
LAWS OF SAINT VINCENT AND THE GRENADINES
REVISED EDITION

**DRUG TRAFFICKING
OFFENCES ACT**

CHAPTER 173

**Act No.
45 of 1993**

Amended by
Act No. 24 of 1996

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CHAPTER 173**DRUG TRAFFICKING OFFENCES ACT**

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Enforcement Powers in Respect of Ships

CHAPTER 173

DRUG TRAFFICKING OFFENCES ACT

An Act to make provision for the recovery of the proceeds of illicit drug trafficking, and for matters connected therewith or incidental thereto.

Be it enacted by the Queen's Most Excellent Majesty, by and with the consent and advice of the House of Assembly of Saint Vincent and the Grenadines, and by the authority of the same as follows.

[Act No. 45 of 1993 amended by Act No. 24 of 1996.]

[Date of commencement: 19th July, 1993.]

1. Short title and commencement

This Act may be cited as the Drug Trafficking Offences Act, 1993, and shall come into force upon such day as the Governor-General may appoint by proclamation in the *Gazette*.

2. Interpretation

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

“**corresponding law**” has the meaning assigned thereto by section 3;

“**Court**” means the High Court;

“**drug trafficking**” means doing or being concerned in any of the following whether in Saint Vincent and the Grenadines or elsewhere—

- (a) producing or supplying a controlled drug where the production or supply contravenes section 6(1) of the Drugs (Prevention of Misuse) Act, or a corresponding law;
- (b) transporting or storing a controlled drug where possession of the drug contravenes section 7(1) of the Drugs (Prevention of Misuse) Act, or a corresponding law;
- (c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 5(1) of the Drugs (Prevention of Misuse) Act, or a corresponding law;

- (d) entering into or being otherwise concerned in an arrangement whereby—
- (i) the retention or control by or on behalf of another of the proceeds of drug trafficking by him is facilitated, or
 - (ii) the proceeds of drug trafficking by a person are used by another to secure that funds are placed at his disposal or are used for his benefit to acquire property by way of investment;

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“drug trafficking offence” means—

- (a) an offence under section 5, 6(2) or (3), or 7(2) (where subsection (4) applies) or 7(3) of the Drugs (Prevention of Misuse) Act, (Import, export, production, supply and possession for supply of controlled drug);
- (b) an offence under section 21 of the Drugs (Prevention of Misuse) Act, (assisting in or inducing commission outside of an offence punishable under a corresponding law);
- (c) an offence under section 21 of this Act;
- (d) a conspiracy to commit any of those offences in paragraphs (a) to (c);
- (e) an offence of attempting to commit any of those offences in paragraphs (a) to (c);
- (f) an offence of inciting another to commit any of those offences in paragraphs (a) to (c);
- (g) aiding, abetting, counselling or procuring the commission of any of those offences in paragraphs (a) to (c);

“interest”, in relation to property, includes right;

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

“this State” means Saint Vincent and the Grenadines;

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

(2) This Act is in *pari materia* with the Drugs (Prevention of Misuse) Act, and subject to the express provisions of this section and of sections 3, 4 and 5 of this Act, expressions used in this Act shall bear the same meaning as they do in that Act.

(3) This Act applies to property whether it is situated in this State or elsewhere.

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

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

- (6) The following provisions shall have effect for the interpretation of this Act—
- (a) property is held by any person if he holds any interest in it;
 - (b) references to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator;
 - (c) reference to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested;
 - (d) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property;
 - (e) proceedings for an offence are instituted in this State—
 - (i) when a summons or warrant is issued in respect of the offence,
 - (ii) when a person is charged with the offence after being taken into custody without a warrant,
 - (iii) when an indictment is preferred,and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times;
 - (f) proceedings for an offence are concluded—
 - (i) when (disregarding any power of a Court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings,
 - (ii) on the satisfaction of a confiscation order made in the proceedings whether by payment of the amount due under the order or by the defendant serving a term of imprisonment in default.

(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.

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

3. Meaning of “corresponding law”

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

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

4. Provisions as to profit

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

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

(2) Property is not realisable property if an order under section 28 of the Drugs (Prevention of Misuse) Act, is in force in respect of the property.

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(3) For the purposes of sections 7 and 8, the amount that might be realised at the time a confiscation order is made against the defendant is—

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

together with the total of the values at that time of all gifts caught by this Act.

(4) Subject to the following provisions of this section, for the purposes of this Act the value of property (other than cash) in relation to any person holding the property—

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

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

- (a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (6) applies, the value there mentioned,

whichever is the greater.

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

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

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

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

- (a) pay an amount due in respect of a fine, or other order of a Court, imposed or made on conviction of a offence, where the fine was imposed or order made before the confiscation order; or
- (b) pay any sum which, if the defendant had been adjudged bankrupt or was being wound up would be among the preferential debts.

(8) A gift (including a gift made before the coming into operation of this Act) is caught by this Act if—

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

(9) For the purposes of this Act—

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

5. Confiscation orders

(1) Where a person appears before the Court, having been remanded for sentence in respect of one or more drug trafficking offences of which he has been convicted either by the Court or by a magistrates Court and has not previously been sentenced or otherwise dealt with in respect of any of those convictions, the Court shall act in accordance with subsections (2), (4) and (5).

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

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

(4) If the Court determines that he has so benefited, it shall, before sentencing or otherwise dealing with him in respect of the offence, determine in accordance with section 9 the amount to be recovered by virtue of this section.

(5) The Court shall then, in respect of that offence—

- (a) order him to pay that amount;
- (b) take account of the order before—
 - (i) imposing any fine on him,
 - (ii) making any order involving any payment by him, or
 - (iii) making any order under section 28 of the Drugs (Prevention of Misuse) Act; and
- (c) subject to paragraph (b), leave the order out of account in determining the appropriate sentence or other manner of dealing with the person against whom proceedings have been instituted for the drug trafficking offence.

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

(7) Where the Court makes a confiscation order, the order shall have effect as if that amount was a fine and the amount may be recovered in the same way as a fine may be recovered.

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

Where the amount does not exceed \$10,000	6 months
Where the amount exceeds \$10,000 but does not exceed \$20,000	12 months
Where the amount exceeds \$20,000 but does not exceed \$50,000	18 months
Where the amount exceeds \$50,000 but does not exceed \$100,000	2 years
Where the amount exceeds \$100,000 but does not exceed \$200,000 ...	3 years
Where the amount exceeds \$200,000 but does not exceed \$500,000 ...	5 years
Where the amount exceeds \$500,000	8 years

(9) Where—

- (a) a warrant of committal is issued for a default in payment of an amount ordered to be paid under section 5 in respect of an offence or offences; and
- (b) at the time the warrant is issued, the defendant is liable to serve a custodial sentence in respect of the offences,

the term of imprisonment to be served in default of payment of the amount shall not begin to run until after the expiry of the term mentioned in subsection (8).

(10) The reference in subsection (9) to the custodial sentence which the defendant is liable to serve in respect of the offence or offences is a reference to the term of imprisonment which he is liable to serve in respect of the offence or offences and consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

6. Variation of confiscation orders

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

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

- (a) in the case of realisable property held by a person against whom an absolute order bankruptcy has been made, the Court shall take into account the extent to which any property held by him may be distributed among creditors; and
- (b) the Court may disregard any inadequacy in the realisable property which appears to the Court to be attributable wholly or partly to anything done by the person against whom the proceedings have been instituted for the purposes of a preserving any property held by a person to whom he had directly or indirectly made a gift caught by this Act, as defined in section 20(1), from any risk of realisation under section 14.

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

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

- (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and
- (b) substitute for the term of imprisonment fixed in respect of the amount to be recovered under the order a shorter term in respect of the lesser amount.

(5) An application under subsection (1) or (3) may be made in chambers, and notice thereof shall be given to the Director of Public Prosecutions.

7. Assessing the proceeds of drug trafficking

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

(2) Those assumptions are—

- (a) that any property appearing to the court—
 - (i) to have been held by him at any time since his conviction, or
 - (ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him whether before or after the date of commencement of this Act,

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

- (b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him;
- (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interest in it.

(3) For the purpose of assessing the value of the proceeds of drug trafficking of a person against whom proceedings have been instituted for a drug trafficking offence in a case where a confiscation order has previously been made against him, the court shall leave out of account any of his proceeds of drug trafficking that are shown to the court to have been taken into account in determining the amount to be recovered under that order.

(4) For the purposes of this section—

- (a) any payments or other rewards received by a person at any time, whether before or after the date of commencement of this Act, in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking;
- (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

8. Statements relating to drug trafficking

(1) Where—

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

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

(2) Where—

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

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

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

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

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

(4) Where—

- (a) there is tendered to the Court by the person against whom the proceedings have been instituted a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
- (b) the prosecution accepts to any extent any allegation in the statement,

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

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

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

9. Amount to be recovered under confiscation order

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

(2) If the Court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made, whether by an acceptance under section 8 or otherwise, the Court may issue a certificate giving its opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3).

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

(4) For the purposes of this section—

- (a) any payments or other rewards received by a person at any time, whether before or after the date of commencement of this Act, in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking;
- (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

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

- (a) the total of the values at that time of all realisable property, less

(b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations, together with the total of the values at that time of all gifts caught by this Act, as defined in section 20(1).

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

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

10. Increase in realisable property

(1) This section has effect where by virtue of section 9(3) (insufficient realisable property) the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of drug trafficking.

(2) If, on an application made in accordance with subsection (3), the Court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it is greater than was thought when the order was made or has subsequently increased) the Court must issue a certificate to that effect, giving the Court's reasons.

(3) An application under subsection (2) may be made either by the Director of Public Prosecutions or by a receiver appointed under section 13(5) in relation to the realisable property of the person in question.

(4) If a certificate has been issued under subsection (2), the Director of Public Prosecutions may apply to the Court for an increase in the amount to be recovered under the confiscation order.

(5) On an application under subsection (4) the Court may—

- (a) substitute for the amount to be received under the confiscation order such amount (not exceeding the amount assessed as the value referred to in subsection (1)) as appears to the Court to be appropriate having regard to the amount now shown to be realisable; and
- (b) increase any term of imprisonment that the Court has directed to be served in default of payment of the amount ordered to be paid under the confiscation order.

11. Increase on sums unpaid under confiscation orders

(1) If a sum required to be paid by a person under a confiscation order is not paid when it is required to be paid, that person is to pay interest on that sum for the period for which it remains unpaid and the amount of the interest is for the purposes of enforcement to be treated as part of the amount to be recovered from him under the confiscation order.

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

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

12. Cases in which restraint orders may be made

(1) The powers conferred on the Court by section 13(1) are exercisable where—

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

(2) Those powers are also exercisable where the Court is satisfied that—

- (a) whether by the laying of an information or a charge or otherwise, a person stands charged with a drug trafficking offence; and
- (b) there is reasonable cause to believe that he has benefited from drug trafficking.

(3) Where the Court has made an order under section 13(1) by virtue of subsection (2) of this section, the Court shall discharge the order if the proposed proceedings are not instituted within such time as it considers reasonable.

13. Procedure on restraint orders

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

(2) A restraint order may apply—

- (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
- (b) to realisable property held by a specified person, being property transferred to him after the making of the order.

(3) A restraint order—

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

(4) A restraint order—

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

- (b) shall be discharged when proceedings for the offences are concluded, which latter word, for the purposes of this paragraph, has the same meaning as applies to section 12(5).

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

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

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

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

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

(7) Where the Court has made a restraint order, a police officer may seize any realisable property for the purposes of preventing it being removed from Saint Vincent and the Grenadines.

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

(9) For the purposes of this section, at any time when the powers conferred on the Court by section 12 are exercisable before proceedings have been instituted, a reference to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in section 12(2)(a) for a drug trafficking offence.

14. Realisation of property

(1) Where—

- (a) in proceedings instituted (which latter word, for the purposes of this paragraph, has the same meaning as applies to subsection (13)(a)) in this State for a drug trafficking offence, a confiscation order is made;
 (b) the order is not subject to appeal; and
 (c) the proceedings have not been concluded, (which latter word, for the purposes of this paragraph, has the same meaning as applies to section 12(5)),

the Court may, on an application by or on behalf of the Director of Public Prosecutions, exercise the powers conferred by subsections (2) to (6) of this section.

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

(3) The Court may empower a receiver appointed under subsection (2) of this section or under section 13(5), in relation to any realisable property, to take possession of that property to such conditions or exceptions as may be specified by the Court.

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

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

(6) The Court may order any person holding an interest in realisable property to make such payments to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act, as defined in section 20(1), as it may direct and it may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

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

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

15. Application of proceeds of realisation and other sums

(1) Subject to subsection (2), the following sums in the hands of a receiver appointed under section 13(5) or under section 14(2), that is to say—

- (a) the proceeds of the realisation of any property under section 13(5)(b) or under section 14(5) or (6); and
- (b) any other sums, being property held by a persons against whom proceedings have been instituted for a drug trafficking offence,

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

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

- (a) among such of those who held property which has been realised; and
- (b) in such proportions, as the Court may direct after giving a reasonable opportunity for such person to make representations to the Court.

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

- (a) if paid by a receiver under subsection (1), it shall first be applied in payment of his remuneration and expenses;

- (b) subject to paragraph (a), it shall be applied in reimbursements of any sums paid by the prosecution under section 16(8),

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

16. Exercise of powers by High Court or receiver

(1) Subsections (1) to (6) inclusive apply to the powers conferred on the Court by sections 13, 14 and 15 or on a receiver appointed under section 13(5) or 14(2).

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the confiscation order, or as the case may be, any confiscation order that may be made in the case of the person against whom proceedings have been instituted for a drug trafficking offence, the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to whom the person against whom the proceedings have been instituted has directly or indirectly made a gift caught by this Act, as defined in section 20(1), the powers shall be exercised with a view to realising no more than the value for the time being of that gift.

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

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

(6) In exercising those powers, no account shall be taken of any obligations of the person against whom the proceedings have been instituted or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

(7) Where a receiver appointed under section 13(5) or 14(2) takes any action—

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

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

(8) Any amount due in respect of the remuneration and expenses of a receiver appointed under section 13(5) or 14(2) shall, if no sum is available to be applied in payment of it under section 13(a), be paid by the prosecution or, in a case where proceedings for a drug trafficking offence are not instituted, by the person on whose application the receiver was appointed.

17. Compensation

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

- (a) the proceedings do not result in his conviction for any drug trafficking offence; or

- (b) where he is convicted of the offence—
 - (i) the conviction concerned is quashed without a conviction for any other drug trafficking offence being substituted, or
 - (ii) the Governor-General has granted pardon in respect of the conviction,

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

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

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned and that, but for that default, the proceedings would not have been instituted or continued; and
- (b) that the applicant has suffered substantial loss in consequence of anything done in relation to the property by or in pursuance of an order of the Court under section 13 or 14.

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

18. Order to make material available

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

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

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

within such period as the order may specify.

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

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

- (a) there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
- (b) there are reasonable grounds for suspecting that the material to which the application relates—
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and
 - (ii) does not consist of or include items subject to legal privilege; and

- (c) there are reasonable grounds for believing that it is in the public interest, having regard to—
 - (i) the benefit likely to accrue to the investigation if the material is obtained, and
 - (ii) the circumstances under which the person in possession of the material holds it,

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

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

(6) Section 97 of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act shall extend to the making of rules of Court governing the procedure in relation to—

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

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

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

(8) An order under subsection (2)—

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

(9) Where, in relation to an investigation into drug trafficking, an order under subsection (2) has been made or has been applied for and has not been refused or a warrant under section 19 has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation is guilty of an offence.

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

- (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation; or
- (b) that he had lawful authority or reasonable excuse for making the disclosure.

(11) A person guilty of an offence under subsection (9) shall be liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

19. Authority for search

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

(2) On such application the Court may issue a warrant authorising a Police Officer to enter and search the premises if it is satisfied that—

- (a) an order made under section 18(2) in relation to material on the premises has not been complied with;
- (b) the conditions in subsection (3) are fulfilled; or
- (c) the conditions in subsection (4) are fulfilled.

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

- (a) there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
- (b) the conditions in section 18(4)(b) and (c) are fulfilled in relation to any material on the premises; and
- (c) it would not be appropriate to make an order under that section in relation to the material because—
 - (i) it is not practicable to communicate with any person entitled to produce the material,
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the material.

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

- (a) there are reasonable grounds for suspecting that a specific person has carried on or has benefited from drug trafficking;
- (b) there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot be at the time of the application be particularised; and
- (c)
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises,
 - (ii) entry to the premises will not be granted unless a warrant is produced, or

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

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

20. Other provisions, offences, gifts, property, etc.

(1) A gift, including a gift made before the commencement of this Act is caught by this Act if—

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

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

- (a) the circumstances in which a person against whom proceedings have been instituted for a drug trafficking offence is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by him; and
- (b) in those circumstances, section 9(5) and subsections (1), (2), (4) and (5) of this section shall apply as if he had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by him.

(3) Subject to section 9(5) and subsections (1), (2), (4) and (5) of this section, for the purposes of this Act the value of property (other than cash) in relation to any person holding the property is—

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

(4) Subject to subsection (2), a reference in this Act to the value at any time (referred to in subsection (5) as "the material time") of a gift caught by this Act, as defined in subsection (1), or of any payment or reward is a reference to—

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

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

(5) Subject to subsection (2), if at the material time the recipient holds—

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

the value referred to in subsection (4)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received.

(6) For the purposes of sections 5 to 20 inclusive—

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

21. Offences of assisting drug trafficking

(1) Subject to subsection (3), any person who, after the date of the coming into operation to this Act enters into or is otherwise concerned in an arrangement whereby—

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

knowing or believing that “A” is a person who carries on or has carried on drug trafficking or has at any time received any payment or other reward in connection with drug trafficking carried on by him or another, is guilty of an offence.

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

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

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any law; and
- (b) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if the disclosure is made—
 - (i) before he does the act, being an act done with the consent of such police officer, or
 - (ii) after he does the act, but was made on his initiative and as soon as it was reasonable for him to have made it.

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

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

22. Offence of concealing or transferring proceeds of drug trafficking

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

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

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

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

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

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

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

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

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

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

(6) A person guilty of an offence under this section and section 21 is liable—

- (a) on summary conviction – to a fine not exceeding \$5,000, or to imprisonment for a term not exceeding two years, or to both;
- (b) on conviction on indictment – to a fine without limit, or to imprisonment for a term not exceeding fourteen years, or to both.

[Subsection (6) amended by Act No. 24 of 1996.]

23. Enforcement of external confiscation orders

(1) The Governor-General may by Order—

- (a) direct in relation to a designated country that, subject to such modifications (which expression includes addition, alternations and omissions) as may be specified, this Act shall apply to external confiscation orders and to proceeds which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
- (b) make—
 - (i) such provisions in connection with the taking of action in the designated country with a view to satisfying a confiscation order,
 - (ii) such provision as to evidence or proof of any matter for the purposes of this section and of section 24, and
 - (iii) such incidental, consequential and transitional provisions, as appears to him to be expedient; and
- (c) without prejudice to the generality of this subsection, direct that, in such circumstances as may be specified, proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under such order to such extent as may be specified.

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

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

24. Registration of external confiscation order

(1) On an application made by or on behalf of the government of a designated country, the Court may register an external confiscation order made there if it is—

- (a) satisfied that at the time of registration the order is in force and not subject to appeal (which expression includes both any proceedings by way of discharging or setting aside a judgement or an application for a new trial or for a stay of execution);
- (b) satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
- (c) of the opinion that enforcing the order in this State would not be contrary to the interests of justice.

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

25. Seizure and detention of cash

(1) A customs officer or a member of the police may seize and, in accordance with this section, detain any cash which is being imported into or exported from this State if its amount is not less than ten thousand dollars 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 forty-eight hours unless its continued detention is authorised by order of a Magistrate upon an application made by the Comptroller of Customs or a member of the Police Force: 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 this State or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.

(3) Any order under subsection (2) shall authorise 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 authorise 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) No application to a Magistrate for an order under subsection (2) or (3) shall be made by the Comptroller of Customs or a member of the Police Force, except with the written approval of the Director of Public Prosecutions.

(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 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 35; or
- (b) proceedings are instituted (whether in this State 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, proceedings for that offence have been concluded.

26. Forfeiture

(1) The Magistrate may order the forfeiture of any cash which has been seized under section 34 if satisfied, on an application made by the Comptroller of Customs or a member of the Police Force 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.

(2) No application under this section to the Magistrate shall be made by the Comptroller of Customs or a member of the Police Force, except with the written approval of the Director of Public Prosecutions.

(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.

27. Interest

Cash seized under section 25 and detained for more than forty-eight hours shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing on any such shall be added to that cash on its forfeiture or release.

28. Procedure

(1) An order under section 25(2) shall provide for notice to be given to persons affected by the order.

(2) Until provision is made by rules the procedure with respect to applications to a Magistrate, for the giving of notice of such applications to person affected, for the joinder of such persons as parties and generally with respect to the procedure under sections 25 and 26, shall be determined by the magistrate.

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

29. Interpretation of certain expressions in sections 34 to 36

In sections 25, 26 and 27—

“**cash**” includes coins and notes in any currency;

“**customs officer**” means an officer appointed under the Customs Act or any statute amending or replacing the same;

“**exported**”, in relation to any cash, includes its being brought to any place in this State for the purpose of being exported.

30. Retention of records of financial institutions

(1) Subject to this section, and to section 31, a financial institution shall retain, in its original form for the minimum retention period applicable to the document—

(a) a document that relates to a financial transaction carried out by the institution in its capacity as a financial institution and, without limiting the generality of this, includes a document that relates to—

- (i) the opening or closing by a person of an account with the institution,
- (ii) the operation by a person of an account with the institution,
- (iii) the opening or use by a person of a deposit box held by the institution,
- (iv) the telegraphic or electronic transfer of funds by the institution on behalf of a person to another person,
- (v) the transmission of funds between this State and a foreign country or between foreign countries on behalf of a person, or
- (vi) an application by a person for a loan from the institution, where a loan is made to the person pursuant to the application; and

(b) a document that relates to a financial transaction carried out by the institution in its capacity as a financial institution that is given to the institution by or on behalf of the person, whether or not the document is signed by or on behalf of the person.

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

(a) where the document relates to the opening of an account with the institution, the period of seven years after the day on which the account is closed;

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

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

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

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

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

31. Register of original documents

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

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

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

32. Meaning of financial institution

For the purposes of sections 30 and 31, “**financial institution**” means—

- (a) a bank licensed under the Banking Act;
[Chapter 87.]
- (b) any financial institution of whatever kind registered, licenced or otherwise regulated by any Act contained in Title V of the Revised Edition of the Laws;
- (c) a trust company, finance company or deposit taking company, recognised by the Minister responsible for Finance as such.

33. Certain records of proceedings confidential

(1) Notwithstanding anything contained in any other Act, no person shall be entitled to obtain access to or to make a copy of or otherwise receive information concerning any proceedings of the Court taken in pursuance of its jurisdiction under this Act and heard in chambers and neither the Registrar of the Court nor any other public officer shall be obliged to disclose any such information, save and except under the terms of a specific order of the Court made in any such proceedings.

- (2) Any person who, otherwise than in accordance with such an order of the Court—
- (a) obtains access to such Court records;
 - (b) makes a copy of any such Court record;
 - (c) knowingly receives information relating to such proceedings; or
 - (d) discloses, otherwise than in the course of his duty as a public officer, any such information, is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment not exceeding two years, or to both.

34. Offences on local ships

Anything which would constitute a drug trafficking offence if done on land in any part of this State shall constitute that offence if done on ship registered in this State, hereinafter referred to as “a local ship”.

35. Ships used for illicit traffic

(1) This section applies to a local ship, a ship registered in a state other than in this State which is a party to the Vienna Convention (a “Convention state”) and a ship not registered in any country or territory.

(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 5(1) of the Drugs Prevention of Misuse Act or the law of any state other than this State.

(3) A certificate purporting to be issued by or on behalf of the Government of any state to the effect that the importation or export of a controlled drug is prohibited by the law of that state shall be evidence of the matters stated.

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

- (a) in case where the controlled drug is a Class A drug—
 - (i) on summary conviction, to imprisonment for five years, or a fine of thirty thousand dollars, or both,
 - (ii) on conviction on indictment, to imprisonment for fourteen years, or to 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 five thousand dollars, or both,
 - (ii) on conviction on indictment, to imprisonment for seven 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 twelve months, or a fine of five thousand dollars, 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 Drugs (Prevention of Misuse) Act.

36. Enforcement powers

(1) The power conferred on an enforcement officer by the Schedule shall be exercisable in relation to any ship to which section 34 or 35 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 seaward limits of the territorial sea of this State in relation to a ship registered in a Convention state except with the authority of the Governor-General, and he shall not give his authority unless that state has in relation to that ship—

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

(3) In giving his authority pursuant to a request or authorisation from a Convention state the Governor-General 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-General may, either in his own motion or in response to a request from a Convention state, authorise a Convention state to exercise, in relation to a local ship, powers corresponding to those conferred on enforcement officers by the Schedule 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 this State whereby the it undertakes not to object to the exercise by any other state in relation to a local ship of powers corresponding to those conferred by that Schedule.

(6) The powers conferred by that Schedule shall not be exercised in the territorial sea of any state other than that of this State without the authority of the Governor-General and he shall not give his authority unless that state has consented to the exercise of those powers.

37. Jurisdiction and prosecutions

(1) Proceedings under this Act 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 this State.

(2) No such proceedings shall be instituted except by or with the consent of the Director of Public Prosecutions.

(3) Without prejudice to subsection (2) no proceedings for an offence under section alleged to have been committed outside the seaward 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-General of the powers conferred by the Schedule.

SCHEDULE

[Section 36.]

Enforcement Powers in Respect of Ships

1. Preliminary

(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 Attorney-General.

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

2. Power to stop, board, divert and detain

(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 this State and detain it there.

(2) Where an enforcement officer is exercising his powers with the authority of the Governor-General given under section 36(2) of this Act 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. Power to search and obtain information

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

(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. Powers in respect of suspected offence

If an enforcement officer has reasonable grounds to suspect that an offence mentioned in sections 34 and 35 of this Act has been committed on a ship to which that section applies he may—

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

5.

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

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

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

6. Use of reasonable force

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

7. Evidence of authority

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

8. Protection of officers

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.

9. Offences

(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 known 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 thirty thousand dollars, or to imprisonment for a term not exceeding two years, or both.

CHAPTER 173

DRUG TRAFFICKING OFFENCES ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
