

PROCEEDS OF CRIME ACT, 1993

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SCHEDULE

SAINT LUCIA

No. 10 of 1993.

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

[Proclamation]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia and by the authority of the same, as follows:

PART I PRELIMINARY

1. Short Title.

This Act may be cited as the Proceeds of Crime Act, 1993.

2. Interpretation.

In this Act —

"benefit"

falls to be construed in accordance with section 3 (1);

"Commissioner"

means the Commissioner of Police;

"confiscation order"

means an order made by the Court pursuant to section 17 (1);

" the Court"

means the High Court;

"document"

, in relation to a scheduled offence, means any written or printed thing and includes —

(a)

any map, plan, graph or drawing;

(b)

any photograph;

(c)

any disc, tape, sound track or other device in which sound or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

d

any film, negative, tape or other device in which one or more visual images are embodied

so as to be capable (as aforesaid) of being reproduced therefrom;

"forfeiture order"

means an order made by the Court pursuant to section 9 (1);

" gazetted officer"

means any police officer of or above the rank of Assistant Superintendent;

" gift caught by this Act"

falls to be construed in accordance with sections 3 (12) and 3 (14);

"interest"

in relation to property, means —

(a)

a legal or equitable interest in the property; or

(b)

a right, power or privilege in connection with the property;
" police officer"

means a member of the Royal St. Lucia Police Force;
" proceeds"

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

means —
proceeds of a scheduled offence; or

(a)

(b)

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

" production order"

means an order made by the Court pursuant to section 41;

Proceeds of Crime Act

"property"

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

" realisable property"

falls to be construed in accordance with section 3 (3) and (4);

No. 12 of 1984.

"Registrar"

means the Registrar of Lands appointed in accordance with the Land Registration Act, 1984.
"relevant application period"

, in relation to a person's conviction of a scheduled offence, means the period of 12 months
after —

(a)

where the person is to be taken to have been convicted of the offence by reason of section
3 (2) (a), the day on which the person was convicted of the offence;

(b)

where the person is to be taken to have been convicted of the offence by reason of section
3 (2) (b), the day on which the person was discharged without conviction;

(c)

where the person is to be taken to have been convicted of the offence by reason of section
3 (2) (c), the day on which the court took the offence into account in passing sentence for

the other offence referred to in that paragraph;

"restraining order"

means an order made by the Court pursuant to section 31 (1);
"scheduled offence"

means an offence specified in the Schedule, and includes —
Schedule.

(a)

an offence of conspiring to commit any of those offences;

(b)

an offence of aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the commission of any of those offences;

(c)

an offence of attempting to commit any of those offences;

(d)

an offence of inciting another to commit any of those offences;

"tainted property "

, in relation to a scheduled offence, means —

(a)

property used in, or in connection with, the commission of the offence; or

(b)

property derived, obtained or realised, directly or indirectly, from the commission of the offence;

"unlawful activity" .

means an act or omission that constitutes an offence against a law in force in Saint Lucia or against a law of any other country

3. Definition of certain terms.

—

(1) In this Act —

(a)

a benefit" includes any property, service or advantage, whether direct or indirect;

(b)

"to benefit" has a corresponding meaning;

(c)

a reference to a benefit derived or obtained by, or otherwise accruing to, a person ("A") includes a reference to a benefit derived or obtained by , or otherwise accruing to, another person at A's request or direction.

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

(a)

he is convicted, whether summarily or on indictment, of the offence;

(b)

he is charged with the offence and is found guilty but is discharged without conviction; or

(c)

a court with his consent takes the scheduled offence, of which he has not been found guilty, into account in sentencing him for another offence.

(3) In this Act, "realisable property" means, subject to subsection (4) —

(a)

any property held by a person who has been convicted of, or charged with, a scheduled offence; and

(b)

any property held by a person to whom a person so convicted or charged has directly or indirectly made a gift caught by this Act.

(4) Property is not realisable property if —

(a)

there is in force in respect of that property, a forfeiture order under this Act or under any other enactment;

(b)

a forfeiture order is proposed to be made against that property under this Act or any other enactment.

(5) For the purposes of sections 19 and 20 the amount that might be realised at the time a confiscation order is made against a person is the total of the values at that time of all the realisable property held by the person, less the total amounts payable in pursuance of an obligation, where there is an obligation having priority at that time, together with the total of the values at that time of all gifts caught by this Act.

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

(a)

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

(b)

pay an amount due in respect of any tax, rate, duty, cess or other impost payable under any enactment for the time being in force;

(c)

pay any other civil obligation as may be determined by the Court.

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

(a)

where any other person holds an interest in the property, is —

(i) the market value of the first-mentioned person's beneficial interest in the property; less

(ii) the amount required to discharge any encumbrance on that interest; and

(b)

in any other case, its market value.

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

(a)

the value of the property to the recipient when he receives it adjusted to take account of subsequent changes in the value of money; or

(b)

where subsection (9) applies, the value there mentioned, whichever is the greater.

(9) Where at the material time the recipient holds —

(a)

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

(b)

property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

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

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

(*a*)

the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money;
or

(*b*)

the value there mentioned, where subsection (11) applies;

whichever is the greater.

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

(*a*)

property which he received, not being cash; or

(*b*)

property which, in whole or in part, directly or indirectly represents in his hands the property which he received, the value referred to in subsection (10) is the value to him at the material time of the property mentioned in paragraph (*a*) of this subsection or the value of the property mentioned in paragraph (*b*) so far as it so represents the property which he received.

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

(*a*)

it was made by the person convicted or charged at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate; and the Court considers it appropriate in all the circumstances to take the gift into account;

(*b*)

it was made by the person convicted or charged at any time and was a gift or property —

(i) received by the person in connection with the commission of a schedule offence committed by him or another; or

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

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

(14) For the purposes of this Act —

(a)

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

(b)

in those circumstances, the preceding provisions of this section shall apply as if the person had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the person.

PART II FORFEITURE ORDERS, CONFISCATION ORDERS AND RELATED MATTERS

General

4. Application for forfeiture order or confiscation order on conviction. (No. 22 of 1988.)

(1) Notwithstanding the provisions of section 28 of the Drugs (Prevention of Misuse) Act, 1988 and subject to subsection (2), where a person is convicted of a scheduled offence committed after the coming into force of this Act, the Director of Public Prosecutions shall apply to the Court for one or both of the following orders —

(a)

a forfeiture order against property that is tainted property in respect of the scheduled offence;

(b)

a confiscation order against the person in respect of benefits derived by the person from the commission of the scheduled offence.

[. 22 of 1988.])

(2) The Director of Public Prosecutions shall not make an application after the end of the relevant application period in relation to the conviction or in any case where forfeiture has been effected under the provisions of the Drugs (Prevention of Misuse) Act, 1988.

(3) An application under this section may be made in respect of one or more than one scheduled offence.

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

(a)

that the property, or benefit to which the new application relates was identified after the previous application was determined; or

(b)

that necessary evidence became available after the previous application was determined; or

(c)

that it is in the interests of justice that the new application be made.

5. Notice of application.

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

(a)

the Director of Public Prosecutions must give no less than 14 days written notice of the application to the person and to any other person who the Director of Public Prosecutions has reason to believe may have an interest in the property;

(b)

the person, and any other person who claims an interest in the property, may appear and adduce evidence at the hearing of the application; and

(c)

the Court may, at any time before the final determination of the application, direct the Director of Public Prosecutions —

(i) to give notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property;

(ii) to publish in the *Saint Lucia Gazette* and in a newspaper published and circulating in Saint Lucia notice of the application in the manner and containing such particulars and within the time that

the Court considers appropriate.

(2) Where the Director of Public Prosecutions applies for a confiscation order against a person —

(a)

the Director of Public Prosecutions must give the person no less than 14 days written notice of the application; and

(b)

the person may appear and adduce evidence at the hearing of the application.

6. Amendment of application.

(1) The Court hearing an application under section 4 (1) may, before final determination of the application, and on the application of the Director of Public Prosecutions, amend the application to include any other property or benefit, as the case may be, upon being satisfied that —

(a)

the property or benefit was not reasonably capable of identification when the application was originally made; or

(b)

necessary evidence became available only after the application was originally made.

(2) Where the Director of Public Prosecutions applies to amend an application for a forfeiture order and the amendment would have the effect of including additional property in the application for the forfeiture order he must give no less than 14 days written notice of the application to amend to any person who he has reason to believe may have an interest in the property to be included in the application for the forfeiture order.

(3) Any person who claims an interest in the property to be included in the application for the forfeiture order may appear and adduce evidence at the hearing of the application to amend.

(4) Where the Director of Public Prosecutions applies to amend an application for a confiscation order against a person and the effect of the amendment would be to include an additional benefit in the application for the confiscation order he must give the person no less than 14 days written notice of the application to amend.

7. Procedure on application.

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

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

8. Application for in rem forfeiture order on abscondence.

(1) Where a person absconds in connection with a scheduled offence committed after the coming into force of this Act, the Director of Public Prosecutions may apply to the Court for a forfeiture order under section 16 in respect of any tainted property.

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

(a)

an information has been laid alleging the commission of the offence by the person;

(b)

a warrant for the arrest of the person has been issued in relation to that information; and

(c)

reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period of six months commencing on the day the warrant was issued,

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

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

(a)

require notice of the application to be given to any person who, in the opinion of the Court appears to have an interest in the property;

(b)

direct notice of the application to be published in the *Saint Lucia Gazette* and in a newspaper published and circulating in Saint Lucia containing such particulars and for so long as the Court may require.

Forfeiture Orders

9. Forfeiture order on conviction.

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

(2) In determining whether property is tainted property the Court may infer —

(a)

that the property was used in, or in connection with the commission of the offence, where the evidence establishes that the property was in the person's possession at the time of, or immediately after, the commission of the offence for which the person was convicted;

(b)

that the property was derived, obtained or realised as a result of the commission by the person of the scheduled offence for which the person was convicted, where the evidence establishes that property, and in particular money, was found in the person's possession or under his control in a building, vehicle, receptacle or place during the course of investigations conducted by the police before or after the arrest and charge of the person for the scheduled offence for which the person was convicted;

(c)

that the value of the increase represents property which was derived, obtained or realised by the person directly or indirectly from the commission of the scheduled offence for which the person was convicted, where the evidence establishes that the value, after the commission of the scheduled offence, of all ascertainable property of a person convicted of the scheduled offence exceeds the value of all ascertainable property of that person prior to the commission of that offence, and the Court is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the increase in value.

(3) Where the Court orders that property, other than money, be forfeited to the Crown, the Court shall specify in the order the amount that it considers to be the value of the property at the time when the order is made.

(4) In considering whether a forfeiture order should be made under subsection (1), the Court shall have regard to —

(a)

the rights and interests, if any, of third parties in the property;

(b)

the gravity of the offence concerned;

(c)

any hardship that may reasonably be expected to be caused to any person, by the operation of the order; and

(d)

the use that is ordinarily made of the property, or the use to which the property was intended to be put.

(5) Where the Court makes a forfeiture order the Court may give such directions as are necessary or convenient for giving effect to the order.

10. Effect of Forfeiture Order.

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

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

(a)

the property vests in the Crown provisionally but does not vest absolutely in the Crown at law until the applicable registration requirements have been complied with;

(b)

the Crown is entitled to be registered as owner of the property;

(c)

the Attorney-General has power on behalf of the Crown to do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Crown as owner, including the execution of any instrument required to be executed by a person transferring an interest in property of that kind.

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

(a)

the property shall not, except with the leave of the Court and in accordance with any directions of the Court be disposed of, or otherwise dealt with, by or on behalf of the Crown, before the relevant appeal date; and

(b)

if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the direction of the Attorney-General.

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

(5) In this section —

"registrable property" means property the title to which is passed by registration in accordance with the provisions of the Land Registration Act, 1984;

"relevant appeal date" used in relation to a forfeiture order made in consequence of a person's conviction of a scheduled offence, means —

(No. 12 of 1984.)

(a)

the date on which the period allowed by the rules of court for the lodging of an appeal against a person's conviction or for the lodging of an appeal against the making of a forfeiture order expires without an appeal having been lodged, whichever is the later; or

(b)

where an appeal against a person's conviction or against the making of a forfeiture order is lodge, the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later.

11. Voidable transfers.

The Court may —

(a)

before making a forfeiture order; and

(b)

in the case of property in respect of which a restraining order was made, where the order was served in accordance with section 32,

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

12. Protection of third parties.

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

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

(a)

that he was not in any way involved in the commission of the offence; and

(b)

where he acquired the interest during or after the commission of the offence, that he acquired the interest —

(i) for sufficient consideration; and

(ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time he acquired it, property that was tainted property, the Court shall make an order declaring the nature, extent and value (as at the time the order is made) of his interest.

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

(4) A person who—

(a)

had knowledge of the application for the forfeiture order before the order was made; or

(b)

appeared at the bearing of that application,

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

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

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

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

(a)

direct that the property or the part thereof to which the interest of the applicant relates be returned to the applicant; or

(b)

direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

13. Discharge of forfeiture order on and quashing of conviction.

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

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

(3) On receipt of an application under subsection (2) the Registrar shall —

(a)

if the interest is vested in the Crown, give directions that the property or part thereof to which the interest of the applicant relates be transferred to the person; or

(b)

in any other case, direct that there be payable to the person an amount equal to the value of the interest as at the time the order is made.

(4) In the exercise of his powers under this section and section 12 the Registrar shall have the power to do or authorise the doing of anything necessary or convenient to effect the transfer or return of property, including the execution of any instrument and the making of an application for the registration of an interest in the property on any appropriate registrar.

14. Payment instead of forfeiture order.

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

(a)

cannot on the exercise of due diligence, be located;

(b)

has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the forfeiture of the property;

(c)

is located outside saint Lucia;

(d)

has been substantially diminished in value or rendered worthless; or

(e)

has been commingled with other property that cannot be divided without difficulty,

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

15. Application of procedure for enforcing fines.

(1) Where the Court orders a person to pay an amount under section 14 that amount shall be treated as if it were a fine imposed upon him in respect of a conviction of a scheduled offence and the Court shall;

(a)

notwithstanding anything contained in section 20 of the Interpretation Act, 1968, impose, in default of the payment of that amount, a term of imprisonment —

[. 18 of 1968.])

(i) of 18 months, where the amount does not exceed \$10,000;

(ii) of 2 years, where the amount exceeds \$10,000 but does not exceed \$20,000;

(iii) of 3 years, where the amount exceeds \$20,000 but does not exceed \$50,000;

(iv) of 5 years, where the amount exceeds \$50,000 but does not exceed \$100,000;

(v) of 7 years, where the amount exceeds \$100,000 but does not exceed \$200,000;

(vi) of 10 years, where the amount exceeds \$200,000 but does not exceed \$1,000,000;

(vii) of 15 years, where the amount exceeds \$1,000,000;

(b)

direct that the term of imprisonment imposed pursuant to paragraph (a), in the case of conviction for an offence against the Drug (Prevention of Misuse) Act, 1988 be served consecutively to any other form of imprisonment imposed on the person, or that the person is then serving;

[. 22 of 1988.])

(c) (No. 17 of 1963.)

direct that the Prisons Ordinance, 1963 and any regulations made thereunder or other law regarding the remission of sentences of prisoners serving a term of imprisonment shall not apply in relation to a term of imprisonment imposed on a person pursuant to paragraph (a) in the case of a conviction for an offence against the Drug (Prevention of Misuse) Act, 1988.

[. 22 of 1988.])

16. Forfeiture order on abscondence.

(1) Subject to section 8 (3), where an application is made to the Court under section 8 (1) for a forfeiture order against any a tainted property in consequence of a person's abscondence in connection with a scheduled offence and the Court is satisfied that —

(a)

any property is tainted property in respect of the offence;

(b)

proceedings in respect of scheduled offence committed in relation to that property were commenced; and

(c)

the accused charged with the offence referred to in paragraph (b) has absconded,

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

(2) The provisions of sections 9 (2), (3), (4) and (5), 10, 11 and 12 shall apply with such modifications as are necessary to give effect to this section.

17. Confiscation order on conviction.

(1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a confiscation order against a person in respect of that person's conviction of a scheduled offence the Court shall, if it is satisfied that the person has benefited from that offence order him to pay to the Crown an amount equal to the value of his benefits from the offence or such lesser amount as the Court certifies in accordance with section 20 to be the amount that might be realised at the time the confiscation order is made.

(2) The Court shall assess the value of the benefits derived by a person from the commission of an offence in accordance with sections 18 to 21.

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

(a)

until the period allowed by the rules of court for the lodging of an appeal against conviction has expired without such an appeal having been lodged; or

(b)

where an appeal against convictions has been lodged, until the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later date.

18. Rules for determining benefit and assessing value.

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

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

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

(a)

all property appearing to the court to be held by the person on the day on which the application is made; and

(b)

all property appearing to the Court to be held by the person at any time —

(i) within the period between the day the scheduled offence, or the earliest offence, was committed and the day on which the application is made; or

(ii) within the period of 6 years immediately before the day on which the application is made; whichever is longer,

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

(c)

any expenditure by the person since the beginning of that period to be expenditure met out of payments received by him as a result of, or in connection with, the commission of that scheduled offence or those scheduled offences; and

(d)

any property received or deemed to have been received by the person at any time as a result of, or in connection with, the commission by him of that scheduled offence, or those scheduled offences as property received by him free of any interests therein.

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

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

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

19. Statements relating to benefits from commission of scheduled offences.

(1) Where —

(a)

a person has been convicted of a scheduled offence and the Director of Public Prosecutions tenders to the Court a statement as to any matters relevant —

(i) to determining whether the person has benefited from the offence or from any other scheduled offence of which he is convicted in the same proceedings or which is taken into account in determining his sentence, or to an assessment of the value of the person's benefit from the offence or any other scheduled offence of which he is so convicted in the same proceedings or which is so taken into account, and

(ii)

(b)

the person accepts to any extent an allegation in the statement,

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

(2) Where —

(a)

a statement is tendered under subsection (1) (a), and

(b)

the Court is satisfied that a copy of that statement has been served on the person,

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

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

(a)

an allegation in respect of which he has complied with the requirement; and

(b)

an allegation that he has benefited from the scheduled offence or that any property or advantage was obtained by him as a result of, or in connection with the commission of the offence.

(4) Where —

(a)

the person tenders to the Court a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and

(b)

the Director of Public Prosecutions accepts to any extent any allegation in the statement,

the Court may, for the purposes of that determination, treat the acceptance of the Director of Public Prosecutions as conclusive of the matters to which it relates.

(5) An allegation may be accepted or matter indicated for the purposes of this section either —

(a)

orally before the Court; or

(b)

in writing in accordance with rules of court.

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

20. Amount to be recovered under confiscation order.

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

(2) Where the Court is satisfied as to any matter relevant for determining the amount which might be realised at the time the confiscation order is made (whether by an acceptance under section 19 or otherwise) the Court may issue a certificate giving the Court's opinion as to the matters concerned, and shall do so if satisfied that amount that might be realised at the time the confiscation order is made is less than the amount that the court assesses to be the value of the person's benefit from the offence, or if more than one, all the offences in respect of which the confiscation order may be made.

21. Variation of confiscation orders.

(1) Where

(a)

the Court makes a confiscation order against a person in relation to a scheduled offence;

(b)

in calculating the amount of the confiscation order, the Court took into account a forfeiture of the property or a proposed forfeiture of the property or a proposed forfeiture order in respect of the property; and

(c)

an appeal against the forfeiture or forfeiture order is allowed or the proceedings for the proposed forfeiture order terminate without the proposed forfeiture order being made—

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

(2) Where —

(a)

the Court makes a confiscation order against a person in relation to a scheduled offence;

(b)

in calculating the amount of the confiscation order, the Court took into account, in accordance with subsections 3 (5) and 3 (6) an amount of tax paid by the person; and

(c)

an amount is repaid or refunded to the person in respect of that tax,

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

22. Court may lift corporate veil.

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

—

(a)

any legal or equitable interest in the property; or

(b)

any right, power or privilege in connection with the property.

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

(a)

shareholdings in, debenture over or directorships in any company that has an interest, whether direct or indirect, in the property, and for this purpose the Court may order the investigation and inspection of the books of a named company;

(b)

any trust that has any relationship to the property;

(c)

any relationship whatsoever between persons having an interest in the property or in companies of the kind referred to in paragraph (a) or trust of the kind referred to in paragraph (b), and any other persons.

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

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

(a)

the order may be enforced against the property as if the property were property of the person against whom the order is made; and

(b)

a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.

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

(a)

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

(b)

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

Confiscation Orders

23. Enforcement of confiscation orders.

Where the Court orders a person to pay an amount under a confiscation order the provisions of section 15 shall apply with such modifications as the Court may determine for the purpose of empowering the Court to impose a term of imprisonment on a person in default of compliance by him of a confiscation order.

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

Powers of Search and Seizure

25. Restrictions on issue of search warrants.

A Magistrate shall not issue a warrant under section 24 unless —

(a)

the informant or some other person has given to the Magistrate, either on oath or by affidavit, any further information that the Magistrate may require concerning the grounds on which the issue of the warrant is sought;

(b)

the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

26. Matters to be included in search warrant.

A warrant issued under section 24 shall include —

(a)

a statement of the purpose for which the warrant is issued, and a reference to the nature of the scheduled offence;

(b)

a description of the kind of property to be seized;

(c)

a time, not being later than twenty-eight days, upon which the warrant ceases to have effect; and

(d)

a statement as to whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night.

27. Police may seize other tainted property.

Where in the course of a search under a warrant issued pursuant to section 24 for tainted property in relation to a scheduled offence, a police officer finds —

(a)

property that he believes, on reasonable grounds, to be —

(i) tainted property in relation to the offence, although not of a kind specified in the warrant; or

(ii) tainted property in relation to another scheduled offence; or

(b)

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

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

28. Record of property seized.

(1) A police officer who executes a warrant issued under this Part shall —

(a)

detain the property seized, taking reasonable care to ensure that the property is preserved so that it may be dealt with in accordance with the law;

(b)

as soon as practicable after the execution of the warrant, but within a period of 48 hours thereafter, prepare a written report, identifying the property seized and the location where the property is being detained and forward a copy of the report to the clerk of the Court in the magisterial district where the property is being detained.

(2) A Magistrate shall, on application, provide a copy of the report —

(a)

to the person from whom the property was seized; and

(b)

to any other person who appears to the Magistrate to have an interest in the property.

(3) A request under subsection (2) by a person, other than the person from whom the property was seized, shall be in writing and supported by affidavit sworn to by the person making the request.

29. Return of property seized.

(1) Where property has been seized under section 27, otherwise than because it may afford evidence of the commission of a scheduled offence, any person who claims an interest in the property may apply to the Court for an order that the property be returned to him.

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

(a)

the person is entitled to possession of the property;

(b)

the property is not tainted property in relation to the scheduled offence; and

(c)

the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property,

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

(3) Where —

(a)

at the time when the property was seized, an information had not been laid in respect of a scheduled offence;

(b)

property has been seized under section 27, otherwise than because it may afford evidence as to the commission of an offence;

(c)

at the end of the period of 48 hours after the time when the property was seized, an information has not been laid in respect of a scheduled offence,

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

(4) Where —

(a)

property has been seized under section 27, otherwise than because it may afford evidence as to the commission of a scheduled offence;

(b)

either of the following conditions is satisfied, that is to say —

(i) before the property was seized, a person had been convicted of a scheduled offence or an information had been laid in respect of a scheduled offence; or

(ii) before the property was seized, an information had not been laid in respect of a scheduled offence, but an information was laid in respect of a scheduled offence within 48 hour