court decides not to make a confiscation order against the defendant, when it makes the decision;

(b) in a case where a confiscation order is made against the defendant as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order;

(c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.

(2) An application under section 81 or 82 is concluded —

(a) in a case where the court decides not to vary the confiscation order concerned, when it makes the decision;

(b) in a case where the court varies the confiscation order as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order;

(c) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made.

135 Confiscation orders: satisfaction and appeal

[P2002/29/87]

(1) A confiscation order is satisfied when no amount is due under it.

(2) A confiscation order is subject to appeal until there is no further possibility of an appeal on which the order could be varied or quashed; and for this purpose any power to grant leave to appeal out of time must be ignored.

136 Other interpretative provisions for Part 2

[P2002/29/88]

(1) A reference to the offence (or offences) concerned must be construed in accordance with section 66(9).

(2) A criminal investigation is an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.

(3) A defendant is a person against whom proceedings for an offence have been started (whether or not the defendant has been convicted).

(4) A reference to sentencing the defendant for an offence includes a reference to dealing with the defendant otherwise in respect of the offence.

(5) The following paragraphs apply to references to orders —

(a) a confiscation order is an order under section 66;

(b) a restraint order is an order under section 97.

(6) Sections 123 to 135 and this section apply for the purposes of this Part.

General

137 Procedure on appeal to the Staff of Government Division

[P2002/29/89]

(1) An appeal to the Staff of Government Division under this Part lies only with the leave of that Court.

(2) Subject to rules of court made under section 12 of the *High Court Act 1991* (distribution of business between divisions) the criminal division of the Staff of Government Division is the division —

(a) to which an appeal to that Court under this Part is to lie; and

(b) which is to exercise that Court's jurisdiction under this Part.

(3) Subject to any rules of court referred to in section 138, the costs of and incidental to all proceedings on an appeal to the criminal division of the Staff of Government Division under —

(a) section 99(1) or (2) (appeals against orders made in restraint proceedings); or

(b) section 115 (appeals against, or relating to, the making of receivership orders),

are in the discretion of the court.

(4) Such rules may in particular make provision for regulating matters relating to the costs of those proceedings, including prescribing scales of costs to be paid to legal or other representatives.

(5) The court shall have full power to determine by whom and to what extent the costs are to be paid.

(6) In any proceedings mentioned in subsection (3), the court may —

(a) disallow; or

(b) (as the case may be) order the legal or other representative concerned to meet,

the whole of any wasted costs or such part of them as may be determined in accordance with rules referred to in section 138.

(7) In subsection (6) "wasted costs" means any costs incurred by a party —

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative; or

(b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.

(8) "Legal or other representative", in relation to a party to proceedings means any person exercising a right of audience or right to conduct litigation on behalf of that party.

138 Rules of court for Part 2

[P2002/29/91]

(1) Rules of court may make provision in relation to —

(a) proceedings under this Part; or

(b) receivers appointed under this Part.

(2) Where no rules of court have been made the court may adopt such practice and procedure as it thinks fit.

PART 3 – MONEY LAUNDERING

Offences

139 Concealing, etc.

[P2002/29/327]

(1) A person commits an offence if that person —

(a) conceals criminal property;

(b) disguises criminal property;

(c) converts criminal property;

(d) transfers criminal property;

(e) removes criminal property from the Island.

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

(a) that person makes an authorised disclosure under section 154 and (if the disclosure is made before the person does the act mentioned in subsection (1)) the person has the appropriate consent;

(b) that person intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) the act the person does is done in carrying out a function the person has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) Nor does a person commit an offence under subsection (1) if —

(a) that person knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the Island; and

(b) the relevant criminal conduct —

(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory; and

(ii) is not of a description prescribed by an order made by the Department of Home Affairs.

(4) In subsection (3) "the relevant criminal conduct" is the criminal conduct by reference to which the property concerned is criminal property.

(5) A deposit-taking body that does an act mentioned in subsection (1)(c) or (d) does not commit an offence under that subsection if —

(a) it does the act in operating an account maintained with it; and

(b) the value of the criminal property concerned is less than the threshold amount determined under section 156 for the act.

(6) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

140 Arrangements

[P2002/29/328]

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

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

(a) that person makes an authorised disclosure under section 154 and (if the disclosure is made before the person does the act mentioned in subsection (1)) the person has the appropriate consent;

(b) that person intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) the act the person does is done in carrying out a function the person has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) Nor does a person commit an offence under subsection (1) if —

(a) that person knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the Island; and

(b) the relevant criminal conduct —

(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory; and

(ii) is not of a description prescribed by an order made by the Department of Home Affairs.

(4) In subsection (3) "the relevant criminal conduct" is the criminal conduct by reference to which the property concerned is criminal property.

(5) A deposit-taking body that does an act mentioned in subsection (1) does not commit an offence under that subsection if —

(a) it does the act in operating an account maintained with it, and

(b) the arrangement facilitates the acquisition, retention, use or control of criminal property of a value that is less than the threshold amount determined under section 156 for the act.

141 Acquisition, use and possession

[P2002/29/329]

(1) A person commits an offence if that person —

(a) acquires criminal property;

(b) uses criminal property;

(c) has possession of criminal property.

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

(a) that person makes an authorised disclosure under section 154 and (if the disclosure is made before the person does the act mentioned in subsection (1)) the person has the appropriate consent;

(b) that person intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) [Repealed][20]

(d) the act the person does is done in carrying out a function the person has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) Nor does a person commit an offence under subsection (1) if —

(a) that person knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the Island; and

(b) the relevant criminal conduct —

(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory; and

(ii) is not of a description prescribed by an order made by the Department of Home Affairs.

(4) In subsection (3) "the relevant criminal conduct" is the criminal conduct by reference to which the property concerned is criminal property.

(5) A deposit-taking body that does an act mentioned in subsection (1) does not commit an offence under that subsection if —

(a) it does the act in operating an account maintained with it; and

(b) the value of the criminal property concerned is less than the threshold amount determined under section 156 for the act.

(6) For the purposes of this section —

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;

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

(c) the provision by a person of goods or services which the person knows or suspects may help another to carry out criminal conduct is not consideration.

142 Failure to disclose: regulated sector

[P2002/29/330 & Sch 9]

(1) A person commits an offence if the conditions in subsections (2) to (5) are satisfied.[21]

(2) The first condition is that the person —

(a) knows or suspects; or

(b) has reasonable grounds for knowing or suspecting,

that another person is engaged in money laundering.

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

(a) on which the person's knowledge or suspicion is based; or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to that person in the course of a business in the regulated sector.

(4) The third condition is —

(a) that the person can identify the other person mentioned in subsection (2) or the whereabouts of any of the laundered property; or

(b) that the person believes, or it is reasonable to expect the person to believe, that the information or other matter mentioned in subsection (3) will or may assist in identifying that other person or the whereabouts of any of the laundered property.

(5) The fourth condition is that the person does not make the required disclosure to —

(a) a nominated officer; or

(b) a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary,

as soon as is practicable after the information or other matter mentioned in subsection (3) comes to that person.

(6) The required disclosure is a disclosure of —

(a) the identity of the other person mentioned in subsection (2), if the person knows it;

(b) the whereabouts of the laundered property, so far as the person knows it; and

(c) the information or other matter mentioned in subsection (3).

(7) The laundered property is the property forming the subject-matter of the money laundering that the person knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.

(8) But a person does not commit an offence under this section if —

(a) that person has a reasonable excuse for not making the required disclosure;

(b) that person is a professional legal adviser or relevant professional adviser and —

(i) if the person knows either of the things mentioned in subsection (6)(a) and (b), the person knows the thing because of information or other matter that came to the person in privileged circumstances, or

(ii) the information or other matter mentioned in subsection (3) came to the person in privileged circumstances; or

(c) subsection (9) or (11) applies to that person.

(9) This subsection applies to a person if —

(a) the person does not know or suspect that another person is engaged in money laundering; and

(b) the person has not been provided by the person's employer with such training as is specified by the Department of Home Affairs by order for the purposes of this section.

(10) Nor does a person commit an offence under this section if —

(a) that person knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the Island; and

(b) the money laundering —

(i) is not unlawful under the criminal law applying in that country or territory; and

(ii) is not of a description prescribed by an order made by the Department of Home Affairs.

(11) This subsection applies to a person if —

(a) the person is employed by, or is in partnership with, a professional legal adviser or a relevant professional adviser to provide the adviser with assistance or support;

(b) the information or other matter mentioned in subsection (3) comes to the person in connection with the provision of such assistance or support; and

(c) the information or other matter came to the adviser in privileged circumstances.

(12) In deciding whether a person committed an offence under this section the court must consider whether the person —

(a) complied with other relevant legal obligations in connection with the making of disclosures under this section, including any obligations imposed by the Department of Home Affairs in a code made under section 157; and

(b) followed any relevant guidance which was at the time concerned issued by a supervisory authority or any other appropriate body and which has been published in a manner approved as appropriate in the opinion of the authority or body to bring the guidance to the attention of persons likely to be affected by it.

(13) A disclosure to a nominated officer is a disclosure which —

(a) is made to a person nominated by the alleged offender's employer to receive disclosures under this section; and

(b) is made in the course of the alleged offender's employment.

(14) But a disclosure which satisfies paragraphs (a) and (b) of subsection (13) is not to be taken as a disclosure to a nominated officer if the person making the disclosure —

(a) is a professional legal adviser or relevant professional adviser;

(b) makes it for the purpose of obtaining advice about making a disclosure under this section; and

(c) does not intend it to be a disclosure under this section.

(15) Information or other matter comes to a professional legal adviser or relevant professional adviser in privileged circumstances if it is communicated or given to the adviser —

(a) by (or by a representative of) a client of the adviser in connection with the giving by the adviser of legal advice to the client;

(b) by (or by a representative of) a person seeking legal advice from the adviser; or

(c) by a person in connection with legal proceedings or contemplated legal proceedings.

(16) But subsection (15) does not apply to information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(17) Schedule 4 has effect for the purpose of determining what is —

(a) a business in the regulated sector;

(b) a supervisory authority.

(18) An appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

(19) A relevant professional adviser is an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for —

(a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and

(b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.

143 Failure to disclose: nominated officers in the regulated sector

[P2002/29/331 & Sch 9]

(1) A person nominated to receive disclosures under section 142 commits an offence if the conditions in subsections (2) to (5) are satisfied.

(2) The first condition is that the person —

(a) knows or suspects; or

(b) has reasonable grounds for knowing or suspecting,

that another person is engaged in money laundering.

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

(a) on which the person's knowledge or suspicion is based; or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to that person in consequence of a disclosure made under section 142.

(4) The third condition is —

(a) that the person knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under section 142;

(b) that that other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3); or

(c) that the person believes, or it is reasonable to expect the person to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.

(5) The fourth condition is that the person does not make the required disclosure to a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary as soon as is practicable after the information or other matter mentioned in subsection (3) comes to that person.

(6) The required disclosure is a disclosure of —

(a) the identity of the other person mentioned in subsection (2), if disclosed to the person under section 142;

(b) the whereabouts of the laundered property, so far as disclosed to the person under section 142; and

(c) the information or other matter mentioned in subsection (3).

(7) The laundered property is the property forming the subject-matter of the money laundering that the person knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.

(8) But a person does not commit an offence under this section if the person has a reasonable excuse for not making the required disclosure.

(9) Nor does a person commit an offence under this section if —

(a) the person knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the Island; and

(b) the money laundering —

(i) is not unlawful under the criminal law applying in that country or territory; and

(ii) is not of a description prescribed by an order made by the Department of Home Affairs.

(10) In deciding whether a person committed an offence under this section the court must consider whether the person —

(a) complied with other relevant legal obligations in connection with the making of disclosures under this section, including any obligations imposed by the Department of Home Affairs in a code made under section 157; and

(b) followed any relevant guidance which was at the time concerned issued by a supervisory authority or any other appropriate body and which has been published in a manner approved as appropriate in the opinion of the authority or body to bring the guidance to the attention of persons likely to be affected by it.

(11) Schedule 4 has effect for the purpose of determining what is a supervisory authority.

(12) An appropriate body is a body which regulates or is representative of a trade, profession, business or employment.

144 Failure to disclose: other nominated officers

[P2002/29/332]

(1) A person nominated to receive disclosures under section 153 or 154 commits an offence if the conditions in subsections (2) to (5) are satisfied.

(2) The first condition is that the person knows or suspects that another person is engaged in money laundering.

(3) The second condition is that the information or other matter on which the person's knowledge or suspicion is based came to the person in consequence of a disclosure made under the applicable section.

(4) The third condition is —

(a) that the person knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under the applicable section;

(b) that that other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3); or

(c) that the person believes, or it is reasonable to expect the person to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.

(5) The fourth condition is that the person does not make the required disclosure to a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary as soon as is practicable after the information or other matter mentioned in subsection (3) comes to that person.

(6) The required disclosure is a disclosure of —

(a) the identity of the other person mentioned in subsection (2), if disclosed to the person under the applicable section;

(b) the whereabouts of the laundered property, so far as disclosed to the person under the applicable section; and

(c) the information or other matter mentioned in subsection (3).

(7) The laundered property is the property forming the subject-matter of the money laundering that the person knows or suspects that other person to be engaged in.

(8) The applicable section is section 153 or, as the case may be, section 154.

(9) But a person does not commit an offence under this section if the person has a reasonable excuse for not making the required disclosure.

(10) Nor does a person commit an offence under this section if —

(a) the person knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the Island; and

(b) the money laundering —

(i) is not unlawful under the criminal law applying in that country or territory; and

(ii) is not of a description prescribed by an order made by the Department of Home Affairs.

145 Tipping off: regulated sector

[P2002/29/333A]

(1) A person commits an offence if —

(a) the person discloses any matter within subsection (2);

(b) the disclosure is likely to prejudice any investigation that might be conducted following the disclosure referred to in that subsection; and

(c) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.

(2) The matters are that the person or another person has made a disclosure under this Part —

(a) to a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary; or

(b) to a nominated officer,

of information that came to that person in the course of a business in the regulated sector.

(3) A person commits an offence if —

(a) the person discloses that an investigation into allegations that an offence under this Part has been committed, is being contemplated or is being carried out;

(b) the disclosure is likely to prejudice that investigation; and

(c) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.

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

(a) on summary conviction, to custody for a term not exceeding 3 months, or to a fine not exceeding £5,000, or to both;

(b) on conviction on information, to custody for a term not exceeding 2 years, or to a fine, or to both.

(5) This section is subject to —

(a) section 146 (disclosures within an undertaking or group);

(b) section 147 (other permitted disclosures between institutions); and

(c) section 148 (other permitted disclosures etc).

146 Disclosures within an undertaking or group, etc.

[P2002/29/333B]

(1) An employee, officer or partner of an undertaking does not commit an offence under section 145 if the disclosure is to an employee, officer or partner of the same undertaking.

(2) A person does not commit an offence under section 145 in respect of a disclosure by a credit institution or a financial institution if —

(a) the disclosure is to a credit institution or a financial institution;

(b) the institution to whom the disclosure is made is situated in a country or territory prescribed by the Department of Home Affairs in —

(i) an order; or

(ii) a code made under section 157; and

(c) both the institution making the disclosure and the institution to whom it is made belong to the same group.

(3) In subsection (2) "group" is to be construed in accordance with any order made by the Department of Home Affairs under subsection (5).

(4) A professional legal adviser or a relevant professional adviser does not commit an offence under section 145 if —

(a) the disclosure is to professional legal adviser or a relevant professional adviser;

(b) both the person making the disclosure and the person to whom it is made carry on business in a country or territory prescribed by the Department of Home Affairs in —

(i) an order; or

(ii) a code made under section 157; and

(c) those persons perform their professional activities within different undertakings that share common ownership, management or control.

(5) The Department of Home Affairs may by order prescribe what is a "group" for the purposes of subsection (2) and this may be by reference to a prescription made by a body specified in the order and may be by reference to a prescription made by that body from time to time (that is, after as well as before the making of the order).

147 Other permitted disclosures between institutions, etc.

[P2002/29/333C]

(1) This section applies to a disclosure —

(a) by a credit institution to another credit institution;

(b) by a financial institution to another financial institution;

(c) by a professional legal adviser to another professional legal adviser; or

(d) by a relevant professional adviser of a particular kind to another relevant professional adviser of the same kind.

(2) A person does not commit an offence under section 145 in respect of a disclosure to which this section applies if —

(a) the disclosure relates to —

(i) a client or former client of the institution or adviser making the disclosure and the institution or adviser to whom it is made;

(ii) a transaction involving them both; or

(iii) the provision of a service involving them both;

(b) the disclosure is for the purpose only of preventing an offence under this Part of this Act;

(c) the institution or adviser to whom the disclosure is made is situated in a country or territory prescribed by the Department of Home Affairs in —

(i) an order; or

(ii) a code made under section 157; and

(d) the institution or adviser making the disclosure and the institution or adviser to whom it is made are subject to equivalent duties of professional confidentiality and the protection of personal data (within the meaning of section 1 of the *Data Protection Act 2002*).

148 Other permitted disclosures, etc.

[P2002/29/333D]

(1) A person does not commit an offence under section 145 if the disclosure is —

(a) to the authority that is the supervisory authority for that person; or

(b) for the purpose of —

(i) the detection, investigation or prosecution of a criminal offence (whether in the Island or elsewhere);

(ii) an investigation under this Act; or

(iii) the enforcement of any order of a court under this Act.

(2) A professional legal adviser or a relevant professional adviser does not commit an offence under section 145 if the disclosure —

(a) is to the adviser's client; and

(b) is made for the purpose of dissuading the client from engaging in conduct amounting to an offence.

(3) A person does not commit an offence under section 145(1) if the person does not know or suspect that the disclosure is likely to have the effect mentioned in section 145(1)(b).

(4) A person does not commit an offence under section 145(3) if the person does not know or suspect that the disclosure is likely to have the effect mentioned in section 145(3)(b).[22]

149 Interpretation of sections 145 to 148

[P2002/29/333E & Sch 9]

(1) For the purposes of sections 145 to 148, Schedule 4 has effect for determining —

(a) what is a business in the regulated sector, and

(b) what is a supervisory authority.

(2) In those sections the expressions "credit institution" and "financial institution" are to be construed in accordance with an order made by the Department of Home Affairs under subsection (5).

(3) References in those sections to a disclosure by or to a credit institution or a financial institution include disclosure by or to an employee, officer or partner of the institution acting on its behalf.

(4) In those sections "relevant professional adviser" means an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for —

(a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and

(b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.

(5) The Department of Home Affairs must by order prescribe —

(a) what is a credit institution;

(b) what is a financial institution,

for the purposes of sections 145 to 148.

(6) A prescription under subsection (5) may be by reference to a prescription made by a body specified in the order and may be by reference to a prescription made by that body from time to time (that is, after as well as before the making of the order).

150 Penalties for money laundering offences

[P2002/29/334]

(1) A person guilty of an offence under section 139, 140 or 141 is liable —

(a) on summary conviction, to custody for a term not exceeding 6 months, or to a fine not exceeding £5,000, or to both; or

(b) on conviction on information, to custody for a term not exceeding 14 years, or to a fine, or to both.

(2) A person guilty of an offence under section 142, 143 or 144 is liable —

(a) on summary conviction, to custody for a term not exceeding 6 months, or to a fine not exceeding £5,000, or to both; or

(b) on conviction on information, to custody for a term not exceeding 5 years, or to a fine, or to both.

(3) A person guilty of an offence under section 155(2) is liable on summary conviction to a fine not exceeding £5,000.

Consent

151 Appropriate consent

[P2002/29/335]

(1) The appropriate consent is —

(a) the consent of a nominated officer to do a prohibited act if an authorised disclosure is made to the nominated officer;

(b) the consent of a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary to do a prohibited act if an authorised disclosure is made to a constable or customs officer.

(2) A person must be treated as having the appropriate consent if —

(a) the person makes an authorised disclosure to a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary; and

(b) the condition in subsection (3) or the condition in subsection (4) is satisfied.

(3) The condition is that before the end of the notice period the person does not receive notice from a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary that consent to the doing of the act is refused.

(4) The condition is that —

(a) before the end of the notice period the person receives notice from a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary that consent to the doing of the act is refused; and

(b) the moratorium period has expired.

(5) The notice period is the period of seven working days starting with the first working day after the person makes the disclosure.

(6) The moratorium period is the period of 31 days starting with the day on which the person receives notice that consent to the doing of the act is refused.

(7) A working day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the *Bank Holidays Act 1989* in the Island when the person makes the disclosure.

(8) References to a prohibited act are to an act mentioned in section 139(1), 140(1) or 141(1) (as the case may be).

(9) A nominated officer is a person nominated to receive disclosures under section 154.

(10) Subsections (1) to (4) apply for the purposes of this Part.

152 Nominated officer: consent

[P2002/29/336]

(1) A nominated officer must not give the appropriate consent to the doing of a prohibited act unless the condition in subsection (2), the condition in subsection (3) or the condition in subsection (4) is satisfied.

(2) The condition is that —

(a) the nominated officer makes a disclosure that property is criminal property to a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary; and

(b) such constable or customs officer gives consent to the doing of the act.

(3) The condition is that —

(a) the nominated officer makes a disclosure that property is criminal property to a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary; and

(b) before the end of the notice period the nominated officer does not receive notice from such a constable or customs officer that consent to the doing of the act is refused.

(4) The condition is that —

(a) the nominated officer makes a disclosure that property is criminal property to a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary;

(b) before the end of the notice period the nominated officer receives notice from such a constable or customs officer that consent to the doing of the act is refused; and

(c) the moratorium period has expired.

(5) A person who is a nominated officer commits an offence if —

(a) the nominated officer gives consent to a prohibited act in circumstances where none of the conditions in subsections (2), (3) and (4) is satisfied; and

(b) the nominated officer knows or suspects that the act is a prohibited act.

(6) A person guilty of such an offence is liable —

(a) on summary conviction, to custody for a term not exceeding 6 months, or to a fine not exceeding £5,000, or to both; or

(b) on conviction on information, to custody for a term not exceeding 5 years, or to a fine, or to both.

(7) The notice period is the period of seven working days starting with the first working day after the nominated officer makes the disclosure.

(8) The moratorium period is the period of 31 days starting with the day on which the nominated officer is given notice that consent to the doing of the act is refused.

(9) A working day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the *Bank Holidays Act 1989* in the Island when the nominated officer gives the appropriate consent.

(10) References to a prohibited act are to an act mentioned in section 139(1), 140(1) or 141(1) (as the case may be).

(11) A nominated officer is a person nominated to receive disclosures under section 154.

Disclosures

153 Protected disclosures

[P2002/29/337]

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

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

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

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

(b) gives the discloser reasonable grounds for knowing or suspecting,

that another person is engaged in money laundering.

(4) The third condition is that the disclosure is made to —

(a) a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary; or

(b) a nominated officer,

as soon as is practicable after the information or other matter comes to the discloser.

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

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

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

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

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

(a) is made to a person nominated by the discloser's employer to receive disclosures under section 142 or this section; and

(b) is made in the course of the discloser's employment.

154 Authorised disclosures

[P2002/29/338]

(1) For the purposes of this Part a disclosure is authorised if —

(a) it is a disclosure to —

(i) a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary; or

(ii) a nominated officer,

by the alleged offender that property is criminal property;

(b) it is made in the form and manner (if any) prescribed for the purposes of this subsection by order under section 155; and

(c) the first, second or third condition set out below is satisfied.

(2) The first condition is that the disclosure is made before the alleged offender does the prohibited act.

(3) The second condition is that —

(a) the disclosure is made while the alleged offender is doing the prohibited act;

(b) the alleged offender began to do the act at a time when, because the alleged offender did not then know or suspect that the

property constituted or represented a person's benefit from criminal conduct, the act was not a prohibited act; and

(c) the disclosure is made on the alleged offender's own initiative and as soon as is practicable after the alleged offender first knows or suspects that the property constitutes or represents a person's benefit from criminal conduct.

(4) The third condition is that —

(a) the disclosure is made after the alleged offender does the prohibited act;

(b) the alleged offender has a reasonable excuse for the failure to make the disclosure before the alleged offender did the act; and

(c) the disclosure is made on the alleged offender's own initiative and as soon as it is practicable for it to be made.

(5) An authorised disclosure is not to be taken to breach any restriction on the disclosure of information (however imposed).

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

(a) is made to a person nominated by the alleged offender's employer to receive authorised disclosures; and

(b) is made in the course of the alleged offender's employment.

(7) References to the prohibited act are to an act mentioned in section 139(1), 140(1) or 141(1) (as the case may be).

155 Form and manner of disclosures

[P2002/29/339]

(1) The Department of Home Affairs may by order prescribe the form and manner in which a disclosure under section 142, 143, 144 or 154 must be made.

(2) A person commits an offence if that person makes a disclosure under section 142, 143, 144 or 154 otherwise than in the form prescribed under subsection (1) or otherwise than in the manner so prescribed.

(3) But a person does not commit an offence under subsection (2) if that person has a reasonable excuse for making the disclosure otherwise than in the form prescribed under subsection (1) or (as the case may be) otherwise than in the manner so prescribed.

(4) The power under subsection (1) to prescribe the form in which a disclosure must be made includes power to provide for the form to include a request to a person making a disclosure that the person provide information specified or described in the form if the person has not provided it in making the disclosure.

(5) Where under subsection (4) a request is included in a form prescribed under subsection (1), the form must —

(a) state that there is no obligation to comply with the request; and

(b) explain the protection conferred by subsection (6) on a person who complies with the request.

(6) A disclosure made in pursuance of a request under subsection (4) is not to be taken to breach any restriction on the disclosure of information (however imposed).

(7) Subsection (4) does not apply to a disclosure made to a nominated officer.

Threshold amounts

156 Threshold amounts

[P2002/29/339A]

(1) This section applies for the purposes of sections 139(5), 140(5) and 141(5).

(2) The threshold amount for acts done by a deposit-taking body in operating an account is £250 unless a higher amount is specified under the following provisions of this section (in which event it is that higher amount).

(3) A constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary may specify the threshold amount for acts done by a deposit-taking body in operating an account —

(a) when such a constable or customs officer gives consent, or gives notice refusing consent, to the deposit-taking body's doing of an act mentioned in section 139(1), 140(1) or 141(1) in opening, or operating, the account or a related account; or

(b) on a request from the deposit-taking body.

(4) Where the threshold amount for acts done in operating an account is specified under subsection (3) or this subsection, a constable or customs officer serving (in either case) with the Financial Crime Unit of the Isle of Man Constabulary may vary the amount (whether on a request from the deposit-taking body or otherwise) by specifying a different amount.

(5) Different threshold amounts may be specified under subsections (3) and (4) for different acts done in operating the same account.

(6) The amount specified under subsection (3) or (4) as the threshold amount for acts done in operating an account must, when specified, not be less than the amount specified in subsection (2).

(7) The Department of Home Affairs may by order vary the amount for the time being specified in subsection (2).

(8) For the purposes of this section, an account is related to another if each is maintained with the same deposit-taking body and there is a person

who, in relation to each account, is the person or one of the persons entitled to instruct the body as respects the operation of the account.

Money laundering codes

157 Money laundering codes

[1990/1/17F]

(1) The Department of Home Affairs must make such codes as it considers appropriate for the purposes of preventing and detecting money laundering.

(2) Without prejudice to the generality of subsection (1), a code may —

(a) provide practical guidance with respect to the requirements of any provision of this Part or any other statutory provision relating to the benefits or proceeds of criminal conduct or the treatment of criminal property;

(b) require any person carrying on a business in the regulated sector to institute and operate such systems, procedures, record-keeping, controls and training as may be specified in the code;

(c) require persons carrying on, employed in or otherwise concerned in a business in the regulated sector to comply with such systems, procedures, record-keeping, controls and training as are required to be instituted and operated under paragraph (b);

(d) provide that in such cases of contravention of a code as are specified in the code, such persons as are so specified shall each be guilty of an offence and liable —

(i) on summary conviction, to custody for 6 months, or to a fine not exceeding £5,000, or to both; and

(ii) on conviction on information, to custody not exceeding 2 years, or to a fine, or to both.

(3) A code under this section may incorporate by reference any relevant regulations, codes, directions and guidance made or issued by a supervisory authority or any other appropriate body.

(4) Before making a code under this section the Department of Home Affairs must consult any person or body that appears to it to be appropriate.

(5) A failure on the part of any person to observe any provision of a code does not of itself render that person liable to —

(a) any civil proceeding; or

(b) except as provided under subsection (2)(d), any criminal proceeding.

Interpretation

158 Interpretation of Part 3

[P2002/29/340]

(1) This section applies for the purposes of this Part.

(2) Criminal conduct is conduct which —

(a) constitutes an offence in the Island; or

(b) would constitute an offence in the Island if it occurred there.

(3) Property is criminal property if —

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

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

(4) It is immaterial —

(a) who carried out the conduct;

(b) who benefited from it;

(c) whether the conduct occurred before or after the passing of this Act.

(5) A person benefits from conduct if that person obtains property as a result of or in connection with the conduct.

(6) If a person obtains a pecuniary advantage as a result of or in connection with conduct, that person is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

(7) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.

(8) If a person benefits from conduct, that person's benefit is the property obtained as a result of or in connection with the conduct.

(9) Property is all property wherever situated and includes —

(a) money;

(b) all forms of property, real or personal, heritable or moveable;

(c) things in action and other intangible or incorporeal property.

(10) The following rules apply in relation to property —

(a) property is obtained by a person if the person obtains an interest in it;

(b) references to an interest, in relation to land in the Island are to any legal estate or equitable interest or power;

(c) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

(11) Money laundering is an act which —

(a) constitutes an offence under section 139, 140 or 141;

(b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a);

(c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a); or

(d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the Island.

(12) For the purposes of a disclosure to a nominated officer —

(a) references to a person's employer include any body, association or organisation (including a voluntary organisation) in connection with whose activities the person exercises a function (whether or not for gain or reward); and

(b) references to employment must be construed accordingly.

(13) "Deposit-taking body" means —

(a) a business which engages in the activity of accepting deposits; or

(b) the National Savings Bank.

PART 4 – INVESTIGATIONS

CHAPTER 1

Introduction

159 Investigations

[P2002/29/341]

(1) For the purposes of this Part a confiscation investigation is an investigation into —

(a) whether a person has benefited from that person's criminal conduct; or

(b) the extent or whereabouts of the benefit from that person's criminal conduct.

(2) For the purposes of this Part a civil recovery investigation is an investigation into —

(a) whether property is recoverable property or associated property;

(b) who holds the property; or

(c) its extent or whereabouts.

(3) But an investigation is not a civil recovery investigation if —

(a) proceedings for a recovery order have been started in respect of the property in question;

(b) an interim receiving order applies to the property in question; or

(c) the property in question is detained under section 47.

(4) For the purposes of this Part a detained cash investigation is —

(a) an investigation for the purposes of Chapter 3 of Part 1 into the derivation of cash detained under section 47 or a part of such cash; or

(b) an investigation for the purposes of Chapter 3 of Part 1 into whether cash detained under section 47, or a part of such cash, is intended by any person to be used in unlawful conduct.

(5) For the purposes of this Part a money laundering investigation is an investigation into whether a person has committed a money laundering offence.

160 Offences of prejudicing investigation

[P2002/29/342]

(1) This section applies if a person knows or suspects that an appropriate officer is acting (or proposing to act) in connection with a confiscation investigation, a civil recovery investigation, a detained cash investigation or a money laundering investigation which is being or is about to be conducted.

(2) The person commits an offence if —

(a) the person makes a disclosure which is likely to prejudice the investigation; or

(b) the person falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.

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

(a) the person does not know or suspect that the disclosure is likely to prejudice the investigation;

(b) the disclosure is made in the exercise of a function under this Act or any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of this Act; or

(c) the person is a professional legal adviser and the disclosure falls within subsection (4).

(4) A disclosure falls within this subsection if it is a disclosure —

(a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client; or

(b) to any person in connection with legal proceedings or contemplated legal proceedings.

(5) But a disclosure does not fall within subsection (4) if it is made with the intention of furthering a criminal purpose.

(6) A person who —

(a) does not know or suspect that the documents are relevant to the investigation; or

(b) does not intend to conceal any facts disclosed by the documents from any appropriate officer carrying out the investigation,

does not commit an offence under subsection (2)(b).

(7) A person guilty of an offence under subsection (2) is liable —

(a) on summary conviction, to custody for a term not exceeding 6 months, or to a fine not exceeding £5,000, or to both; or

(b) on conviction on information, to custody for a term not exceeding 5 years, or to a fine, or to both.

(8) For the purposes of this section "appropriate officer" must be construed in accordance with section 195.

CHAPTER 2

Investigation provisions

Courts

161 Courts

[P2002/29/344]

In this Chapter references to the court are to —

(a) the Court of General Gaol Delivery, in relation to an order for the purposes of a confiscation investigation or a money laundering investigation;

(b) the High Court, in relation to an order for the purposes of a civil recovery investigation or a detained cash investigation.

Production orders

162 Production orders

[P2002/29/345]

(1) A Deemster may, on an application made by an appropriate officer, make a production order if the Deemster is satisfied that each of the requirements for the making of the order is fulfilled.

(2) The application for a production order must state that —

(a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation; or

(b) property specified in the application is subject to a civil recovery investigation or a detained cash investigation.

(3) The application must also state that —

(a) the order is sought for the purposes of the investigation;

(b) the order is sought in relation to material, or material of a description, specified in the application;

(c) a person specified in the application appears to be in possession or control of the material.

(4) A production order is an order either —

(a) requiring the person the application for the order specifies as appearing to be in possession or control of material to produce it to an appropriate officer for the officer to take away; or

(b) requiring that person to give an appropriate officer access to the material,

within the period stated in the order.

(5) The period stated in a production order must be a period of seven days beginning with the day on which the order is made, unless it appears to a Deemster that a longer or shorter period would be appropriate in the particular circumstances.

163 Requirements for making of production order

[P2002/29/346]

(1) These are the requirements for the making of a production order.

(2) There must be reasonable grounds for suspecting that —

(a) in the case of a confiscation investigation, the person the application for the order specifies as being subject to the investigation has benefited from that person's criminal conduct;

(b) in the case of a civil recovery investigation, the property the application for the order specifies as being subject to the investigation is recoverable property or associated property;

(c) in the case of a detained cash investigation into the derivation of cash, the property the application for the order specifies as being subject to the investigation, or a part of it, is recoverable property;

(d) in the case of a detained cash investigation into the intended use of cash, the property the application for the order specifies as being subject to the investigation, or a part of it, is intended by any person to be used in unlawful conduct;

(e) in the case of a money laundering investigation, the person the application for the order specifies as being subject to the investigation has committed a money laundering offence.

(3) There must be reasonable grounds for believing that the person the application specifies as appearing to be in possession or control of the material so specified is in possession or control of it.

(4) There must be reasonable grounds for believing that the material is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(5) There must be reasonable grounds for believing that it is in the public interest for the material to be produced or for access to it to be given, having regard to —

(a) the benefit likely to accrue to the investigation if the material is obtained;

(b) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

164 Production orders: order to grant entry

[P2002/29/347]

(1) This section applies if a Deemster makes a production order requiring a person to give an appropriate officer access to material on any premises.

(2) The Deemster may, on an application made by an appropriate officer and specifying the premises, make an order to grant entry in relation to the premises.

(3) An order to grant entry is an order requiring any person who appears to an appropriate officer to be entitled to grant entry to the premises to allow the officer to enter the premises to obtain access to the material.

165 Production orders: further provisions

[P2002/29/348]

(1) A production order does not require a person to produce, or give access to, privileged material.

(2) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court.

(3) A production order does not require a person to produce, or give access to, excluded material.

(4) A production order has effect in spite of any restriction on the disclosure of information (however imposed).

(5) An appropriate officer may take copies of any material which is produced, or to which access is given, in compliance with a production order.

(6) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the order was made.

(7) But if an appropriate officer has reasonable grounds for believing that —

(a) the material may need to be produced for the purposes of any legal proceedings; and

(b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

166 Production orders: computer information

[P2002/29/349]

(1) This section applies if any of the material specified in an application for a production order consists of information contained in a computer.

(2) If the order is an order requiring a person to produce the material to an appropriate officer for the officer to take away, it has effect as an order to produce the material in a form in which it can be taken away by the officer and in which it is visible and legible.

(3) If the order is an order requiring a person to give an appropriate officer access to the material, it has effect as an order to give the officer access to the material in a form in which it is visible and legible.

167 Production orders: Government departments, etc.

[P2002/29/350]

(1) A production order may be made in relation to material in the possession or control of a department or statutory board.

(2) An order so made may require any officer of the department or statutory board (whether named in the order or not) who may for the time being be in possession or control of the material to comply with it.

(3) An order containing such a requirement must be served as if the proceedings were civil proceedings against the department or statutory board.

(4) If an order contains such a requirement —

(a) the person on whom it is served must take all reasonable steps to bring it to the attention of the officer concerned;

(b) any other officer of the department or statutory board who is in receipt of the order must also take all reasonable steps to bring it to the attention of the officer concerned.

(5) If the order is not brought to the attention of the officer concerned within the period stated in the order (in pursuance of section 162(4)) the person on whom it is served must report the reasons for the failure to a Deemster.

168 Production orders: supplementary

[P2002/29/351]

(1) An application for a production order or an order to grant entry may be made ex parte in chambers.

(2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to production orders and orders to grant entry.

(3) Where no rules of court have been made the court may adopt such practice and procedure as it thinks fit.

(4) An application to discharge or vary a production order or an order to grant entry may be made to the court by —

(a) the person who applied for the order;

(b) any person affected by the order.

(5) The court —

(a) may discharge the order;

(b) may vary the order.

(6) If a constable or customs officer applies for a production order or an order to grant entry, an application to discharge or vary the order need not be by the same constable or officer.

(7) References to a person who applied for a production order or an order to grant entry must be construed accordingly.

(8) Production orders and orders to grant entry have effect as if they were orders of the court.

(9) Subsections (2) to (8) do not apply to orders made for the purposes of a civil recovery investigation or a detained cash investigation.

Search and seizure warrants

169 Search and seizure warrants

[P2002/29/352]

(1) A Deemster may, on an application made by an appropriate officer, issue a search and seizure warrant if the Deemster is satisfied that either of the requirements for the issuing of the warrant is fulfilled.

(2) The application for a search and seizure warrant must state that —

(a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation; or

(b) property specified in the application is subject to a civil recovery investigation or a detained cash investigation.

(3) The application must also state —

(a) that the warrant is sought for the purposes of the investigation;

(b) that the warrant is sought in relation to the premises specified in the application;

(c) that the warrant is sought in relation to material specified in the application,

or that there are reasonable grounds for believing that there is material falling within section 170(6), (7), (8), (9) or (10) on the premises.

(4) A search and seizure warrant is a warrant authorising an appropriate person —

(a) to enter and search the premises specified in the application for the warrant; and

(b) to seize and retain any material found there which is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the application is made.

(5) An appropriate person is —

(a) a constable or a customs officer, if the warrant is sought for the purposes of a confiscation investigation or a money laundering investigation;

(b) a person authorised by the Attorney General, if the warrant is sought for the purposes of a civil recovery investigation;

(c) a constable or a customs officer, if the warrant is sought for the purposes of a detained cash investigation.

(6) The requirements for the issue of a search and seizure warrant are —

(a) that a production order made in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant; or

(b) that section 170 is satisfied in relation to the warrant.

170 Requirements where production order not available

[P2002/29/353]

(1) This section is satisfied in relation to a search and seizure warrant if —

(a) subsection (2) applies; and

(b) either the first or the second set of conditions is complied with.

(2) This subsection applies if there are reasonable grounds for suspecting that —

(a) in the case of a confiscation investigation, the person specified in the application for the warrant has benefited from that person's criminal conduct;

(b) in the case of a civil recovery investigation, the property specified in the application for the warrant is recoverable property or associated property;

(c) in the case of a detained cash investigation into the derivation of cash, the property specified in the application for the warrant, or a part of it, is recoverable property;

(d) in the case of a detained cash investigation into the intended use of cash, the property specified in the application for the warrant, or a part of it, is intended by any person to be used in unlawful conduct;

(e) in the case of a money laundering investigation, the person specified in the application for the warrant has committed a money laundering offence.

(3) The first set of conditions is that there are reasonable grounds for believing that —

(a) any material on the premises specified in the application for the warrant is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought;

(b) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and

(c) it would not be appropriate to make a production order for any one or more of the reasons in subsection (4).

(4) The reasons are —

(a) that it is not practicable to communicate with any person against whom the production order could be made;

(b) that it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises;

(c) that the investigation might be seriously prejudiced unless an appropriate person is able to secure immediate access to the material.

(5) The second set of conditions is that —

(a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that the material falls within subsection (6), (7), (8), (9) or (10);

(b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and

(c) any one or more of the requirements in subsection (11) is met.

(6) In the case of a confiscation investigation, material falls within this subsection if it cannot be identified at the time of the application but it —

(a) relates to the person specified in the application, the question whether that person has benefited from that person's criminal conduct or any question as to the extent or whereabouts of that benefit; and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(7) In the case of a civil recovery investigation, material falls within this subsection if it cannot be identified at the time of the application but it —

(a) relates to the property specified in the application, the question whether it is recoverable property or associated property, the question as to who holds any such property, any question as to whether the person who appears to hold any such property holds other property which is recoverable property, or any question as to the extent or whereabouts of any property mentioned in this paragraph; and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(8) In the case of a detained cash investigation into the derivation of cash, material falls within this subsection if it cannot be identified at the time of the application but it —

(a) relates to the property specified in the application, the question whether the property, or a part of it, is recoverable property or any other question as to its derivation; and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(9) In the case of a detained cash investigation into the intended use of cash, material falls within this subsection if it cannot be identified at the time of the application but it —

(a) relates to the property specified in the application or the question whether the property, or a part of it, is intended by any person to be used in unlawful conduct; and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(10) In the case of a money laundering investigation, material falls within this subsection if it cannot be identified at the time of the application but it —

(a) relates to the person specified in the application or the question whether the person has committed a money laundering offence; and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(11) The requirements are —

(a) that it is not practicable to communicate with any person entitled to grant entry to the premises;

(b) that entry to the premises will not be granted unless a warrant is produced;

(c) that the investigation might be seriously prejudiced unless an appropriate person arriving at the premises is able to secure immediate entry to them.

(12) An appropriate person is —

(a) a constable or a customs officer, if the warrant is sought for the purposes of a confiscation investigation or a money laundering investigation;

(b) a person authorised by the Attorney General, if the warrant is sought for the purposes of a civil recovery investigation;

(c) a constable or a customs officer, if the warrant is sought for the purposes of a detained cash investigation.

171 Further provisions: general

[P2002/29/354]

(1) A search and seizure warrant does not confer the right to seize privileged material.

(2) Privileged material is any material which a person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court.

(3) A search and seizure warrant does not confer the right to seize excluded material.

172 Further provisions: confiscation and money laundering

[P2002/29/355]

(1) This section applies to —

(a) search and seizure warrants sought for the purposes of a confiscation investigation or a money laundering investigation; and

(b) powers of seizure under them.

(2) In relation to such warrants and powers, the Department of Home Affairs may make an order which applies the provisions to which subsection (3) applies subject to any specified modifications.

(3) This subsection applies to the following provisions of the *Police Powers and Procedures Act 1998* —

(a) section 18 (search warrants - safeguards);

(b) section 19 (execution of warrants);

(c) section 24 (access and copying);

(d) section 25 (retention).

173 Further provisions: civil recovery and detained cash

[P2002/29/356]

(1) This section applies to search and seizure warrants sought for the purposes of civil recovery investigations or detained cash investigations.

(2) An application for a warrant may be made ex parte to a Deemster in chambers.

(3) A warrant may be issued subject to conditions.

(4) A warrant continues in force until the end of the period of one month starting with the day on which it is issued.

(5) A warrant authorises the person it names to require any information which is held in a computer and is accessible from the premises specified in the application for the warrant, and which the named person believes relates to any matter relevant to the investigation, to be produced in a form —

(a) in which it can be taken away; and

(b) in which it is visible and legible.

(6) If, in the case of civil recovery investigations —

(a) the Attorney General gives written authority for persons to accompany the person a warrant names when executing it; and

(b) a warrant is issued,

those authorised persons have the same powers under it as the person it names.

(7) A warrant may include provision authorising a person who is exercising powers under it to do other things which —

(a) are specified in the warrant; and

(b) need to be done in order to give effect to it.

(8) Copies may be taken of any material seized under a warrant.

(9) Material seized under a warrant may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the warrant was issued.

(10) But if an appropriate officer has reasonable grounds for believing that —

(a) the material may need to be produced for the purposes of any legal proceedings; and

(b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

Disclosure orders

174 Disclosure orders

[P2002/29/357]

(1) A Deemster may, on an application made by an appropriate officer, make a disclosure order if satisfied that each of the requirements for the making of the order is fulfilled.

(2) No application for a disclosure order may be made in relation to a detained cash investigation or a money laundering investigation.

(3) The application for a disclosure order must state that —

(a) a person specified in the application is subject to a confiscation investigation and the order is sought for the purposes of the investigation; or

(b) property specified in the application is subject to a civil recovery investigation and the order is sought for the purposes of the investigation.

(4) A disclosure order is an order authorising a person referred to in subsection (7) to give to any person the appropriate officer considers has relevant information notice in writing requiring the person to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, any or all of the following —

(a) answer questions, either at a time specified in the notice or at once, at a place so specified;

(b) provide information specified in the notice, by a time and in a manner so specified;

(c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

(5) Relevant information is information (whether or not contained in a document) which the person authorised under subsection (4) considers to be relevant to the investigation.

(6) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to the person.

(7) A disclosure order may authorise any of the following persons for the purposes of subsection (4) —

(a) a person authorised by the Attorney General, if the order is sought for the purposes of a civil recovery investigation;

(b) a police officer of at least the rank of inspector or a customs officer who is not below such grade as is designated by the Collector of Customs and Excise as equivalent to the rank of chief inspector, if the warrant is sought for the purposes of a confiscation investigation.

175 Requirements for making of disclosure order

[P2002/29/358]

(1) These are the requirements for the making of a disclosure order.

(2) There must be reasonable grounds for suspecting that —

(a) in the case of a confiscation investigation, the person specified in the application for the order has benefited from that person's criminal conduct;

(b) in the case of a civil recovery investigation, the property specified in the application for the order is recoverable property or associated property.

(3) There must be reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(4) There must be reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

176 Disclosure orders: offences

[P2002/29/359]

(1) A person commits an offence who, without reasonable excuse, fails to comply with a requirement imposed under a disclosure order.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to —

(a) custody for a term not exceeding 6 months;

(b) a fine not exceeding £5,000; or

(c) both.

(3) A person commits an offence who, in purported compliance with a requirement imposed under a disclosure order —

(a) makes a statement which the person knows to be false or misleading in a material particular; or

(b) recklessly makes a statement which is false or misleading in a material particular.

(4) A person guilty of an offence under subsection (3) is liable —

(a) on summary conviction, to custody for a term not exceeding 6 months, or to a fine not exceeding £5,000; or

(b) on conviction on information, to custody for a term not exceeding 2 years, or to a fine, or to both.

177 Disclosure orders: statements

[P2002/29/360]

(1) A statement made by a person in response to a requirement imposed under a disclosure order may not be used in evidence against that person in criminal proceedings.

(2) But subsection (1) does not apply —

(a) in the case of proceedings under Part 2;

(b) on a prosecution for an offence under section 176(1) or (3);

(c) on a prosecution for an offence under section 5 of the *Perjury Act 1952* (false statements); or

(d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(d) against a person unless —

(a) evidence relating to it is adduced; or

(b) a question relating to it is asked,

by that person or on that person's behalf in the proceedings arising out of the prosecution.

178 Disclosure orders: further provisions

[P2002/29/361]

(1) A disclosure order does not confer the right to require a person to answer any privileged question, provide any privileged information or produce any privileged document, except that a lawyer may be required to provide the name and address of a client.

(2) A privileged question is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the High Court.

(3) Privileged information is any information which the person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court.

(4) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court.

(5) A disclosure order does not confer the right to require a person to produce excluded material.

(6) A disclosure order has effect in spite of any restriction on the disclosure of information (however imposed).

(7) A person to whom documents are to be produced under a disclosure order may take copies of any documents produced in compliance with a requirement to produce them which is imposed under the order.

(8) Documents so produced may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the investigation for the purposes of which the order was made.

(9) But if the person to whom documents are produced under a disclosure order has reasonable grounds for believing that —

(a) the documents may need to be produced for the purposes of any legal proceedings; and

(b) they might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

179 Disclosure orders: supplementary

[P2002/29/362]

(1) An application for a disclosure order may be made ex parte to a Deemster in chambers.

(2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to disclosure orders.

(3) Where no rules of court have been made the court may adopt such practice and procedure as it thinks fit.

(4) An application to discharge or vary a disclosure order may be made to the court by —

(a) an appropriate officer;

(b) any person affected by the order.

(5) The court —

(a) may discharge the order;

(b) may vary the order.

(6) Subsections (2) to (5) do not apply to orders made for the purposes of a civil recovery investigation.

Customer information orders

180 Customer information orders

[P2002/29/363]

(1) A Deemster may, on an application made by an appropriate officer, make a customer information order if the Deemster is satisfied that each of the requirements for the making of the order is fulfilled.

(2) No application for a customer information order may be made in relation to a detained cash investigation.

(3) The application for a customer information order must state that —

(a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation; or

(b) property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property.

(4) The application must also state that —

(a) the order is sought for the purposes of the investigation;

(b) the order is sought against the financial institution or financial institutions specified in the application.

(5) An application for a customer information order may specify —

(a) all financial institutions;

(b) a particular description, or particular descriptions, of financial institutions; or

(c) a particular financial institution or particular financial institutions.

(6) A customer information order is an order that a financial institution covered by the application for the order must, on being required to do so by notice in writing given by an appropriate officer, provide any such customer information as it has relating to the person specified in the application.

(7) A financial institution which is required to provide information under a customer information order must provide the information to an appropriate officer in such manner, and at or by such time, as an appropriate officer requires.

(8) If a financial institution on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it.

181 Meaning of customer information

[P2002/29/364]

(1) "Customer information", in relation to a person and a financial institution, is information whether the person holds, or has held, an account or accounts at the financial institution (whether solely or jointly with another) and (if so) information as to —

(a) the matters specified in subsection (2) if the person is an individual;

(b) the matters specified in subsection (3) if the person is a company or a similar body incorporated or otherwise established outside the Island.

(2) The matters referred to in subsection (1)(a) are —

(a) the account number or numbers;

(b) the person's full name;

(c) the person's date of birth;

(d) the person's most recent address and any previous addresses;

(e) the date or dates on which the person began to hold the account or accounts and, if the person has ceased to hold the account or any of the accounts, the date or dates of cessation;

(f) such evidence of the person's identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;

(g) the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution jointly with the first person;

(h) the account number or numbers of any other account or accounts held at the financial institution to which the person is a signatory and details of the person holding the other account or accounts.

(3) The matters referred to in subsection (1)(b) are —

(a) the account number or numbers;

(b) the person's full name;

(c) a description of any business which the person carries on;

(d) the country or territory in which it is incorporated or otherwise established and any number allocated to it under the statutory provision under which it is incorporated or established or corresponding legislation of any country or territory outside the Island;

(e) any number assigned to it for the purposes of value added tax in the Island or the United Kingdom;

(f) its registered office, and any previous registered offices, the statutory provision under which it is incorporated or established or anything similar under corresponding legislation of any country or territory outside the Island;

(g) the date or dates on which it began to hold the account or accounts and, if it has ceased to hold the account or any of the accounts, the date or dates on which it did so;

(h) such evidence of its identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;

(i) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account or any of the accounts.

(4) The Department of Home Affairs may by order provide for information of a description specified in the order —

(a) to be customer information; or

(b) no longer to be customer information.

(5) Money laundering is an act which —

(a) constitutes an offence under —

(i) section 139, 140 or 141 of this Act; or

(ii) section 10 of the *Anti-Terrorism and Crime Act 2003*; or

(b) would constitute an offence specified in paragraph (a) if done in the Island.

182 Requirements for making of customer information order

[P2002/29/365]

(1) These are the requirements for the making of a customer information order.

(2) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from that person's criminal conduct.

(3) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that —

(a) the property specified in the application for the order is recoverable property or associated property;

(b) the person specified in the application holds all or some of the property.

(4) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.

(5) In the case of any investigation, there must be reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(6) In the case of any investigation, there must be reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

183 Customer information orders: offences

[P2002/29/366]

(1) A financial institution commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.

(2) A financial institution guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding £5,000.

(3) A financial institution commits an offence if, in purported compliance with a customer information order, it —

(a) makes a statement which it knows to be false or misleading in a material particular; or

(b) recklessly makes a statement which is false or misleading in a material particular.

(4) A financial institution guilty of an offence under subsection (3) is liable —

(a) on summary conviction, to a fine not exceeding £5,000; or

(b) on conviction on information, to a fine.

184 Customer information orders: statements

[P2002/29/367]

(1) A statement made by a financial institution in response to a customer information order may not be used in evidence against it in criminal proceedings.

(2) But subsection (1) does not apply —

(a) in the case of proceedings under Part 2;

(b) on a prosecution for an offence under section 183(1) or (3); or

(c) on a prosecution for some other offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless —

(a) evidence relating to it is adduced; or

(b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

185 Customer information orders: disclosure of information

[P2002/29/368]

A customer information order has effect in spite of any restriction on the disclosure of information (however imposed).

186 Customer information orders: supplementary

[P2002/29/369]

(1) An application for a customer information order may be made ex parte in chambers.

(2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to customer information orders.

(3) Where no rules of court have been made the court may adopt such practice and procedure as it thinks fit.

(4) An application to discharge or vary a customer information order may be made to the High Court by —

(a) the person who applied for the order;

(b) any person affected by the order.

(5) The court —

(a) may discharge the order;

(b) may vary the order.

(6) If a constable or a customs officer applies for a customer information order, an application to discharge or vary the order need not be by the same constable or customs officer.

(7) References to a person who applied for a customer information order must be construed accordingly.

(8) A constable or a customs officer may not make an application for a customer information order or an application to vary such an order unless that person is a senior appropriate officer or is authorised to do so by a senior appropriate officer.

(9) Subsections (2) to (7) do not apply to orders made for the purposes of a civil recovery investigation.

Account monitoring orders

187 Account monitoring orders

[P2002/29/370]

(1) A Deemster may, on an application made by an appropriate officer, make an account monitoring order if the Deemster is satisfied that each of the requirements for the making of the order is fulfilled.

(2) No application for an account monitoring order may be made in relation to a detained cash investigation.

(3) The application for an account monitoring order must state that —

(a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation; or

(b) property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property.

(4) The application must also state that —

(a) the order is sought for the purposes of the investigation;

(b) the order is sought against the financial institution specified in the application in relation to account information of the description so specified.

(5) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another).

(6) The application for an account monitoring order may specify information relating to —

(a) all accounts held by the person specified in the application for the order at the financial institution so specified;

(b) a particular description, or particular descriptions, of accounts so held; or

(c) a particular account, or particular accounts, so held.

(7) An account monitoring order is an order that the financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the

order to an appropriate officer in the manner, and at or by the time or times, stated in the order.

(8) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

188 Requirements for making of account monitoring order

[P2002/29/371]

(1) These are the requirements for the making of an account monitoring order.

(2) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from that person's criminal conduct.

(3) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that —

(a) the property specified in the application for the order is recoverable property or associated property;

(b) the person specified in the application holds all or some of the property.

(4) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.

(5) In the case of any investigation, there must be reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(6) In the case of any investigation, there must be 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.

189 Account monitoring orders: statements

[P2002/29/372]

(1) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings.

(2) But subsection (1) does not apply —

(a) in the case of proceedings under Part 2;

(b) in the case of proceedings for contempt of court; or

(c) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless —

(a) evidence relating to it is adduced; or

(b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

190 Account monitoring orders: applications

[P2002/29/373]

An application for an account monitoring order may be made to a Deemster *ex parte* in chambers.

191 Account monitoring orders: disclosure of information

[P2002/29/374]

An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).

192 Account monitoring orders: supplementary

[P2002/29/375]

(1) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.

(2) Where no rules of court have been made the court may adopt such practice and procedure as it thinks fit.

(3) An application to discharge or vary an account monitoring order may be made to the High Court by —

(a) the person who applied for the order;

(b) any person affected by the order.

(4) The court —

(a) may discharge the order;

(b) may vary the order.

(5) If a constable or a customs officer applies for an account monitoring order, an application to discharge or vary the order need not be by the same constable or customs officer.

(6) References to a person who applied for an account monitoring order must be construed accordingly.

(7) Account monitoring orders have effect as if they were orders of the court.

(8) This section does not apply to orders made for the purposes of a civil recovery investigation.

Evidence overseas

193 Evidence overseas

[P2002/29/376]

(1) This section applies if an appropriate officer is carrying out a confiscation investigation.

(2) A Deemster on the application of the appropriate officer or a person subject to the investigation may issue a letter of request if the Deemster thinks that there is evidence in a country or territory outside the Island —

(a) that such a person has benefited from that person's criminal conduct; or

(b) of the extent or whereabouts of that person's benefit from that person's criminal conduct.

(3) A letter of request is a letter requesting assistance in obtaining outside the Island such evidence as is specified in the letter for use in the investigation.

(4) The Deemster may forward a letter of request —

(a) to a court or tribunal which is specified in the letter and which exercises jurisdiction in the place where the evidence is to be obtained; or

(b) to an authority recognised by the government of the country or territory concerned as the appropriate authority for receiving letters of request.

(5) Alternatively, the Deemster issuing the letter of request may send it to the Attorney General for forwarding to the court, tribunal or authority mentioned in subsection (4).

(6) Evidence obtained in pursuance of a letter of request must not be used for any purpose other than that for which it is obtained.

(7) Subsection (6) does not apply if the authority mentioned in subsection (4)(b) consents to the use.

(8) Evidence includes documents and other articles.

(9) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to the issue of letters of request by a Deemster under this section.

(10) Where no rules of court have been made the court may adopt such practice and procedure as it thinks fit.

Code of practice

194 Code of practice

[P2002/29/377]

(1) The Department of Home Affairs must prepare a code of practice as to the exercise by all of the following of functions they have under this Chapter —

(a) the Attorney General;

(b) constables; and

(c) customs officers.

(2) A draft of the code must be published by the Department of Home Affairs in such manner as it considers appropriate.

(3) The Department of Home Affairs must —

(a) consider any representations made about the draft; and

(b) amend the draft accordingly.

(4) The code may then be brought into operation by order made by the Department of Home Affairs.

(5) A person or body specified in subsection (1)(a) to (c) must comply with a code of practice which is in operation under this section in the exercise of any function that person has under this Chapter.

(6) A person or body who fails to comply with any provision of such a code of practice is not by reason only of that failure liable in any criminal or civil proceedings.

(7) But the code of practice is admissible in evidence in such proceedings and a court may take account of any failure to comply with its provisions in determining any question in the proceedings.

(8) Section 76(5) of the *Police Powers and Procedures Act 1998* (application of codes of practice under that Act to persons other than police officers) does not apply to an appropriate officer in the exercise of any function under this Chapter.

Interpretation

195 "Appropriate officers"

[P2002/29/378]

(1) In relation to a civil recovery investigation, an appropriate officer is the Attorney General or a person authorised in writing as such by the Attorney General.

(2) In relation to a confiscation investigation, a detained cash investigation and a money laundering investigation, an appropriate officer is —

(a) a constable;

(b) a customs officer.

(3) In this Part, "**document**", "**excluded material**" and "**premises**" have the same meanings as in the *Police Powers and Procedures Act 1998*.

CHAPTER 3

Interpretation

196 Criminal conduct

[P2002/29/413]

(1) Criminal conduct is conduct which —

(a) constitutes an offence in the Island; or

(b) would constitute an offence in the Island if it occurred there.

(2) A person benefits from conduct if the person obtains property or a pecuniary advantage as a result of or in connection with the conduct.

(3) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.

(4) If a person benefits from conduct that person's benefit is the property or pecuniary advantage obtained as a result of or in connection with the conduct.

(5) It is immaterial —

(a) whether conduct occurred before or after the passing of this Act; and

(b) whether property or a pecuniary advantage constituting a benefit from conduct was obtained before or after the passing of this Act.

197 Property

[P2002/29/414]

(1) Property is all property wherever situated and includes —

(a) money;

(b) all forms of real or personal property;

(c) things in action and other intangible or incorporeal property.

(2) "**Recoverable property**" and "**associated property**" have the same meanings as in Part 1.

(3) The following rules apply in relation to property —

(a) property is obtained by a person if the person obtains an interest in it;

(b) references to an interest, in relation to land, are to any legal estate or equitable interest or power;

(c) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

198 Money laundering offences

[P2002/29/415]

(1) An offence under —

(a) section 139, 140 or 141 of this Act; or

(b) section 10 of the *Anti-Terrorism and Crime Act 2003*,

is a money laundering offence.

(2) Each of the following is also a money laundering offence —

(a) an offence under section 17A, 17B or 17C of the *Criminal Justice Act 1990*;

(b) an offence under section 45, 46 or 47 of the *Drug Trafficking Act 1996*.

(3) Each of the following is a money laundering offence —

(a) an attempt, conspiracy or incitement to commit an offence specified in subsection (1);

(b) aiding, abetting, counselling or procuring the commission of an offence specified in subsection (1).

199 Other interpretative provisions for Part 4

[P2002/29/416]

(1) These expressions are to be construed in accordance with these provisions of this Part —

"civil recovery investigation": section 159(2) and (3);

"confiscation investigation": section 159(1);

"detained cash investigation": section 159(4);

"money laundering investigation": section 159(5).

(2) In the application of this Part, these expressions are to be construed in accordance with these provisions of this Part —

"account information": section 187(5);

"account monitoring order": section 187(7);

"appropriate officer": section 195;

"customer information": section 181;

"customer information order": section 180(6);

"disclosure order": section 174(4);

"document": section 195;

"order to grant entry": section 164(3);

"production order": section 162(4);

"search and seizure warrant": section 169(4).

(3) In the application of this Part, these expressions are to be construed in accordance with the provisions of Part 3 —

"a business in the regulated sector": section 142(17);

"financial institution": section 149(6).

(4) A business is not in the regulated sector to the extent that it engages in any activity prescribed by order made by the Department of Home Affairs.

(5) But a person who for any reason ceases to carry on a business in the regulated sector is to continue to be treated as a financial institution for the purposes of any requirement under —

(a) a customer information order; or

(b) an account monitoring order,

to provide information which relates to a time when the person was a financial institution.

(6) "**Recovery order**" and "**interim receiving order**" have the same meanings as in Part 1.

(7) "**Unlawful conduct**" has the meaning given by section 2.

(8) References to notice in writing include references to notice given by electronic means.

(9) This section and sections 196 to 198 apply for the purposes of this Part.

PART 5 – BANKRUPTCY AND WINDING UP

Recovery orders

200 Recovery orders: bankruptcy or winding up

[P2002/29/311]

(1) Proceedings for a recovery order under section 22 (recovery orders) may not be taken or continued in respect of property to which subsection (3) applies unless the appropriate court gives leave and the proceedings are taken or (as the case may be) continued in accordance with any terms imposed by the appropriate court.

(2) An application for an order for the further detention of any cash to which subsection (3) applies may not be made under section 47 unless the appropriate court gives leave.

(3) This subsection applies to recoverable property, or property associated with it, if —

(a) it is an asset of a company being wound up in pursuance of a resolution for voluntary winding up; or

(b) it is an asset comprised in the estate of an individual who has been adjudged bankrupt.

(4) An application under this section, for leave to take proceedings for a recovery order may be made without notice to any person.

(5) Subsection (4) does not affect any requirement for notice of an application to be given to any person acting as an insolvency practitioner or to the official receiver (whether or not acting as an insolvency practitioner).

(6) In this section —

(a) the appropriate court means the court having jurisdiction in connection with the bankruptcy or winding up referred to in subsection (3);

(b) acting as an insolvency practitioner has the same meaning as in section 209.

Confiscation and restraint: bankruptcy

201 Bankruptcy: excluded property

[P2002/29/417]

(1) This section applies if a person is adjudged bankrupt.

(2) The following property is excluded from that person's estate for the purposes of the Bankruptcy Acts 1892 to 1988 —

(a) property for the time being subject to a restraint order which was made under section 98 before the order adjudging the person bankrupt;

(b) any property in respect of which an order under section 105 is in force.

(3) If in the case of a debtor an interim receiver stands at any time appointed under section 8 of the Bankruptcy Code 1892 and any property of the debtor is then subject to a restraint order made under section 97 the powers conferred on the receiver by virtue of that Act do not apply to property then subject to the restraint order.

202 Bankruptcy: restriction of powers

[P2002/29/418]

(1) If a person is adjudged bankrupt the powers referred to in subsection (2) must not be exercised in relation to the property referred to in subsection (3).

(2) The powers are the powers conferred on a court by sections 97 to 116 and the powers of a receiver appointed under section 103 or 105.

(3) This is the property —

(a) property which is for the time being comprised in the bankrupt's estate for the purposes of the Bankruptcy Acts 1892 to 1988;

(b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 11(2) of the Bankruptcy Code 1892;

(c) in a case where a confiscation order has been made under section 66 of this Act, any sums remaining in the hands of a receiver appointed under section 105 of this Act after the amount required to be paid under the confiscation order has been fully paid.

(4) But nothing in the Bankruptcy Acts 1892 to 1988 must be taken to restrict (or enable the restriction of) the powers referred to in subsection (2).

203 Bankruptcy: tainted gifts

[P2002/29/419]

(1) This section applies if a person who is adjudged bankrupt has made a tainted gift (whether directly or indirectly).

(2) No order may be made under or in respect of section 12, 30 or 31 of the *Bankruptcy Code 1892* (avoidance of certain transactions) in respect of the making of the gift at any time when —

(a) any property of the recipient of the tainted gift is subject to a restraint order under section 97; or

(b) there is in force in respect of such property an order under section 105.

(3) Any order made under or in respect of section 12, 30 or 31 of the *Bankruptcy Code 1892* after an order mentioned in subsection (2)(a) or (b) is discharged must take into account any realisation under Part 2 of this Act of property held by the recipient of the tainted gift.

(4) A person makes a tainted gift for the purposes of this section if that person makes a tainted gift within the meaning of Part 2.

Confiscation and restraint: winding up

204 Winding up: restriction of powers

[P2002/29/426]

(1) In this section "company" means any company which may be wound up under the Companies Acts 1931 to 2004 or under the *Companies Act 2006*.

(2) If an order for the winding up of a company is made or it passes a resolution for its voluntary winding up, the functions of the liquidator (or any provisional liquidator) are not exercisable in relation to the following property —

(a) property for the time being subject to a restraint order which was made under section 97 before the relevant time;

(b) any property in respect of which an order under section 105 is in force.

(3) If an order for the winding up of a company is made or it passes a resolution for its voluntary winding up the powers referred to in subsection (4) must not be exercised in the way mentioned in subsection (5) in relation to any property —

(a) which is held by the company; and

(b) in relation to which the functions of the liquidator are exercisable.

(4) The powers are the powers conferred on a court by section 97 to 116 and the powers of a receiver appointed under section 103 or 105.

(5) The powers must not be exercised —

(a) so as to inhibit the liquidator from exercising the liquidator's functions for the purpose of distributing property to the company's creditors;

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(6) But nothing in the Companies Acts 1931 to 2004 or the *Companies Act 2006* must be taken to restrict (or enable the restriction of) the exercise of the powers referred to in subsection (4).

(7) The relevant time is —

(a) if 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) if such an order has been made, but before the presentation of the petition for the winding up of the company by the court such a resolution has been passed by the company, the time of the passing of the resolution;

(c) if such an order has been made, but paragraph (b) does not apply, the time of the making of the order.

205 Winding up: tainted gifts

[P2002/29/427]

(1) In this section "company" means any company which may be wound up under the Companies Acts 1931 to 2004 or under the *Companies Act 2006*.

(2) This section applies if —

(a) an order for the winding up of a company is made or it passes a resolution for its voluntary winding up; and

(b) it has made a tainted gift (whether directly or indirectly).

(3) No order may be made under or in respect of section 12, 30 or 31 of the Bankruptcy Code 1892 (avoidance of certain transactions) (which provisions have effect by virtue of section 248 of the *Companies Act 1931*) or under section 250 of the *Companies Act 1931*, or otherwise, in respect of the making of the gift at any time when —

(a) any property of the recipient of the tainted gift is subject to a restraint order under section 97; or

(b) there is in force in respect of such property an order under section 105.

(4) Any order made under or in respect of section 12, 30 or 31 of the *Bankruptcy Code 1892* or under section 250 of the *Companies Act 1931*, or otherwise, after an order mentioned in subsection (3)(a) or (b) is discharged must take into account any realisation under Part 2 of this Act of property held by the recipient of the tainted gift.

(5) A person makes a tainted gift for the purposes of this section if the person makes a tainted gift within the meaning of Part 2.

206 Winding up: floating charges

[P2002/29/430]

(1) In this section "company" means a company which may be wound up under the Companies Acts 1931 to 2004 or under the *Companies Act 2006*.

(2) If a company holds property which is subject to a floating charge, and a receiver has been appointed by or on the application of the holder of the charge, the functions of the receiver are not exercisable in relation to the following property —

(a) property for the time being subject to a restraint order which was made under section 97 before the appointment of the receiver;

(b) any property in respect of which an order under section 105 is in force.

(3) If a company holds property which is subject to a floating charge, and a receiver has been appointed by or on the application of the holder of the charge, the powers referred to in subsection (4) must not be exercised in the way mentioned in subsection (5) in relation to any property —

(a) which is held by the company; and

(b) in relation to which the functions of the receiver are exercisable.

(4) These are the powers —

(a) the powers conferred on a court by sections 97 to 116; and

(b) the powers of a receiver appointed under section 103 or 105.

(5) The powers must not be exercised —

(a) so as to inhibit the receiver from exercising the receiver's functions for the purpose of distributing property to the company's creditors;

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the receiver) properly incurred in the exercise of the receiver's functions in respect of the property.

(6) But nothing in the Companies Acts 1931 to 2004 or the *Companies Act 2006* must be taken to restrict (or enable the restriction of) the exercise of the powers referred to in subsection (4).

207 Winding up: limited liability companies

[P2002/29/427]

In sections 204, 205 and 206 "company" includes a limited liability company within the meaning of the *Limited Liability Companies Act 1996* (which may be wound up under the *Companies Act 1931* by virtue of section 31 of the *Limited Liability Companies Act 1996*).

Insolvency practitioners

208 Insolvency practitioners

[P2002/29/432]

(1) Subsections (2) and (3) apply if a person acting as an insolvency practitioner seizes or disposes of any property in relation to which that person's functions are not exercisable because —

(a) it is for the time being subject to a restraint order made under section 97; or

(b) it is for the time being subject to a property freezing order made under section 6 or an interim receiving order made under section 13,

and at the time of the seizure or disposal the insolvency practitioner believes on reasonable grounds that the insolvency practitioner is

entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of the property.

(2) The insolvency practitioner is not liable to any person in respect of any loss or damage resulting from the seizure or disposal, except so far as the loss or damage is caused by the negligence of the insolvency practitioner.

(3) The insolvency practitioner has a lien on the property or the proceeds of its sale —

(a) for such of the insolvency practitioner's expenses as were incurred in connection with the liquidation, bankruptcy, sequestration or other proceedings in relation to which the insolvency practitioner purported to make the seizure or disposal; and

(b) for so much of the insolvency practitioner's remuneration as may reasonably be assigned to the insolvency practitioner's acting in connection with those proceedings.

(4) Subsection (2) does not prejudice the generality of any other statutory provision which confers protection from liability on the insolvency practitioner.

(5) Subsection (7) applies if —

(a) property is subject to a restraint order made under section 97;

(b) a person acting as an insolvency practitioner incurs expenses in respect of property subject to the restraint order; and

(c) the insolvency practitioner does not know (and has no reasonable grounds to believe) that the property is subject to the restraint order.

(6) Subsection (7) also applies if —

(a) property is subject to a restraint order made under section 97;

(b) a person acting as an insolvency practitioner incurs expenses which are not ones in respect of property subject to the restraint order; and

(c) the expenses are ones which (but for the effect of the restraint order) might have been met by taking possession of and realising property subject to it.

(7) Whether or not the insolvency practitioner has seized or disposed of any property, the insolvency practitioner is entitled to payment of the expenses under section 107(2) or 108(3) if the restraint order was made under section 97.

(8) Subsection (10) applies if —

(a) property is subject to a property freezing order made under section 6 or an interim receiving order made under section 13;

(b) a person acting as an insolvency practitioner incurs expenses in respect of property subject to the order; and

(c) the insolvency practitioner does not know (and has no reasonable grounds to believe) that the property is subject to the order.

(9) Subsection (10) also applies if —

(a) property is subject to a property freezing order made under section 6 or an interim receiving order made under section 13;

(b) a person acting as an insolvency practitioner incurs expenses which are not ones in respect of property subject to the order, and

(c) the expenses are ones which (but for the effect of the order) might have been met by taking possession of and realising property subject to it.

(10) Whether or not the insolvency practitioner has seized or disposed of any property, the insolvency practitioner is entitled to payment of the expenses under section 35.

209 Meaning of insolvency practitioner

[P2002/29/433]

(1) This section applies for the purposes of section 208.

(2) A person acts as an insolvency practitioner if that person acts —

(a) as liquidator, provisional liquidator or receiver of a company;

(b) as trustee in bankruptcy or interim receiver of a person's property;

(c) as trustee under a deed of arrangement made for the benefit of a person's creditors; or

(d) as administrator of an insolvent estate of a deceased person.

(3) The expression "person acting as an insolvency practitioner" includes the official receiver acting as receiver or manager of the property concerned.

PART 6 – INFORMATION

210 Use of information in connection with the exercise of functions

[P2002/29/435]

(1) Information obtained by or on behalf of the Attorney General in connection with the exercise of any of the Attorney General's functions under any Part of this Act may be used by the Attorney General in connection with the exercise of any other functions of the Attorney General (whether under, or in relation to, another Part of this Act or otherwise).

(2) Information obtained by or on behalf of the Attorney General in connection with the exercise of any of the Attorney General's functions which are not functions under, or in relation to, any Part of this Act may

be used by the Attorney General in connection with the exercise of any of the Attorney General's functions under, or in relation to, any Part of this Act.

(3) Information obtained by or on behalf of a constable in connection with the exercise of any functions of a constable under any Part of this Act may, with the consent of a police officer of at least the rank of inspector, be used in connection with the exercise of any other functions of a constable (whether under, or in relation to, another Part of this Act or otherwise).

(4) Information obtained by or on behalf of a constable in connection with the exercise of any functions of a constable which are not functions under, or in relation to, any Part of this Act may, with the consent of a police officer of at least the rank of inspector, be used in connection with the exercise of any functions of a constable under, or in relation to any Part of this Act.

(5) Information obtained by or on behalf of a customs officer in connection with the exercise of any functions of a customs officer under any Part of this Act may, with the consent of a customs officer who is not below such grade as is designated by the Collector of Customs and Excise as equivalent to a police officer of at least the rank of chief inspector, be used in connection with the exercise of any other functions of a customs officer (whether under, or in relation to, another Part of this Act or otherwise).

(6) Information obtained by or on behalf of a customs officer in connection with the exercise of any functions of a customs officer which are not functions under, or in relation to, any Part of this Act may, with the consent of a customs officer who is not below such grade as is designated by the Collector of Customs and Excise as equivalent to a police officer of at least the rank of chief inspector, be used in connection with the exercise of any functions of a customs officer under, or in relation to any Part of this Act.

(7) This section applies to information obtained before the coming into operation of the section as well as information obtained after the coming into operation of the section.

211 Disclosure of information in connection with the exercise of functions

[P2002/29/436]

(1) Information which is held by or on behalf of a permitted person (whether or not it was obtained before or after the coming into force of this section) may be disclosed to —

(a) the Attorney General, for the purpose of the exercise of the Attorney General's functions under this Act;

(b) a police officer of at least the rank of inspector, for the purpose of the exercise of a constable's functions under this Act;

(c) a customs officer who is not below such grade as is designated by the Collector of Customs and Excise as equivalent to that rank, for the purpose of the exercise of a customs officer's functions under this Act.

(2) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).

(3) But nothing in this section authorises the making of a disclosure which —

(a) contravenes section 106 of the *Income Tax Act 1970* without the consent of the Assessor of Income Tax; or

(b) contravenes the *Data Protection Act 2002*.

(4) This section does not affect a power to disclose which exists apart from this section.

(5) These are permitted persons —

(a) a department or statutory board;

(b) the Assessor of Income Tax;

(c) the Chief Constable;

(d) the Collector of Customs and Excise;

(e) a constable (whether or not serving with the Financial Crime Unit of the Isle of Man Constabulary);

(f) a customs officer (whether or not serving with the Financial Crime Unit of the Isle of Man Constabulary).

(6) The Department of Home Affairs may by order designate as permitted persons other persons who exercise functions which it believes are of a public nature.

(7) But an order under subsection (6) must specify the functions in respect of which the designation is made.

212 Disclosures by the Assessor: further disclosure

[P2002/29/437]

(1) Subsection (2) applies to information obtained under section 211 from the Assessor of Income Tax.

(2) Such information must not be further disclosed except —

(a) for a purpose connected with the exercise of the functions of the person to whom the information is disclosed; and

(b) with the consent of the Assessor.

(3) Consent under subsection (2) may be given —

(a) in relation to a particular disclosure;

(b) in relation to disclosures made in circumstances specified or described in the consent.

(4) Subsection (5) applies to information obtained under section 211 from a permitted person other than the Assessor.

(5) A permitted person who discloses such information to a person mentioned in section 211(1) may make the disclosure subject to such conditions as to further disclosure by the person to whom the information is disclosed as the permitted person thinks appropriate; and the information must not be further disclosed in contravention of the conditions.

213 Onward disclosure of information

[P2002/29/438]

(1) Information obtained by or on behalf of a person mentioned in section 210 in connection with the exercise of any functions may be disclosed by the person to whom the information is disclosed if the disclosure is for the purposes of any of the following —

(a) any criminal investigation which is being or may be carried out, whether in the Island or elsewhere;

(b) any criminal proceedings which have been or may be started, whether in the Island or elsewhere;

(c) the exercise of functions under this Act or the *Criminal Justice Act 1990* or the *Criminal Justice Act 1991*;

(d) the exercise by a prosecutor of functions under Part 2;[23]

(e) the exercise by a constable or a customs officer of functions under Chapter 3 of Part 1;

(f) safeguarding national security;

(g) investigations or proceedings outside the Island which have led or may lead to the making of an external order within the meaning of section 218;

(h) the exercise of a designated function.

(2) But such information may be disclosed to the Assessor of Income Tax.

(3) If a person mentioned in section 210 ("A") makes a disclosure of information for a purpose specified in subsection (1), A may make any further disclosure of the information by the person to whom it is disclosed subject to such conditions as A thinks fit.

(4) Such a person must not further disclose the information in contravention of the conditions.

(5) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).

(6) But nothing in this section authorises the making of a disclosure which —

(a) contravenes section 106 of the *Income Tax Act 1970* without the consent of the Assessor of Income Tax; or

(b) contravenes the *Data Protection Act 2002*.

(7) A designated function is a function which the Department of Home Affairs thinks is a function of a public nature and which it designates by order.

Overseas purposes

214 Restriction on disclosure for overseas purposes

[P2002/29/442]

(1) Section 57 of the *Anti-Terrorism and Crime Act 2003* (restrictions on disclosure of information for overseas purposes) applies to a disclosure of information authorised by section 213(1)(a) or (b).

(2) In the application of section 57 of the *Anti-Terrorism and Crime Act 2003* by virtue of subsection (1), section 59 (interpretation) of that Act must be ignored and the following subsection is substituted for subsection (2) of section 57 of that Act —

"(2) In subsection (1) the reference, in relation to a direction, to a relevant disclosure is a reference to a disclosure which —

(a) is made for a purpose authorised by section 213(1)(a) or (b) of the *Proceeds of Crime Act 2008*; and

(b) is of any such information as is described in the direction.".

PART 7 – CO-OPERATION

215 External requests and orders

[P2002/29/444]

(1) The Council of Ministers may by order —

(a) make provision for a prohibition on dealing with property which is the subject of an external request;

(b) make provision for the realisation of property for the purpose of giving effect to an external order.

(2) An order under this section may include provision which (subject to any specified modifications) corresponds to any provision of Part 1 (except Chapter 3) or Part 2 of this Act.

(3) An order under this section may include —

(a) provision about the functions of the Attorney General and any other person having functions under this Act in relation to external requests and orders;

(b) provision about the registration of external orders;

(c) provision about the authentication of any judgment or order of a court outside the Island, and of any other document connected with such a judgment or order or any proceedings relating to it;

(d) provision about evidence (including evidence required to establish whether proceedings have been started or are likely to be started in a court outside the Island);

(e) provision to secure that any person affected by the implementation of an external request or the enforcement of an external order has an opportunity to make representations to a court in the Island if a request is being implemented or an order is being enforced.

(4) Before making an order under this section, the Council of Ministers must consult the Attorney General.

216 External investigations

[P2002/29/445]

(1) The Council of Ministers may by order make —

(a) provision to enable orders equivalent to those under Part 4 to be made, and warrants equivalent to those under Part 4 to be issued, for the purposes of an external investigation;

(b) provision creating offences in relation to external investigations which are equivalent to offences created by Part 4.

(2) An order under this section may include —

(a) provision corresponding to any provision of Part 4 (subject to any specified modifications);

(b) provision about the functions of the Attorney General, constables, customs officers and any other person having functions under this Act;

(c) provision about evidence (including evidence required to establish whether an investigation is being carried out in a country or territory outside the Island).

(3) But an order under this section must not provide for a disclosure order to be made for the purposes of an external investigation into whether a money laundering offence has been committed.

(4) Before making an order under this section, the Council of Ministers must consult the Attorney General.

217 Rules of court for Part 7

[P2002/29/446]

(1) Rules of court may make such provision as is necessary or expedient to give effect to an order made under this Part (including provision about the exercise of functions of a Deemster conferred or imposed by the order).

(2) Where no rules of court have been made the court may adopt such practice and procedure as it thinks fit.

218 Interpretation of Part 7

[P2002/29/447]

(1) An external request is a request by an overseas authority to prohibit dealing with relevant property which is identified in the request.

(2) An external order is an order which —

(a) is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct; and

(b) is for the recovery of specified property or a specified sum of money.

(3) An external investigation is an investigation by an overseas authority into —

(a) whether property has been obtained as a result of or in connection with criminal conduct;

(b) the extent or whereabouts of property obtained as a result of or in connection with criminal conduct; or

(c) whether a money laundering offence has been committed.

(4) Property is all property wherever situated and includes —

(a) money;

(b) all forms of property, real or personal, heritable or moveable;

(c) things in action and other intangible or incorporeal property.

(5) Property is obtained by a person if the person obtains an interest in it.

(6) References to an interest, in relation to property other than land, include references to a right (including a right to possession).

(7) Property is relevant property if there are reasonable grounds to believe that it may be needed to satisfy an external order which has been or which may be made.

(8) Criminal conduct is conduct which —

(a) constitutes an offence in the Island; or

(b) would constitute an offence in the Island if it occurred there.

(9) A money laundering offence is conduct carried out in a country or territory outside the Island and which if carried out in the Island would constitute any of the following offences —

(a) an offence under section 139, 140 or 141 of this Act or section 10 of the *Anti-Terrorism and Crime Act 2003*; or

(b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a);

(c) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a).

(10) An overseas court is a court of a country or territory outside the Island.

(11) An overseas authority is an authority which has responsibility in a country or territory outside the Island —

(a) for making a request to an authority in another country or territory (including the Island) to prohibit dealing with relevant property;

(b) for carrying out an investigation into whether property has been obtained as a result of or in connection with criminal conduct; or

(c) for carrying out an investigation into whether a money laundering offence has been committed.

(12) This section applies for the purposes of this Part.

PART 8 – AMENDMENTS TO CUSTOMS AND EXCISE MANAGEMENT ACT 1986

219 Amendments to Customs and Excise Management Act 1986

Schedule 5 contains amendments to the *Customs and Excise Management Act 1986*.

PART 9 – AMENDMENTS TO CRIMINAL JUSTICE LEGISLATION

220 Amendments to criminal justice legislation

Schedule 6 contains amendments to the *Criminal Justice Act 1990* and the *Criminal Justice Act 1991*.

PART 10 – MISCELLANEOUS AND GENERAL

Miscellaneous

221 Offences by bodies corporate

(1) This section applies where an offence under this Act is committed by a body corporate and it is proved that the offence —

(a) was committed with the consent or connivance of an officer of the body; or

(b) was attributable to neglect on the part of an officer of the body.

(2) The officer, as well as the body, shall be guilty of the offence.

(3) Where an individual is convicted of an offence under this Act by virtue of this section, the individual shall be liable to the same penalty as the body corporate.

(4) In this section "officer" includes —

(a) a director, manager or secretary;

(b) a person purporting to act as a director, manager or secretary;

(c) if the affairs of the body are managed by its members, a member;

(d) in relation to a limited liability company constituted under the *Limited Liability Companies Act 1996*, a member, the company's manager, or registered agent; and

(e) in relation to a company incorporated under the *Companies Act 2006*, the company's registered agent.

222 Financial provision

(1) Any expenses incurred in the implementation of this Act are to be paid out of monies provided by Tynwald.

(2) Subject to subsection (3), all monies representing anything recovered, confiscated or forfeited (including accrued interest thereon) under Part 1 or Part 2 of this Act are to be paid into the General Revenue of the Island.

(3) Any payment due to the Attorney General or to a Department under this Act is to be treated as a Crown debt.

(4) The Treasury may enter into asset sharing agreements on behalf of the Island.

(5) The Treasury may transfer (upon such terms and conditions as the Treasury determines) the whole or any part of a sum of money representing anything recovered, confiscated or forfeited under this Act or any enactment modified or repealed by this Act to authorities in any other country or territory which participated directly or indirectly in the

recovery, confiscation or forfeiture if such transfer is authorised in an asset sharing agreement.

(6) Where the Island has participated directly or indirectly with another country or territory in the recovery, confiscation or forfeiture of property under the laws of that country or territory which the Treasury considers to be analogous, or to fulfil a purpose similar to, any of the provisions of this Act, the Treasury may receive (upon such terms and conditions as the Treasury determines) the whole or any part of a sum of money representing anything so recovered, confiscated or forfeited from authorities in that other country or territory if such receipt is authorised in an asset sharing agreement.

(7) In this section, "asset sharing agreement" means any agreement or arrangement made by or on behalf of the Island with a country or territory outside the Island for the sharing of monies representing property recovered, confiscated or forfeited under-

(a) this Act; or

(b) the laws of that country or territory which the Treasury considers to be analogous, or to fulfil a purpose similar to, any of the provisions of this Act.

223 Subordinate legislation

(1) References in this section to subordinate legislation are to —

(a) any order under this Act (other than one falling to be made by a court);

(b) any regulations under this Act;

(c) any code under this Act.

(2) Subordinate legislation —

(a) may make different provision for different purposes;

(b) may include supplementary, incidental, saving or transitional provisions.

(3) Subject to subsection (4), subordinate legislation must not come into operation unless it is approved by Tynwald.

(4) Subsection (3) does not apply to orders made under section 226(2).

General

224 Amendments

(1) Schedule 7 contains miscellaneous and consequential amendments to other enactments.

(2) Schedule 8 contains amendments to provisions of this Act to be made consequentially upon the passing of certain other enactments.

225 Repeals

Schedule 9 contains repeals.

226 Short title and commencement

(1) This Act may be cited as the Proceeds of Crime Act 2008.

(2) This Act comes into operation on such day or days as the Treasury by order appoints and different days may be appointed for different provisions and for different purposes.[24] [25]

(3) Without limiting section 223(2), an order under subsection (2) may —

(a) make such transitional adaptations to or modifications of the provisions brought into operation by the order as the Treasury considers expedient, including different adaptations or modifications for different provisions and for different purposes;

(b) include such transitional provisions and saving provisions modifying the application of any provision of any enactment pending the commencement of, or pending the doing of anything under, a provision of this Act as the Treasury considers expedient.

(4) An order under subsection (2) must be laid before Tynwald as soon as practicable after it is made.

SCHEDULE 1

POWERS OF INTERIM RECEIVER

Section 14(1)

1 Seizure

Power to seize property to which the order applies.

2 Information

(1) Power to obtain information or to require a person to answer any question.

(2) A requirement imposed in the exercise of the power has effect in spite of any restriction on the disclosure of information (however imposed).

(3) An answer given by a person in pursuance of such a requirement may not be used in evidence against that person in criminal proceedings.

(4) Sub-paragraph (3) does not apply —

(a) on a prosecution for an offence under section 5 of the *Perjury Act 1952* (false statements); or

(b) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with it.

(5) But an answer may not be used by virtue of sub-paragraph (4)(b) against a person unless —

(a) evidence relating to it is adduced; or

(b) a question relating to it is asked,

by or on behalf of that person in the proceedings arising out of the prosecution.

3 Entry, search, etc.

(1) Power to —

(a) enter any premises to which the interim order applies; and

(b) take any of the following steps.

(2) Those steps are —

(a) to carry out a search for or inspection of anything described in the order;

(b) to make or obtain a copy, photograph or other record of anything so described;

(c) to remove anything which the receiver is required to take possession of in pursuance of the order or which may be required as evidence in the proceedings under Chapter 2 of Part 1.

(3) The order may describe anything generally, whether by reference to a class or otherwise.

4 Supplementary

(1) An order making any provision under paragraph 2 or 3 must make provision in respect of legal professional privilege.

(2) An order making any provision under paragraph 3 may require any person —

(a) to give the interim receiver access to any premises which the receiver may enter in pursuance of paragraph 3;

(b) to give the interim receiver any assistance the receiver may require for taking the steps mentioned in that paragraph.

5 Management

(1) Power to manage any property to which the order applies.

(2) Managing property includes —

(a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes;

(b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business;

(c) incurring capital expenditure in respect of the property.

SCHEDULE 2

POWERS OF TRUSTEE FOR CIVIL RECOVERY

Section 23(6)

1 Power

Power to sell the property or any part of it or interest in it.

2 Expenditure

Power to incur expenditure for the purpose of —

(a) acquiring any part of the property, or any interest in it, which is not vested in the trustee;

(b) discharging any liabilities, or extinguishing any rights, to which the property is subject.

3 Management

(1) Power to manage property.

(2) Managing property includes doing anything mentioned in paragraph 5(2) of Schedule 1.

4 Legal proceedings

Power to start, carry on or defend any legal proceedings in respect of the property.

5 Compromise

Power to make any compromise or other arrangement in connection with any claim relating to the property.

6 Supplementary

(1) For the purposes of, or in connection with, the exercise of any of the trustee's powers —

(a) power by the official name of the trustee to do any of the things mentioned in sub-paragraph (2);

(b) power to do any other act which is necessary or expedient.

(2) Those things are —

(a) holding property;

(b) entering into contracts;

(c) suing and being sued;

(d) employing agents;

(e) executing a power of attorney, deed or other instrument.

SCHEDULE 3

LIFESTYLE OFFENCES

Section 123(2)

1 Drug trafficking

(1) An offence under any of the following provisions of the *Misuse of Drugs Act 1976* —

(a) section 4(2) or (3) (unlawful production or supply of controlled drugs);

(b) section 4A (manufacture or supply of a substance for the time being specified in Schedule 2A to that Act);

(c) section 5(3) (possession of controlled drug with intent to supply);

(d) section 8 (permitting certain activities relating to controlled drugs);

(e) section 9C (using a ship for illicit traffic in controlled drugs);

(f) section 20 (assisting in or inducing the commission outside the Island of an offence punishable under a corresponding law).

(2) An offence under any of the following provisions of the *Customs and Excise Management Act 1986* if it is committed in connection with a prohibition or restriction on importation or exportation which has effect by virtue of section 3 of the *Misuse of Drugs Act 1976* —

(a) section 47(2) or (3) (improper importation of goods);

(b) section 69(2) (exportation of prohibited or restricted goods);

(c) section 178 (fraudulent evasion).

2 Money laundering

An offence under either of the following provisions of this Act —

(a) section 139 (concealing etc criminal property);

(b) section 140 (assisting another to retain criminal property).

3 Directing terrorism

An offence under section 44 of the *Anti-Terrorism and Crime Act 2003* (directing the activities of a terrorist organisation).

4 Unlawful immigration

An offence under section 25, 25A or 25B of the Immigration Act 1971 (of Parliament, as it has effect in the Island) (assisting unlawful immigration etc.).

5 Arms trafficking

(1) An offence under either of the following provisions of the *Customs and Excise Management Act 1986* if it is committed in connection with a firearm or ammunition —

(a) section 69(2) (exportation of prohibited goods);

(b) section 178 (fraudulent evasion).

(2) An offence under section 7(1) of the *Firearms Act 1947* (dealing in firearms or ammunition by way of trade or business).

(3) In this paragraph "firearm" and "ammunition" have the same meanings as in section 32 of the *Firearms Act 1947*.

6 Counterfeiting

An offence under —

(a) the *Forgery Act 1952*;

(b) the *Coinage Offences Act 1980*.

7 Intellectual property

(1) An offence under any of the following provisions of the *Copyright Act 1991* —

(a) section 106(1) (making or dealing in an article which infringes copyright);

(b) section 106(2) (making or possessing an article designed or adapted for making a copy of a copyright work);

(c) section164A (making or dealing in unauthorised decoders).

(2) An offence under section 19(1) of the *Performers' Protection Act 1996* (making or dealing in an illicit recording).

(3) An offence under section 92(1), (2) or (3) of the Trade Marks Act 1994 (of Parliament, as it has effect in the Island) (unauthorised use etc of trade mark).

8 Brothels

An offence under section 28 or 29 of the *Sexual Offences Act 1992* (keeping or letting premises for use as a brothel).

9 Blackmail

An offence under section 23 of the *Theft Act 1981* (blackmail).

10 Corruption

An offence under Part 2 of the *Bribery Act 2013*.[26]

11 Inchoate offences

(1) An offence of attempting, conspiring or inciting the commission of an offence specified in this Schedule.

(2) An offence of aiding, abetting, counselling or procuring the commission of such an offence.

SCHEDULE 4

REGULATED SECTOR AND SUPERVISORY AUTHORITIES

Sections 142(17), 143(11), 149(1)

Regulated sector

1 Business in the regulated sector

(1) A business is in the regulated sector to the extent that it consists of—

(a) business carried on by a building society within the meaning of section 7 of the *Industrial and Building Societies Act 1892*;

(b) business carried on by a society (other than a building society or credit union) registered under the *Industrial and Building Societies Act 1892*;

(c) any activity carried on for the purpose of raising money authorised to be borrowed under the *Isle of Man Loans Act 1974*;

(d) the business of an estate agent within the meaning of the *Estate Agents Act 1975*;

(e) the provision by way of business of audit services in respect of a body corporate;

(f) the business of an external accountant, where "external accountant" means any person who, by way of business, provides accountancy services to third parties and does not include accountants employed by—

(i) public authorities, or

(ii) undertakings which do not by way of business provide accountancy services to third parties,

and, for the avoidance of doubt, does not include an employed person whose duties relate solely to the provision of accountancy services to his or her employer;

(g) any activity which is specified in subparagraph (h) that is undertaken by —

(i) an advocate within the meaning of the *Advocates Act 1976*;

(ii) a registered legal practitioner within the meaning of the *Legal Practitioners Registration Act 1986*;

(iii) a notary public within the meaning of the *Advocates Act 1995* and the Notaries Regulation 2000 [SD 671/00 as amended by SD 850/02]; or

(iv) any other legal professional who by way of business provides legal services to third parties,

except for any such persons who are employed by public authorities or undertakings which do not by way of business provide legal services to third parties;

(h) when undertaken by a person referred to in subparagraph (g)—

(i) managing any assets belonging to a client;

(ii) the provision of legal services which involves participation in a financial or real property transaction (whether by assisting in the planning or execution of any such transaction or otherwise) by acting for, or on behalf of, a client in respect of —

(A) the sale or purchase of land;

(B) managing bank, savings or security accounts;

(C) organising contributions for the promotion, formation, operation or management of bodies corporate;

(D) the sale or purchase of a business; or

(E) the creation, operation or management of a legal person or legal arrangement;

(i) insurance business within the meaning of the *Insurance Act 2008*;

(j) the business of acting as an insurance manager for or in relation to an insurer within the meaning of the *Insurance Act 2008*;

(k) the business of insurance intermediary within the meaning of the *Insurance Act 2008*;

(l) any activity permitted to be carried on by a licence holder under a casino licence granted under the *Casino Act 1986*;

(m) a collective investment scheme within the meaning of section 1 of the *Collective Investment Schemes Act 2008*;

(n) the business of a bookmaker within the meaning of the *Gaming, Betting and Lotteries Act 1988*;

(o) the business of providing online gambling within the meaning of section 1 of the *Online Gambling Regulation Act 2001*;

(p) the business of engaging in any regulated activity within the meaning of the *Financial Services Act 2008*;

(q) investment business within the meaning of section 3 of the *Financial Services Act 2008* and Class 2 of Schedule 1 to the Regulated Activities Order 2011 whether or not exclusions or exemptions contained within the Order or the Financial Services (Exemptions) Regulations 2011 apply;

(r) corporate services or trust services within the meaning of section 3 of the *Financial Services Act 2008* and Classes 4 and 5 of Schedule 1 to the Regulated Activities Order 2011 [SD 884/11] whether or not exclusions or exemptions for that class contained within the Order or the Financial Services (Exemptions) Regulations 2011 [SD 885/11] apply;

(s) deposit taking within the meaning of section 3 of the *Financial Services Act 2008* and Class 1 of Schedule 1 to the Regulated Activities Order 2011 whether or not exclusions or exemptions for that class contained within the Order or the Financial Services (Exemptions) Regulations 2011 apply;

(t) business carried by a society registered as a credit union within the meaning of the *Credit Unions Act 1993*;

(u) acting as a retirement benefits schemes administrator within the meaning of Part 6 of the *Retirement Benefits Schemes Act 2000*;

(v) acting as the trustee of a retirement benefits scheme within the meaning of the *Retirement Benefits Schemes Act 2000*;

(w) any activity carried on for the purpose of raising money by a local authority;

(x) the business of a *bureau de change*;

(y) the business of the Post Office in respect of any activity undertaken on behalf of the National Savings Bank;

(z) any activity involving money (including any representation of monetary value) transmission services or cheque encashment facilities;

(aa) the provision of safe custody facilities for cash or liquid securities on behalf of other persons;

(bb) the business of dealing in goods of any description (including dealing as an auctioneer) whenever a transaction involves accepting a total cash payment of euro 15,000 or more;

(cc) administering or managing money on behalf of other persons;

(dd) services to collective investment schemes as defined in section 3 of the *Financial Services Act 2008* and Class 3 of Schedule 1 to the Regulated Activities Order 2011 ignoring any exclusions for that class contained within the Order or the Financial Services (Exemptions) Regulations 2011;

(ee) any business involving the issuing and managing of means of payment (including but not limited to credit and debit cards, cheques, traveller's cheques, money orders, bankers' drafts and electronic money);

(ff) subject to paragraph (2), lending including, but not limited to, consumer credit, mortgage credit factoring and the finance of commercial transactions;

(gg) subject to paragraph (2), financial leasing arrangements in respect of products other than consumer products;

(hh) subject to paragraph (2), the business of providing financial guarantees and commitments;

(ii) subject to paragraph (5), the provision of safe custody facilities, deposit boxes or other secure storage facilities suitable for high-value physical items or assets, jewellery, precious metals and stones, bullion or documents of title.

(2) A business is not in the regulated sector by reason only of the provisions of subparagraphs (1)(ff), (gg) or (hh) if the lending, leasing or provision of guarantees or commitments (as the case may be) is made by—

(a) a parent undertaking to a subsidiary of that parent undertaking;

(b) a subsidiary of a parent undertaking to the parent undertaking; or

(c) a subsidiary of a parent undertaking to another subsidiary of that parent undertaking.

(3) In subparagraph (2)—

"parent undertaking" means an undertaking which, in relation to another undertaking (a "subsidiary")—

(a) owns or controls, whether directly or indirectly, shares or other interests in the subsidiary together aggregating in excess of 50 per cent of the votes exercisable at general or other meetings of the subsidiary on any or all matters;

(b) has a right to appoint or remove a majority of its board of directors, or other governing body;

(c) has the right to exercise a dominant influence over the subsidiary—

(i) by virtue of the provisions contained in the subsidiary's constitutional documents, or

(ii) by virtue of a control contract; or

(d) controls, alone or pursuant to an agreement with other persons, a majority of the voting rights in the subsidiary; and

"undertaking" means a natural person, body corporate, trust, partnership or unincorporated association.

(4) For the purposes of subparagraph (3)—

(a) an undertaking is taken to have the right to exercise a dominant influence over another undertaking only if it has a right to give directions with respect to the operating and financial policies of that other undertaking with which its directors are, or governing body is, obliged to comply whether or not they are for the benefit of that other undertaking;

(b) "control contract" means a contract in writing conferring a dominant influence right which—

(i) is of a kind authorised by the constitutional documents of the undertaking in relating to which the right is exercisable; and

(ii) is permitted by the law under which that undertaking is established; and

(c) any undertaking which is a subsidiary of another undertaking is also a subsidiary of any further undertaking of which that other is a subsidiary.

(5) A business is not in the regulated sector by reason only of the provisions of subparagraph (1)(ii) if the services provided are—

(a) the storage of goods such as luggage, household items or motor vehicles;

(b) the storage of non-physical property such as computer data;

(c) the secure transportation of high value items;

(d) the offering of safe custody on an occasional or very limited basis, such as hotels providing a safe for use by guests; or

(e) legal professionals storing legal documents other than documents of title.[27]

2 Supervisory authorities

(1) The following bodies are supervisory authorities —

(a) the Treasury;

(b) the Department of Home Affairs;

(c) the Financial Supervision Commission;

(d) the Insurance and Pensions Authority;

(e) the Isle of Man Gambling Supervision Commission;

(f) the Isle of Man Office of Fair Trading; and

(g) the professional bodies listed in sub-paragraph (2).

(2) The professional bodies referred to in sub-paragraph (1)(g) are —

(a) the Association of Accounting Technicians;

(b) the Association of Chartered Certified Accountants;

(c) the Association of International Accountants;

(d) the Association of Taxation Technicians;

(e) the Chartered Institute of Management Accountants;

(f) the Chartered Institute of Public Finance and Accountancy;

(g) the Chartered Institute of Taxation;

(h) the Council for Licensed Conveyancers;

(i) the Faculty of Advocates;

(j) the Faculty Office of the Archbishop of Canterbury;

(k) the General Council of the Bar;

(l) the General Council of the Bar of Northern Ireland;

(m) the Insolvency Practitioners Association;

(n) the Institute of Certified Bookkeepers;

(o) the Institute of Chartered Accountants in England and Wales;

(p) the Institute of Chartered Accountants in Ireland;

(q) the Institute of Chartered Accountants of Scotland;

(r) the Institute of Financial Accountants;

(s) the International Association of Book-keepers;

(t) the Isle of Man Law Society;

(u) the Law Society of England and Wales;

(v) the Law Society for Northern Ireland; and

(w) the Law Society of Scotland.

Amendment

3 Power to amend

The Department of Home Affairs may by order amend this Schedule.

SCHEDULE 5

AMENDMENTS TO CUSTOMS AND EXCISE MANAGEMENT ACT 1986

Section 219

[Sch 5 amends the following Act —

Customs and Excise Management Act 1986 q.v.]

SCHEDULE 6

AMENDMENTS TO CRIMINAL JUSTICE LEGISLATION

Section 220

[Sch 6 amends the following Acts —

Criminal Justice Act 1990 q.v.

Criminal Justice Act 1991 q.v.]

SCHEDULE 7

MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS

Section 224(1)

[Sch 7 amends the following Acts —

Bankruptcy Code 1892 q.v.

Misuse of Drugs Act 1976 q.v.

Administration of Justice Act 1981 q.v.

Criminal Law Act 1981 q.v.

Criminal Justice Act 1990 q.v.

Criminal Justice Act 1991 q.v.

Criminal Jurisdiction Act 1993 q.v.

Drug Trafficking Act 1996 q.v.

Police Powers and Procedures Act 1998 q.v.

Online Gambling Regulation Act 2001 q.v.

Anti-Terrorism and Crime Act 2003 q.v.]

Sch 7 also amended in part the following rules, which are not reproduced:

Land Registry Rules 2000 (S.D. 588/00)

10. (1) The following amendments have effect.

(2) In rule 73(1), for "section 7(13) of the Criminal Justice Act 1990 ("the 1990 Act")" substitute "section 102 of the Proceeds of Crime Act 2008 ("the 2008 Act")".

(3) In rule 73(2)(a), for "section 7 of the 1990 Act" substitute "section 97 of the 2008 Act".

(4) In rule 73(2)(a), for "section 7(6) of that Act" substitute "section 98 of that Act".

(5) In rule 73(4), for "section 7(13) of the 1990 Act" substitute "section 102 of the 2008 Act".

(6) In the side note to rule 73, for "Criminal Justice Act 1990" substitute "Proceeds of Crime Act 2008".

SCHEDULE 8

AMENDMENTS TO THIS ACT CONSEQUENTIAL TO THE PASSING OF OTHER ENACTMENTS

Section 224(2))

[Sch 8 amends the following Act —

Proceeds of Crime Act 2008 q.v.]

SCHEDULE 9

REPEALS

Section 225

[Sch 9 repeals the following Acts in part —

Misuse of Drugs Act 1976

Criminal Justice Act 1990

Criminal Justice Act 1991

Drug Trafficking Act 1996

Criminal Justice Act 1996

Law Reform Act 1997

Statute Law Revision Act 1997

Police Powers and Procedures Act 1998

Criminal Justice Act 2001

Children and Young Persons Act 2001

Anti-Terrorism and Crime Act 2003

and the following Act wholly —

Criminal Justice (Money Laundering Offences) Act 1998.]

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References

[1] Subs (1A) inserted by Organised and International Crime Act 2010 s 18.
[2] Subs (6)(f) inserted by Cash in Postal Packets Act 2013 s.14.
[3] Subs (7A) inserted by Cash in Postal Packets Act 2013 s 14.
[4] Subs (9) added by Organised and International Crime Act 2010 s 18.
[5] S 43A inserted by Cash in Postal Packets Act 2013 s 15.
[6] Subs 44(1) amended by Cash in Postal Packets Act 2013 s 16.
[7] S 45 heading amended by Cash in Postal Packets Act 2013 s 17.
[8] Subs (1A) inserted by Cash in Postal Packets Act 2013 s 17.
[9] Subs (3) amended by Cash in Postal Packets Act 2013 s 17.
[10] Subs (4) amended by Cash in Postal Packets Act 2013 s 17.
[11] Subs 49(3) amended by Cash in Postal Packets Act 2013 s 18.
[12] Subs 49(5) inserted by Cash in Postal Packets Act 2013 s 18.
[13] Subs 54(1) substituted by Cash in Postal Packets Act 2013 s 19.
[14] Subs 54(8) inserted by Cash in Postal Packets Act 2013 s 19.
[15] Para (a) amended by Proceeds of Crime Act 2008 Sch 8.
[16] Para (d) amended by Anti-Terrorism and Crime (Amendment) Act 2011 s 56(2).
[17] Subs (5) added by Proceeds of Crime Act 2008 Sch 8.
[18] Para (a) substituted by Proceeds of Crime Act 2008 Sch 8.
[19] Para (c) amended by Anti-Terrorism and Crime (Amendment) Act 2011 s 56(3).
[20] Para (c) repealed by Organised and International Crime Act 2010 s 18.
[21] Subs (1) amended by Organised and International Crime Act 2010 s 18.
[22] Subs (4) amended by Organised and International Crime Act 2010 s 18.
[23] Para (d) operative 1/8/2009 (SD392/09).

[24] ADO (ss 1 to 65, Sch 1, Sch 2) 22/10/2008 (SD743/08); (ss 142, 143,150(2) and Sch 4 for the purposes of these sections and s 153 but only for disclosures under ss 142 and 143) 22/10/2008 (SD744/08)*; (ss 159 to 193, and ss 195 to 199 for civil recovery and detained cash investigations) 22/10/2008 (SD743/08); (s 200 fully operative and ss 208 and 209 for the purposes of Part 1) 22/10/2008 (SD743/08); (ss 210 to 224 [except s 213(1)(d)], 226, Sch 5, Sch 6 [except s 21A(7) CJA 1991], Sch 7 (in part), Sch 8 (in part) 22/10/2008 (SD743/08); remaining provisions operative 1/8/2009 subject to certain transitional provisions and savings provisions (SD392/09 amended by SD529/09).
*Ed. note (1): Subscribers should note that SD743/08 and SD744/08 contain transitional modifications to the Act.
[25] Ed. note (2): The provisions brought into operation by SD744/08 operate alongside the existing money laundering legislation see para 2 of the explanatory note to the Order.
[26] Para 10 amended by Proceeds of Crime Act 2008 Sch 8 and by Bribery Act 2013 Sch 1.
[27] Para 1 substituted by SD97/13.