



TURKS AND CAICOS ISLANDS

CHAPTER 38
CRIMINAL JUSTICE (INTERNATIONAL
CO-OPERATION) ORDINANCE
and Subsidiary Legislation

Revised Edition
showing the law as at 15 May 1998

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance 1997.

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CHAPTER 38

**CRIMINAL JUSTICE
(INTERNATIONAL CO-OPERATION) ORDINANCE**

(Ordinances 20 of 1992, 3 of 1995 and 12 of 1995)

AN ORDINANCE TO ENABLE THE TURKS AND CAICOS ISLANDS TO JOIN WITH OTHER COUNTRIES IN IMPLEMENTING THE VIENNA CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES; AND TO PROVIDE FOR THE SEIZURE, DETENTION AND FORFEITURE OF DRUG TRAFFICKING MONEY IMPORTED OR EXPORTED IN CASH.

[1 April 1993] Commencement

PART 1

PRELIMINARY

1. This Ordinance may be cited as the Criminal Justice (International Co-operation) Ordinance. Short title

2. (1) In this Ordinance— Interpretation

“cash” includes coins and notes in any currency;

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

“customs officer” has the same meaning as in the Customs Ordinance; *Cap. 156*

“drug trafficking” has the same meaning as in the Control of Drugs (Trafficking) Ordinance; *Cap. 35*

“drug trafficking offence” has the same meaning as in the Control of Drugs (Trafficking) Ordinance;

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

“Islands” means the Turks and Caicos Islands;

“Islands ship” means a ship registered in the Turks and Caicos Islands;

“scheduled substance” means a substance for the time being specified in Schedule 1;

“ship” includes any vessel used in navigation;

“the proceeds of drug trafficking” has the same meaning as in the Control of Drugs (Trafficking) Ordinance and includes proceeds received by any person before as well as after the coming into force of this Ordinance;

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

(2) Any expression used in this Ordinance which is also used in the Control of Drugs (Trafficking) Ordinance 1988 has the same meaning as in that Ordinance.

(3) If in any proceedings under this Ordinance any question arises whether any country or territory is a state or is a party to the Vienna Convention, a certificate issued by or under the authority of the Governor shall be conclusive evidence on that question.

PART II

CRIMINAL PROCEEDINGS AND INVESTIGATIONS INTO DRUG TRAFFICKING OFFENCES

Service of
overseas process
in the Islands

3. (1) This section has effect where the Governor receives from the government of, or other authority in, a country or territory outside the Islands—

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

together with a request for it to be served on a person in the Islands.

(2) The Governor may cause the process or document to be served by post or, if the request is for personal service, direct the Commissioner of Police to cause it to be personally served on him.

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

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

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

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

(Inserted by Ord. 12 of 1995)

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

- (a) a summons requiring a person charged with a drug trafficking offence to appear before a court in the Islands; and
- (b) a summons or order requiring a person to attend before a court in the Islands for the purpose of giving evidence in criminal proceedings for a drug trafficking offence;

Service of
Islands' process
overseas

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

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

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

(Substituted by Ord. 12 of 1995)

Overseas
evidence for use
in Islands

5. (1) Where on an application made in accordance with subsection (2) it appears to a Magistrate—

(a) that a drug trafficking offence has been committed or that there are reasonable grounds for suspecting that such an offence has been committed; and

(b) that proceedings in respect of that offence have been instituted or that an investigation into that offence is being carried on;

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

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

(3) The Attorney General may himself issue a letter of request if—

(a) he is satisfied as to the matters mentioned in subsection (1)(a); and

(b) the offence in question is being investigated or proceedings have been instituted in respect of it.

(4) Subject to subsection (5), a letter of request shall be sent to the Governor for transmission either—

(a) to a court or tribunal specified in the letter and exercising jurisdiction in the place where the evidence is to be obtained; or

(b) to any authority recognised by the government of the country or territory in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.

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

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

(7) Evidence obtained by virtue of a letter of request shall not without the consent of such an authority as is mentioned in subsection (4)(b) be used for any purpose other than that speci-

fied in the letter; and when any document or other article obtained pursuant to a letter of request is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to such an authority unless that authority indicates that the document or article need not be returned.

(8) Evidence obtained by virtue of a letter of request shall, without being sworn to by witnesses, be received in evidence in so far as that can be done without unfairness to either party.

(Inserted by Ord. 12 of 1995)

6. (1) This section has effect where the Governor receives—

Islands' evidence
for use overseas

- (a) from a court or tribunal exercising criminal jurisdiction in a country or territory outside the Islands or a prosecuting authority in such a country or territory; or
- (b) from any other authority in such a country or territory which appears to him to have the function of making requests of the kind to which this section applies;

a request for assistance in obtaining evidence in the Islands in connection with criminal proceedings for an offence corresponding to a drug trafficking offence that has been instituted, or a criminal investigation into such an offence that is being carried on, in that country or territory.

(2) If the Governor is satisfied—

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

he may, if he thinks fit, by a notice in writing refer the request to the Magistrate's Court, to receive such of the evidence to which the request relates as may appear to the Court to be appropriate for the purpose of giving effect to the request.

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

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

(5) Schedule 2 has effect with respect to proceedings before the Magistrate’s Court in pursuance of a notice under subsection (2).

(Inserted by Ord. 12 of 1995)

Transfer of
prisoner to give
evidence etc.
overseas
Cap. 144

7. (1) The Governor, may, if he thinks fit, issue a warrant providing for any person (“a prisoner”) serving a sentence in a prison or other institution to which the Prisons Ordinance applies to be transferred to a country or territory outside the Islands for the purpose—

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

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

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

but a consent once given shall not be capable of being withdrawn after the issue of the warrant.

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

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

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

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

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

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

(Inserted by Ord. 12 of 1995)

8. (1) This section has effect where—

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

(2) If the Governor is satisfied that the appropriate authority in the country or territory where the prisoner is detained will make arrangements for him to come to the Islands to give evidence pursuant to the witness order, witness summons or citation or, as the case may be, for the purpose mentioned in subsection (1)(b), he may issue a warrant under this section.

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

Transfer of
overseas prisoner
to give evidence
etc. in the Islands

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

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

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

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(6) A person shall not be subject to the Immigration Ordinance in respect of his entry into or presence in the Islands in pursuance of a warrant under this section but if the warrant ceases to have effect while he is still in the Islands he shall be treated for the purposes of that Ordinance as if he has then unlawfully entered the Islands.

(Inserted by Ord. 12 of 1995)

Search, etc. for material relevant to overseas investigation

9. (1) If, on an application made by a police officer, a Magistrate is satisfied—

- (a) that criminal proceedings for an offence corresponding to a drug trafficking offence have been instituted against a person in a country or territory outside the Islands or that a person has been arrested in the course of a criminal investigation carried on there into such an offence; and
- (b) that there are reasonable grounds for suspecting that there is on premises in the Islands occupied or controlled by that person evidence relating to that offence other than items subject to legal privilege;

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

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

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

- (a) from a court or tribunal exercising criminal jurisdiction in the overseas country or territory in question or a prosecuting authority in that country or territory; or

- (b) from any other authority in that country or territory which appears to him to have the function of making requests for the purposes of this section;

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

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

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

(6) In this section, “items subject to legal privilege” shall have the same meaning as in section 25 (1) of the Control of Drugs (Trafficking) Ordinance.

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(Inserted by Ord. 12 of 1995)

10. (1) The Governor may by order provide for the enforcement in the Islands of any order which—

Enforcement of
overseas
forfeiture orders

- (a) is made by a court in a country or territory outside the Islands designated for the purposes of this section by the order; and
- (b) is for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which an offence corresponding to a drug trafficking offence has been committed or which was used in connection with the commission of such an offence.

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

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

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

(Inserted by Ord. 12 of 1995)

Rules of court

11. (1) Provision may be made by rules of court for any purpose for which it appears to the Magistrate that it is necessary or expedient that provision should be made in connection with any of the provisions of this Part.

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

(3) An order made by the Governor under section 10 may authorise the making of rules of court for any purpose specified in the order.

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

(Inserted by Ord. 12 of 1995)

PART III

THE VIENNA CONVENTION

Manufacture and
supply of
scheduled
substances

12. (1) It is an offence for a person—

(a) to manufacture a scheduled substance; or

(b) to supply such a substance to another person;

knowing or suspecting that the substance is to be used in or for the unlawful production of a controlled drug.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for five years or a fine of \$10,000 or both;

(b) on conviction on indictment, to imprisonment for 14 years or a fine without limit or both.

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(3) In this section “a controlled drug” has the same meaning as in the Control of Drugs Ordinance and “unlawful production of a controlled drug” means the production of such a drug which is unlawful by virtue of section 5(1)(a) of that Ordinance.

(4) The Governor in Council may by order amend that Schedule (whether by addition, deletion or transfer from one table to the other) but—

- (a) no such order shall add any substance to the Schedule unless—
 - (i) it appears to the Governor to be frequently used in or for the unlawful production of a controlled drug; or
 - (ii) it has been added to the Annex to the Vienna Convention under Article 12 of that Convention; and
- (b) no such order shall be made unless a draft of it has been laid before and approved by a resolution of the Legislative Council.

13. (1) The Governor in Council may by regulations make provision—

Regulations
about scheduled
substances

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

(2) Regulations made by virtue of subsection (1)(b) may, in particular, require—

- (a) the notification of the proposed exportation of substances specified in Table I in Schedule 1 to such countries as may be specified in the regulation;
- (b) the production, in such circumstances as may be so specified, of evidence that the required notification has been given.

(3) Regulations under this section may make different provision in relation to the substances specified in Table I and Table II in Schedule 1 respectively and in relation to different cases or circumstances.

(4) Regulations under this section shall be subject to annulment in pursuance of a resolution of the Legislative Council.

(5) Any person who fails to comply with any requirement imposed by the regulations or, in purported compliance with any

such requirement, furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular commits an offence and is liable on summary conviction, to imprisonment for two years or a fine of \$5,000 or both.

(6) No information obtained pursuant to the regulations shall be disclosed except for the purposes of criminal proceedings or of proceedings under the Control of Drugs (Trafficking) Ordinance relating to the confiscation of the proceeds of drug trafficking.

Concealing or
transferring
proceeds of drug
trafficking

14. (1) A person commits an offence if he—

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

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

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

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

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

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

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

(5) For the purposes of subsection (3) consideration given for any property is inadequate if its value is significantly less than the value of that property, and there shall not be treated as

consideration the provision for any person of services or goods which are of assistance to him in drug trafficking.

(6) A person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for two years or a fine of \$10,000 or both;
- (b) on conviction on indictment, to imprisonment for 14 years or a fine without limit or both.

15. (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of the order or at a time specified by the court), that person shall be liable to pay interest on that sum for the period for which it remains unpaid and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.

Interest on sums unpaid under confiscation orders

(2) The Supreme court may, on the application of the Attorney General, increase the term of imprisonment or detention fixed in respect of the confiscation order that the court has directed to be served in default of payment of the amount ordered to be paid.

(3) The rate of interest under subsection (1) shall be that for the time being applying to a civil judgement debt under the Civil Procedure Ordinance.

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16. Anything which would constitute a drug trafficking offence if done on land in any part of the Islands shall constitute that offence if done on an Islands ship.

Offences on local ships

17. (1) This section applies to an Islands ship, a ship registered in a Dependent Territory of the United Kingdom, a ship registered in a state which is a party to the Vienna Convention (a "Convention state") and a ship not registered in any country or territory. (*Amended by Ord. 12 of 1995*)

Ships used for illicit traffic

(2) A person commits an offence if on a ship to which this section applies, wherever it may be, he—

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

knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to section 4(1) of the Control of Drugs Ordinance or the law of any state or a Dependent Territory of the United Kingdom, other than the

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Islands. (*Amended by Ord. 12 of 1995*)

(3) A certificate purporting to be issued by or on behalf of the Government of any state or a Dependent Territory of the United Kingdom to the effect that the importation or export of a controlled drug is prohibited by the law of that state or a Dependent Territory of the United Kingdom shall be evidence of the matters stated. (*Amended by Ord. 12 of 1995*)

(4) A person who commits an offence under this section is liable—

(a) in a case where the controlled drug is a Class A drug—

(i) on summary conviction, to imprisonment for five years or a fine of \$10,000 or both;

(ii) on conviction on indictment, to imprisonment for life or a fine without limit or both;

(b) in a case where the controlled drug is a Class B drug—

(i) on summary conviction, to imprisonment for three years or a fine of \$5,000 or both;

(ii) on conviction on indictment, to imprisonment for 14 years or a fine without limit or both;

(c) in a case where the controlled drug is a Class C drug—

(i) on summary conviction, to imprisonment for 12 months or a fine of \$2,000 or both;

(ii) on conviction on indictment, to imprisonment for five years or a fine of \$10,000 or both.

(5) In this section “a controlled drug” and the references to controlled drug of a specified Class have the same meaning as in the Control of Drugs Ordinance.

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Enforcement
powers

18. (1) The power conferred on an enforcement officer by Schedule 3 shall be exercisable in relation to any ship to which section 16 or 17 applies for the purpose of detecting and the taking of appropriate action in respect of the offences mentioned in those sections.

(2) Those powers shall not be exercised outside the landward limits of the territorial sea of the Islands in relation to a ship registered in a Convention state except with the authority of the Governor, and he shall not give his authority unless that state has

in relation to that ship—

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

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

(4) The Governor may, either in his own motion or in response to a request from a Convention state, authorize a Convention state to exercise, in relation to an Islands ship, powers corresponding to those conferred on enforcement officers by Schedule 3 but subject to such conditions or limitations, if any, as he may impose.

(5) Subsection (4) is without prejudice to any agreement made, or which may be made, on behalf of the Islands whereby the Islands undertake not to object to the exercise by any state or other Dependent Territory of the United Kingdom in relation to an Islands ship of powers corresponding to those conferred by that Schedule. *(Amended by Ord. 12 of 1995)*

(6) The powers conferred by that Schedule shall not be exercised in the territorial sea of any state or other Dependent Territory of the United Kingdom other than that of the Islands without the authority of the Governor and he shall not give his authority unless that state or Dependent Territory of the United Kingdom has consented to the exercise of those powers. *(Amended by Ord. 12 of 1995)*

19. (1) Proceedings under this Part or Schedule 3 in respect of an offence on a ship may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the Islands.

Jurisdiction and
prosecutions

(2) No such proceedings shall be instituted except by or with the consent of the Attorney General.

(3) Without prejudice to subsection (2) no proceedings for an offence under section 17 alleged to have been committed outside the landward limits of the territorial sea of the Islands on a ship registered in a Convention state shall be instituted except in pursuance of the exercise with the authority of the Governor of the powers conferred by Schedule 3.

PART IV

DRUG TRAFFICKING MONEY IMPORTED OR EXPORTED IN CASH

Seizure and
detention

20. (1) A customs officer or a police officer may seize and, in accordance with this section, detain any cash which is being imported into or exported from the Islands if its amount is not less than \$10,000 and he has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking.

(2) Cash seized by virtue of this section shall not be detained for more than 48 hours unless its continued detention is authorized by an order made by the Magistrate; and no such order shall be made unless the Magistrate is satisfied—

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

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

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

(4) Any application for an order under subsections (2) or (3) shall be made by the Attorney General.

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

- (a) the Magistrate may direct its release if satisfied—
 - (i) on an application made by the person from whom it was seized or a person by or on

whose behalf it was being imported or exported, that there are no, or are no longer, any such grounds for its detention as are mentioned in subsection (2); or

(ii) on an application made by any other person, that detention of the cash is not for that or any other reason justified; and

(b) a customs officer or a police officer may release the cash if satisfied that its detention is no longer justified but shall first notify the Magistrate under whose order it is being detained.

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

(a) an application for its forfeiture is made under section 21; or

(b) proceedings are instituted (whether in the Islands or elsewhere) against any person for an offence with which the cash is connected;

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

21. (1) The Magistrate may order the forfeiture of any cash which has been seized under section 20 if satisfied, on an application made while the cash is detained under that section, that the cash directly or indirectly represents any person's proceeds of, or is intended by any person for use in drug trafficking.

Forfeiture

(2) Any application under this section to the Magistrate shall be made by the Attorney General.

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

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

Interest

23. (1) An order under section 20(2) shall provide for notice to be given to persons affected by the order.

Procedure

(2) Provisions may be made by rules of court with respect to applications to the Magistrate under this Part for the giving of

notice of such applications to persons affected, for the joinder of such persons as parties and generally with respect to the procedure under this Part before the court.

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

PART V

GENERAL

Expenses and
receipts

24. (1) Any expenses incurred by the Governor under this Ordinance shall be defrayed out of money provided by the Legislative Council.

(2) Any money representing cash forfeited under Part IV or accrued interest thereon shall be paid into the Consolidated Fund.

SCHEDULE 1

SUBSTANCES USEFUL FOR MANUFACTURING CONTROLLED DRUGS

(Sections 12 and 13)

TABLE I

EPHEDRINE
ERGOMETRINE
ERGOTAMINE
LYSERGIC ACID
1-PHENYL-2-PROPANONE
PSEUDOEPHEDRINE

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

TABLE II

ACETIC ANHYDRIDE
ACETONE
ANTHRANILIC ACID
ETHYL ETHER
PHENYLACETIC ACID
PIPERIDINE

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

SCHEDULE 2

TURKS AND CAICOS ISLANDS EVIDENCE FOR USE OVERSEAS: PROCEEDINGS OF MAGISTRATE'S COURT

1. The court shall have the like powers for securing the attendance of a witness for the purpose of the proceedings as it has for the purpose of other proceedings before the court. Securing attendance of witnesses
2. The court may in the proceedings take evidence on oath. Power to administer oaths
3. (1) A person shall not be compelled to give in the proceedings any evidence which he could not be compelled to give—
 - (a) in criminal proceedings in the Islands; or
 - (b) subject to subparagraph (2), in criminal proceedings in the country or territory from which the request for evidence has come.

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

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

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

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

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

Transmission of
evidence

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

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

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

Costs

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

SCHEDULE 3

ENFORCEMENT POWERS IN RESPECT OF SHIPS

(Section 18)

Preliminary

1. (1) In this Schedule “an enforcement officer” means—

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

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

Power to Stop,
Board, Divert
and Detain

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

(2) Where an enforcement officer is exercising his powers with the authority of the Governor given under section 18(2) of this Ordinance the officer may require the ship to be taken to a port in the Convention state in question or, if that state has so requested, in any other country or territory willing to receive it.

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

(4) If an enforcement officer detains a vessel he shall serve on the master a notice in writing stating that it is to be detained until the notice is

withdrawn by the service on him of a further notice in writing signed by an enforcement officer.

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

Power to Search
and Obtain
Information

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

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

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

4. If an enforcement officer has reasonable grounds to suspect that an offence mentioned in sections 19 or 20 of this Ordinance has been committed on a ship to which that section applies he may—

Powers in
respect of
suspected
offence

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

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

Assistants

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

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

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

Use of
Reasonable
Force

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

Evidence of
Authority

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

Protection of
Officers

Offences

9. (1) A person commits an offence if he—

- (a) intentionally obstructs an enforcement officer in the performance of any of his functions under this Schedule;
- (b) fails without reasonable excuse to comply with a requirement made by an enforcement officer in the performance of those functions; or
- (c) in purporting to give information required by an officer for the performance of those functions—
 - (i) makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular; or
 - (ii) intentionally fails to disclose any material particular.

(2) A person who commits an offence under this paragraph is liable on summary conviction to a fine of \$10,000.

**CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION)
(ENFORCEMENT OF OVERSEAS FORFEITURE ORDERS) ORDER
– SECTION 10**

(Legal Notice No. 24 of 1997)

[1 November 1997] Commencement

1. This Order may be cited as the Criminal Justice (International Co-operation) (Enforcement of Overseas Forfeiture Orders) Order.

Short title

2. (1) In this Order—

Interpretation

“appropriate authority of a designated country” means—

- (a) the authority specified opposite that country in Schedule 2; or
- (b) where no authority is so specified, the authority appearing to the court to be the appropriate authority for the purposes of this Order;

“a court of a designated country” includes a court of any state or territory of a designated country;

“designated country” means a country or territory designated under section 4;

“drug trafficking offence” means any offence corresponding to or similar to—

- (a) an offence under sections 5(2) or 6(3) of the Control of Drugs Ordinance (production, supply and possession for supply of controlled drugs);
- (b) an offence under section 13 of that Ordinance (assisting in or inducing commission outside the Islands of an offence punishable under a corresponding law);
- (c) an offence under—
 - (i) section 33 of the Customs Ordinance (improper importation);
 - (ii) section 46 of the Customs Ordinance (exportation of prohibited or restricted goods);
 - (iii) section 130 of the Customs Ordinance (fraudulent evasion),

in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 4 of the Control of Drugs Ordinance;

- (d) an offence under section 22 of the Control of Drugs (Trafficking) Ordinance (assisting another to retain the benefit of drug trafficking);
- (e) an offence under section 12 of the Ordinance (manufacture and supply of scheduled substances);
- (f) an offence under section 14 of the Ordinance (concealing or transferring proceeds of drug trafficking);
- (g) an offence under section 17 of the Ordinance (ships used for illicit traffic);
- (h) an offence of conspiracy to commit any of the offences in paragraphs (a) to (g);
- (i) an offence under section 45 of the Interpretation Ordinance of attempting to commit any of those offences;
- (j) an offence of inciting another to commit any of those offences; and
- (k) aiding, abetting, counselling or procuring the commission of any of those offences;

“the Ordinance” means the Criminal Justice (International Co-operation) Ordinance;

“police officer” includes a customs officer employed in the Customs Department;

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

(2) This Order applies to property whether it is situated in the Islands or elsewhere.

(3) The following provisions shall have effect for the interpretation of this Order.

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

(5) Proceedings are instituted in a designated country when—

- (a) under the law of the designated country concerned one of the steps specified in relation to that country in the right-hand column of Schedule 1 has been taken there in respect of an alleged drug trafficking offence; or
- (b) an application has been made to a court in a designated country for an external forfeiture order;

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

(6) Proceedings are concluded—

- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a forfeiture order being made in the proceedings;
- (b) on the satisfaction of a forfeiture order made in the proceedings (whether by the recovery of all property liable to be recovered, or otherwise).

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

3. (1) An order made by a court in a designated country for the forfeiture and destruction or forfeiture and other disposal, of anything in respect of which a drug trafficking offence has been committed or which was used in connection with the commission of such an offence is referred to in this Order as an “external forfeiture order”.

External
forfeiture orders

(2) In subsection (1), the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

(3) A person against whom an external forfeiture order has been made, or a person against whom proceedings which may result in an external forfeiture order being made have been, or are to be, instituted in a court in a designated country, is referred to as “the defendant”.

4. Each of the countries and territories specified in Schedule 2 is hereby designated for the purposes of section 10 of the Ordinance.

Designation of
countries and
territories

5. (1) The Supreme Court may in accordance with this section by an order (referred to in this Order as a “restraint order”) prohibit any person, subject to such conditions and exceptions as may be specified in the Order, from dealing with any property liable to forfeiture, that is to say, any property in respect of which an external forfeiture order has been made or in respect of which such an order could be made in the proceedings referred to in subsection (2) or (3).

Restraint Orders

(2) A restraint order may be made where—

- (a) proceedings have been instituted against the defendant in a designated country;
- (b) the proceedings have not been concluded; and
- (c) either an external forfeiture order has been made in the proceedings or it appears to the Supreme Court that there are reasonable grounds for believing that such an order may be made in them.

(3) A restraint order may also be made where—

- (a) it appears to the Supreme Court that proceedings are to be instituted against the defendant in a designated country; and

(b) it appears to the Court that there are reasonable grounds for believing that an external forfeiture order may be made in them.

(4) Where the Court has made an order under subsection (1) by virtue of subsection (3), the Court shall discharge the order if the proposed proceedings are instituted within such time as the Court considers reasonable.

(5) A restraint order—

(a) may be made only on an application by or on behalf of the government of a designated country or, in a case where an external forfeiture order has been registered under section 10, by the Attorney General;

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

(c) notwithstanding anything in rules of court, may provide for service on, or the provision of notice to, persons affected by the order in such manner as the Supreme Court may direct.

(6) A restraint order—

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

(b) shall be discharged when the proceedings in relation to which the order was made are concluded.

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

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

(a) to take possession of any property specified in the restraint order; and

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

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

(9) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression) removing the property from the Islands.

(10) Where a restraint order has been made, a police officer may for the purpose of preventing any property specified in the restraint order being removed from the Islands, seize the property.

(11) Property seized under subsection (10) shall be dealt with in accordance with the directions of the Court which made the order.

6. An application under section 5(5) shall be supported by an affidavit which shall—

Applications for
restraint orders

- (a) state, where applicable, the grounds for believing that an external forfeiture order may be made in the proceedings instituted or to be instituted in the designated country concerned;
- (b) to the best of the deponent's ability, give particulars of the property in respect of which the order is sought and specify the person or persons holding such property;
- (c) in a case to which section 5(3) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned;

and the affidavit may, unless the Court otherwise directs, contain statements of information or belief with the sources and grounds thereof.

7. (1) Where an external forfeiture order has been registered in a magistrate's court under section 10, the Supreme Court may, on the application of the Attorney General, order the forfeiture of the property specified in the external forfeiture order.

Disposal of
forfeited
property

(2) Property forfeited under subsection (1) shall be disposed of in accordance with the court's directions.

(3) The court shall not in respect of any property exercise the powers conferred by subsections (1) and (2) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

8. (1) This section applies to the power conferred on the Supreme Court by section 5 or on a receiver appointed under section 5.

Exercise of
powers by
Supreme Court
or receiver

(2) The powers shall be exercised with a view to recovering property which is liable to be recovered under an external forfeiture order registered in the Magistrate's Court under section 10 or, as the case may be, with a view to recovering property which may become liable to be recovered under any external forfeiture order which may be made in the defendant's case.

9. (1) Where a receiver appointed under section 5 takes any action—

Receivers:
Supplementary
provisions

- (a) in relation to property which is not liable to recovery

under an external forfeiture order, being action which he would be entitled to take if it were such property;

- (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall be paid by the person on whose application the receiver was appointed.

Registration of
external
forfeiture orders

10. (1) On an application made by or on behalf of the government of a designated country, a Magistrate's Court may register an external forfeiture order made there if -

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

(2) In subsection (1) "appeal" includes—

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

(3) The Magistrate's Court shall cancel the registration of an external forfeiture order if it appears to the court that the order has been satisfied by the forfeiture of the property liable to be recovered under the external forfeiture order or by any other means.

Proof of orders
and judgment of
court in a
designated
country

11. (1) For the purposes of this Order—

- (a) any order made or judgment given by a court in a designated country purporting to bear the seal of that court, or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person; and
- (b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court in a designated country shall be deemed without further proof to be a true copy.

(2) A document purporting to be a copy of any order made or judgment given by a court in a designated country is duly authenticated for the purposes of subsection (1)(b) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of the designated country.

12. (1) For the purposes of this Order, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating—

- (a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, there;
- (b) that an external forfeiture order is in force and is not subject to appeal;
- (c) that property recoverable in the designated country under an external forfeiture order remains unrecovered there;
- (d) that any person has been notified of any proceedings in accordance with the law of the designated country; or
- (e) that an order (however described) made by a court of the designated country for the forfeiture and destruction or the forfeiture and other disposal of anything in respect of which a drug trafficking offence has been committed or which was used in connection with the commission of such an offence,

Evidence in relation to proceedings and orders in a designated country

shall, in any proceedings in the Supreme Court or, as the case may be, a magistrate's court, be admissible as evidence of the facts so stated.

(2) In any such proceedings a statement contained in a document, duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court in a designated country, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of subsection (2) if it purports to be certified by any person in his capacity as judge, magistrate or officer of the court in the designated country, or by or on behalf of the appropriate authority of the designated country, to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document containing or summarising the evidence or a true copy of that document.

(4) Nothing in this section shall prejudice the admission of any evidence, whether contained in any document or otherwise, which is admissible apart from this section.

13. Where in relation to any designated country no authority is specified in Schedule 2, a certificate made by the Governor to the effect that the authority specified therein is the appropriate authority for the purposes of

Certificate of appropriate authority

this Order shall be sufficient evidence of that fact.

Representation
of government of
a designated
country

14. A request for assistance sent to the Governor by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for the Attorney General to act on its behalf in any proceedings in the Supreme Court or a magistrate's court under section 10, or any other provision of this Order.

SCHEDULE 1

Section 2(5)

INSTITUTION OF PROCEEDINGS

Designated country	Point at which proceedings are instituted
Anguilla	(a) when a summons or warrant is issued in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant; (c) when a bill of indictment is preferred.
Argentina	when a judge has ordered that a person be detained for the purpose of testifying in connection with the commission of an offence.
Australia	(a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence after having been taken into custody without a warrant; (c) when a bill of indictment is preferred.
The Bahamas	(a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence after having been taken into custody without a warrant; (c) when a bill of indictment is preferred.
Bahrain	when a bill of indictment is lodged in court against any person for an offence.

Barbados	<p>(a) when an information has been laid before a magistrate;</p> <p>(b) when a person is charged with an offence;</p> <p>(c) when a bill of indictment is preferred.</p>
Bermuda	when an information is laid charging a person with an offence.
British Virgin Islands	<p>(a) when a summons or warrant is issued in respect of an offence;</p> <p>(b) when a person is charged with an offence after being taken into custody without a warrant;</p> <p>(c) when an indictment is preferred.</p>
The Cayman Islands	<p>(a) when a charge has been signed under subsection (3) or (4) of section 13 of the Criminal Procedure Code in respect of the offences;</p> <p>(b) when a person is charged with the offence after being arrested without a warrant under subsection (5) of that section.</p>
Ecuador	when a writ is issued by a judge initiating criminal proceedings.
Germany	when a person is notified that he is accused of an offence and will be brought before a court.
Gibraltar	when a person is charged with an offence, whether by the laying of an information or otherwise.
Guernsey	when a person is charged with an offence.
Guyana	when a charge has been laid against a person for an offence.
Hong Kong	<p>(a) when a magistrate issues a warrant or summons;</p> <p>(b) when a person is charged with an offence;</p> <p>(c) when an indictment is preferred.</p>

India

- (a) when information relating to the commission of any crime is received by any law enforcement agency empowered to investigate such crime under the law for the time being in force and laid before a court of law;
- (b) when any allegation is made orally or in writing to a court of law that a person has committed an offence;
- (c) when a person is charged with an offence;
- (d) when any investigation or inquiry into the commission of any offence is directed by a court of law.

Isle of Man

- (a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in relation to the offence is made to him;
- (b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him;
- (c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody;
- (d) where an information is preferred by the Attorney General in a case where there have been no committal proceedings, when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917.

Italy

- (a) when a person is notified, in accordance with article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in progress;

	(b) when a proposal for the application of a preventative measure (“misura di prevenzione”) is laid before a court.
Malaysia	when a person is charged with an offence.
Montserrat	(a) when a judge issues a summons or warrant in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant.
Netherlands	(a) when a pre-trial financial investigation has been initiated; (b) when the provisional measure has been ordered by an investigating magistrate; (c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted; (d) when a public prosecutor has laid an indictment.
Panama	when a person has been charged with an offence.
Saudi Arabia	when an information has been laid before a judicial authority
South Africa	(a) when a summons is issued in respect of an offence; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred.
Spain	when by virtue of a judicial resolution it is decided to proceed against a person for an offence.
Sweden	when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion.

Switzerland	when proceedings for an offence are brought before an examining magistrate.
United Mexican States	when criminal proceedings are instituted by a judicial authority.
United States of America	when an indictment, information or complaint has been filed against a person in respect of an offence.
Uruguay	when criminal proceedings are instituted by a judicial authority.

SCHEDULE 2

Section 4

<i>Designated country</i>	<i>Appropriate authority</i>
Afghanistan	
Algeria	
Anguilla	the Attorney General of Anguilla
Antigua and Barbuda	
Argentina	
Armenia	
Australia	
Azerbaijan	
The Bahamas	
Bahrain	
Bangladesh	
Barbados	
Belarus	
Belgium	
Belize	
Bermuda	the Attorney General of Bermuda
Bhutan	
Bolivia	
Bosnia and Herzegovina	
Brazil	
British Virgin Islands	the Attorney General of the British Virgin Islands
Brunei Darussalam	
Bulgaria	
Burkina Faso	
Burundi	
Cameroon	
Canada	
Cape Verde	
The Cayman Islands	the Attorney General of the Cayman Islands
Chad	
Chile	
China	
Colombia	
Costa Rica	
Croatia	
Cuba	
Cyprus	
The Czech Republic	
Denmark	
Dominica	
Dominican Republic	
Ecuador	

Egypt	
El Salvador	
Ethiopia	
Fiji	
Finland	
France	
Gambia	
Germany	
Ghana	
Gibraltar	the Attorney General of Gibraltar
Greece	
Grenada	
Guatemala	
Guinea-Bissau	
Guernsey	Her Majesty's Attorney General for the Bailiwick of Guernsey
Guyana	
Haiti	
Honduras	
Hong Kong	the Attorney General of Hong Kong
India	
Isle of Man	Her Majesty's Attorney General for the Isle of Man
Italy	
Ivory Coast	
Jamaica	
Japan	
Jordan	
Kenya	
Kyrgyzstan	
Latvia	
Lesotho	
Luxembourg	
Macedonia	
Madagascar	
Malawi	
Malaysia	
Mali	
Malta	
Mauritania	
Moldova	
Monaco	
Montserrat	the Attorney General of Montserrat
Myanmar	
Morocco	
Nepal	
Netherlands	
Nicaragua	
Niger	
Nigeria	
Norway	

Oman
Pakistan
Panama
Paraguay
Peru
Poland
Portugal
Qatar
Romania
The Russian Federation
St Kitts and Nevis
St Lucia
St Vincent and the Grenadines
Sao Tome and Principe
Saudi Arabia
Senegal
Seychelles
Sierra Leone
Slovakia
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Suriname
Swaziland
Sweden
Switzerland
Syria
Tajikistan
Togo
Tunisia
Uganda
Ukraine
United Arab Emirates
United Kingdom of Great Britain
and Northern Ireland
United Mexican States
United Republic of Tanzania
United States of America
Uruguay
Uzbekistan
Venezuela
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The Federal Republic of
Yugoslavia, Serbia and
Montenegro
Zambia
Zimbabwe

**CRIMINAL JUSTICE (DETENTION AND
FORFEITURE OF DRUG TRAFFICKING CASH) RULES**

ARRANGEMENT OF RULES

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Form E: Direction for Release of Detained Cash

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**CRIMINAL JUSTICE (DETENTION AND FORFEITURE OF DRUG
TRAFFICKING CASH) RULES – SECTION 23**

Legal Notice 6 of 1994

Made under section 159(1) of the Magistrate's Court Ordinance.

[4 March 1994] Commencement

1. (1) These Rules may be cited as the Criminal Justice (Detention and Forfeiture of Drug Trafficking Cash) Rules.

Short title

(2) In these Rules—

(a) “the Ordinance” means the Criminal Justice (International Co-operation) Ordinance; and

(b) any reference to a form is a reference to a form set out in the Schedule to these Rules or a form to the like effect.

2. (1) An application for an order under section 20(2) of the Ordinance for continued detention of cash seized under section 20(1) thereof shall be made in writing in Form A to the Magistrate.

Application for continued detention of seized cash

(2) A copy of the written application under paragraph (1) shall be given by the applicant to the person from whom the cash was seized.

3. (1) The Magistrate considering the application under section 20(2) of the Ordinance shall require the matters contained in it to be sworn by the applicant under oath, may require the applicant to answer any questions under oath, and may require any statement in response by the person from whom the cash was seized to be made under oath.

Hearing of application for continued detention of seized cash

(2) The Magistrate shall record or cause to be recorded in writing the substance of any statements made under oath which are not already recorded in the written application.

4. In rules 2, 3 and 8 of these Rules, references to the person from whom the cash was seized include references to the sender and the intended recipient, where known, of a letter, parcel, container or other means of unattended dispatch, but the Magistrate shall not decline to hear an application in such a case solely on the ground that it has not been proved that the sender or intended recipient has received a copy of the written application under rule 2(2) of these Rules.

Unattended parcels etc

5. (1) An order made by the Magistrate under section 20(2) of the Ordinance shall be in Form B.

Order for continued detention of seized cash

(2) Notice of any order mentioned in paragraph (1), shall be given

forthwith by the applicant to any person appearing to him to be affected by it and such notice shall be in the form set out in Form B and shall be accompanied by a copy of the said order.

Notice of order
for continued
detention of
seized cash

6. Where, in accordance with an order made under section 20(2) of the Ordinance, the applicant gives notice to any person affected by the order, the applicant shall notify the clerk of the Magistrate's Court to which any application under section 20(3) or (5) would, in accordance with rules 7(1) and (2) of these Rules, be made of the names and addresses of the persons so notified.

Subsequent
applications

7. (1) An application under section 20(3) of the Ordinance for further detention of cash shall be in Form C and shall be sent to the Clerk of the Magistrate's Court.

(2) An application under section 20(5) of the Ordinance for the release of detained cash shall be in Form D and shall be sent to the Clerk of the Magistrate's Court.

(3) The Clerk of the Magistrate's Court who receives an application in accordance with paragraph (1) or (2) shall fix a date for the hearing of the application, shall notify the applicant thereof and shall notify any persons to whom notice of the order for continued detention has been given of the application and of the date fixed for the hearing.

(4) If the Magistrate is satisfied that an order for further detention of cash should be made under section 20(3) of the Ordinance he shall endorse the order for continued detention accordingly, and a copy of the order so endorsed shall be given by the Clerk of the Court to any person to whom notice of the order for continued detention has been given.

Direction for
release of cash

8. A direction under section 20(5)(a) of the Ordinance for the release of detained cash shall be in Form E, and shall provide for the release of the cash within 7 days of the date of the making of the direction or such longer period as with the agreement of the person from whom the cash was seized may be specified in the notice.

Forfeiture

9. (1) An application for forfeiture of cash under section 21 of the Ordinance shall be in Form F and shall be addressed to the Clerk of the Magistrate's Court referred to in rule 7(1) of these Rules.

(2) The Clerk of the Magistrate's Court who receives such application shall fix a date for the hearing, shall notify the applicant thereof, and shall notify any persons to whom notice of an order for continued detention has been given of the application and of the date fixed for the hearing.

Joinder

10. At any hearing under section 20(3) or (5) of the Ordinance, or under section 21 thereof, or on the application of any person affected by an order for continued or further detention, the Magistrate may, if he thinks fit, order that such person be joined as a party to the proceedings and, if he so

orders, otherwise than at such a hearing, the Clerk of the Magistrate's Court shall give notice to the other parties.

11. Any notice or copy of any order required to be given to any person under the foregoing provisions of the Rules may be given by post to his last known address.

Notice

12. (1) At the hearing of an application under section 20(3) or (5) of the Ordinance, or under section 21 thereof, any person to whom notice of the application has been given may attend and be heard on the question whether a further order should be made, an existing order should be discharged, or a forfeiture order should be made, as the case may be, but the fact that any such person does not attend shall not prevent the court from hearing the application.

Procedure at
hearings

(2) Subject to the foregoing provisions of these Rules, proceedings on such an application shall be regulated in the same manner as proceedings on complaint, and accordingly for the purposes of this rule the application shall be deemed to be a complaint, the applicant to be a complainant, the respondents to be defendants, and any notice given by the Clerk of the Magistrate's Court under rule 7(3) or 9(2) of these Rules to be a summons; but nothing in this rule shall be construed as enabling a warrant of arrest to be issued for failure to appear in answer to any such notice.

SCHEDULE

Rule 1(2)(b)

FORMS

FORM A

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ORDINANCE

APPLICATION FOR CONTINUED DETENTION OF SEIZED CASH

Date.....

Person from whom cash seized *

Address *

Amount seized (**estimated)

Date of seizure

Time of seizure

Place of seizure

(Name of applicant) of

(address and official position of applicant)

.....

applies for an order under section 20(2) of the Criminal Justice (International Co-operation) Ordinance authorising the continued detention of the above-mentioned cash and will state upon oath that:

(a) there are reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking, namely (state grounds)

.....

.....

.....

.....

and

(b) the continued detention of the cash for a period of is justified while—

(i) its origin or derivation is further investigated.**

(ii) consideration is given to the institution of criminal proceedings against any person for an offence with which the cash is connected.**

Note:

A copy of this application must be given to the person from whom the cash was seized. The Magistrate who considers this application will require the facts alleged in it to be sworn under oath and may require the applicant to answer any questions under oath. The Magistrate may require any statement in response by the person from whom the cash was seized to be given under oath.

* *In the case of a letter, parcel, container or other means of unattended dispatch, insert names, if known, of sender and intended recipient.*

** *Delete as appropriate.*

FORM B

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ORDINANCE

ORDER FOR CONTINUED DETENTION OF SEIZED CASH

Date.....

Person from whom cash seized *

Address *

Amount seized (estimated)

Date of seizure

Time of seizure

Place of seizure

On the application of (name of applicant), after hearing oral evidence

from the applicant/representations from (name), being the person from whom the cash was seized.

Decision. It is ordered that the above-mentioned cash be further detained for a period of (state period up to a maximum of three months) from the date of this order or until its release may be sooner directed.

Notice of this order must be given forthwith by the applicant to any person appearing to him to be affected by it. Such notice shall be in the form set out overleaf, and shall be accompanied by a copy of this order.

MAGISTRATE

* *In the case of a letter, parcel, container or other means of unattended dispatch, insert names, if known, of sender and intended recipient.*

**Notice to Persons Affected by Order
for Continued Detention of Seized Cash**

Cash in the sum of (amount) was seized on
..... (date and time) at (place)
from

(person from whom seized), and on (date of order) an
order was made under section 20(2) of the Criminal Justice (International
Co-operation) Ordinance authorising the continued detention of cash for a
period of (state period). A copy of the order is enclosed
with this notice.

You are being given notice of the order because it appears that you may be
affected by it. You may be able to apply for the release of the cash under
section 20(5) of the Criminal Justice (International Co-operation) Ordinance.

At the end of the above-mentioned period of detention an application may
be made for its further detention. You will be notified by the court if such
an application is made, or if any other person makes an application to the
court for release of the cash.

Signed

Dated

FORM C

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ORDINANCE

APPLICATION FOR FURTHER DETENTION OF SEIZED CASH

Date

Date of order for continued detention of seized cash

(Name of applicant)

(address and official position of applicant) applies for an order under
section 20(3) of the Criminal Justice (International Co-operation) Ordinance
authorising the further detention of cash in the sum of
..... (amount).

To: The Clerk of the Magistrate's Court

..... Magistrate's Court

FORM D

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ORDINANCE

APPLICATION FOR RELEASE OF DETAINED CASH

Date

Date of order for continued detention of seized cash

(Name of applicant)

(Address) applies for the release of the detained cash under section 20(5) of the Criminal Justice (International Co-operation) Ordinance on the grounds that—

(a) there are no, or no longer any reasonable grounds for suspecting that the cash directly or indirectly represents any person's proceeds of, or is intended for use in, drug trafficking and that continued detention of cash is justified while its origin or derivation is further investigated or consideration is given to the institution (whether within the Islands or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected; or

(b) that detention of cash is not for that or any other reason justified.*

To: The Clerk of the Magistrate's Court
..... Magistrate's Court

Note: A copy of the application must be given to the Commissioner of Police and to the Collector of Customs.

* Delete as appropriate

FORM E

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ORDINANCE

DIRECTION FOR RELEASE OF DETAINED CASH

Date

On the application of (name of applicant)

of (address of applicant)

after hearing oral evidence from/representations from

Decision: It is directed that the sum of together with the interest accruing thereon in accordance with section 22 of the Criminal Justice (International Co-operation) Ordinance, be released to or to the

order of (name) on or before (date, not more than 7 days from date of order or such later date as with the agreement of the person from whom the cash has been seized may be specified).

MAGISTRATE

FORM F

CRIMINAL JUSTICE OF DRUGS (INTERNATIONAL CO-OPERATION) ORDINANCE

APPLICATION FOR FORFEITURE OF CASH UNDER SECTION 20

Date

(Name of applicant) of

(address and official position of applicant) applies for an order under section 21(1) of the Criminal Justice (International Co-operation) Ordinance for the forfeiture of cash in the sum of (amount) seized on (date and time) from (person from whom seized), together with any interest accruing thereon pursuant to section 22 of that Ordinance, on the grounds that the said cash

- (i) directly or indirectly represents any person's proceeds of drug trafficking, and/or
- (ii) is intended by any person for use in drug trafficking.

To: The Clerk of the Magistrate's Court
..... Magistrate's Court

* Delete as appropriate

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