

THE DRUG OFFENCES (FORFEITURE
OF PROCEEDS) ACT

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SCHEDULE

THE DRUG OFFENCES (FORFEITURE
OF PROCEEDS) ACT

Acts
16 of 1994,
29 of 1996,
18 of 2005
2nd Sch.

[15th August, 1994.]

PART I. *Preliminary*

1. This Act may be cited as the Drug Offences (Forfeiture of Proceeds) Act. Short title.

2.—(1) In this Act—

Interpreta-
tion.

“benefit ” includes any property, service or advantage
whether direct or indirect;

“Commissioner” means the Commissioner of Police;

“constable” means a member of the Jamaica Constabulary
Force;

“forfeiture order” means an order made under section 7;

“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
property;

“pecuniary penalty order” means an order made under
section 14;

“prescribed offence” means an offence specified in the
Schedule;

Schedule.

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

“realizable property” means, subject to subsection (2) (b)—

(a) any property held by a person who has been
convicted of or charged with, a prescribed
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;

“relevant application period” in relation to a person’s conviction of a prescribed offence, means the period of six months after the day on which the person was convicted of the offence;

“restraint order” means an order made pursuant to section 28;

“tainted property” in relation to a prescribed offence, means—

- (a) property used in, or in connection with, the commission of the offence; or
- (b) property derived, obtained or realized directly or indirectly by the person convicted from the commission of the offence.

(2) For the purposes of this Act—

- (a) 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;
- (b) property is not realizable property if—
 - (i) there is in force in respect of that property a forfeiture order under this Act or under any other enactment;
 - (ii) a forfeiture order is proposed to be made against that property under this Act or any other enactment;
- (c) property is held by a person if he has any interest in it.

(3) For the purposes of section 17 the amount that might be realized at the time a pecuniary penalty order is made against a person is the total of the values at that time of all the realizable property held by the person, less the total amount 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.

(4) For the purposes of subsection (3), an obligation has priority at any time if—

(a) it is an obligation of the person to pay an amount due in respect of—

(i) a fine or other order of a court, imposed or made on conviction of an offence and before the pecuniary penalty order;

(ii) any tax, rate, duty, cess or other impost payable under any enactment for the time being in force;

(b) it relates to property which is—

(i) property for the time being comprised in a bankrupt's estate for the purposes of section 104 of the Bankruptcy Act;

(ii) to be applied for the benefit of creditors of a bankrupt by virtue of a condition imposed under paragraph (d) of the proviso to section 72 (6) of the Bankruptcy Act.

(5) Subject to subsections (6) and (7), 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 (other than a charging order); and

(b) in any other case, the market value of the property.

(6) References in this Act to the value at any time (hereinafter referred to as "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 (7) applies, the value mentioned therein,

whichever is the greater.

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

(8) Subject to subsection (11), a reference to the value at 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) where subsection (9) applies, the value mentioned therein,

whichever is the greater.

(9) Subject to subsection (11), 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 (8) is the value to him at the material time of the property mentioned in paragraph (a), or, as the case may be, in paragraph (b) of this subsection, so far as it so represents the property which he received.

(10) A gift is caught by this Act if—

- (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 of property—
 - (i) received by that person in connection with the commission of the prescribed offence committed by him; or
 - (ii) which in whole or in part directly represented in that person's hands property received by him in that connection.

(11) For the purposes of this Act—

- (a) the circumstances in which a person 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 person; and
- (b) in those circumstances, the provisions of subsections (8) to (10) 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 para-

graph (a) bears to the value of the consideration provided by the person, that is to say—

$$\frac{\text{consideration provided by transferor}}{\text{consideration provided by transferee}} \times \text{value of whole property}$$

PART II. *Forfeiture Orders, Pecuniary Penalty Orders and Related Matters*

Applica-
tion for
forfeiture
order and
pecuniary
penalty
order.

3.—(1) This section shall have effect without prejudice to the operation of the provisions of the Dangerous Drugs Act which relate to seizure and forfeiture.

(2) Where a person is convicted of a prescribed offence committed after the 15th day of August, 1994, the Director of Public Prosecutions may apply to a Judge of the Supreme Court (hereinafter referred to as the Judge) for one or both of the following orders—

(a) a forfeiture order against any property that is tainted property in relation to the prescribed offence;

(b) a pecuniary penalty order against the person convicted in respect of the total value of any benefits derived by or accruing to the person convicted from the commission of the prescribed offence.

(3) An application under this section—

(a) may not be made after the end of the relevant application period in relation to the conviction; and

(b) may be made in respect of more than one prescribed offence.

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

- (a) the property or benefit to which the new application relates was identified after the previous application was determined; or
- (b) necessary evidence became available after the previous application was determined; or
- (c) it is in the interest of justice that the new application be made:

Provided that the Judge shall not grant leave in respect of any application made after the expiration of two years from the date of conviction.

(5) The Director of Public Prosecutions may, in accordance with rules of court, appeal against the Judge's decision to refuse an application for a forfeiture order under this section.

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4.—(1) Where the Director of Public Prosecutions applies for a forfeiture order against property that is tainted property in relation to a prescribed offence—

Notice of
application.

(a) the Director of Public Prosecutions shall—

- (i) give no less than fourteen days' written notice of the application to the person convicted and to any other person who the Director of Public Prosecutions has reason to believe may have an interest in the property; and
- (ii) publish a copy of the notice in the *Gazette* and in a daily newspaper printed and circulated in Jamaica;

(b) the person convicted and any other person who claims

an interest in the property may appear and adduce evidence at the hearing of the application;

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(c) the Judge, at any time before the final determination of the application—

- (i) shall make an order for a valuation to be carried out in relation to the property, and give such ancillary directions as the Judge considers necessary for that purpose; and
- (ii) may direct the Director of Public Prosecutions to give notice of the application to any person who, in the opinion of the Judge, appears to have an interest in the property.

(2) Where the Director of Public Prosecutions applies for a pecuniary penalty order against a person convicted of a prescribed offence, in respect of benefits derived by or accruing to that person from the commission of the offence—

- (a) he shall give the person convicted not less than fourteen days' written notice of the application; and
- (b) the person convicted may appear and adduce evidence at the hearing of the application.

Amendment
of application.

5.—(1) The Judge hearing an application under section 3 (2) (hereafter in this section referred to as the original application) may, before final determination thereof, and on the application of the Director of Public Prosecutions amend the original 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 original application was made; or
- (b) necessary evidence became available only after the original application was made.

(2) Where the Director of Public Prosecutions applies to amend an original application and the amendment would have the effect of including additional property in the original application, he shall give not less than fourteen 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 original application.

(3) Any person who claims an interest in the property to be included in the original application 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 pecuniary penalty order against a person and the effect of the amendment would be to include an additional benefit in the application for the pecuniary penalty order, he shall give the person not less than fourteen days' written notice of the application to amend.

6.—(1) Where an application is made to the Judge for a forfeiture order or pecuniary penalty order in respect of a person's conviction for a prescribed offence, the Judge may, in determining the application, have regard to the transcript of any proceedings against the person for the offence.

Procedure
on applica-
tion.

(2) [*Deleted by Act 18 of 2005, 2nd Sch.*]

7.—(1) Where an application is made to the Judge for a forfeiture order against property in respect of a person's conviction for a prescribed offence and the Judge is satisfied that the property is tainted property in respect of the offence, the Judge may order that the property or such part thereof as the Judge may specify in the order, be forfeited to the Crown.

Forfeiture
order on
conviction.

(2) Where the Judge orders that property, other than money, be forfeited to the Crown, the Judge shall specify in the order the amount representing the value of the property pursuant to a valuation carried out under section 4(1)(c)(i).

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2nd Sch.

(3) In considering whether a forfeiture order should be made under subsection (1) the Judge 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 intended use of the property.

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

Effect of
forfeiture
order.

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

(2) Where such property is subject to the Registration of Titles Act—

- (a) the property vests in the Crown in equity but not 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 Commissioner of Lands has power on behalf of the Crown to do, or authorize 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 that kind of property.

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

- (a) the property shall not, except with the leave of the Judge and in accordance with any directions of the Judge, be disposed of, or otherwise dealt with, by or on behalf of the Crown, before the relevant appeal date;
- (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 directions of the Attorney-General.

(4) Without prejudice to the generality of subsection (3) (b) the directions that may be given pursuant thereto 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 “relevant appeal date” means—

- (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 the appeal against a person’s conviction or against the making of a forfeiture order is lodged, the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later.

Voidable
transfers.

9. The Judge may—

(a) before making a forfeiture order, and

(b) in the case of property in respect of which a restraint order was made, where a copy of the order was served in accordance with section 31,

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

Protection of
third parties.

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

(2) If, pursuant to subsection (1), a person applies for an order the Judge shall make an order declaring the nature, extent and value (as at the time the order is made) of the person's interest if the Judge is satisfied—

(a) that the person was not in any way involved in the commission of the offence; and

(b) where the person acquired the interest during or after the commission of the offence, that he acquired the interest—

(i) for sufficient consideration; and

(ii) without knowing, or having reasonable grounds to suspect, that at the time he acquired it, the property was tainted property.

(3) Subject to subsection (4), where a forfeiture order has already been made against property, a person who claims an interest in the property may, before the end of the period of three months commencing on the day on which

the forfeiture order is made or such longer period as the Judge may, having regard to all the circumstances, allow, apply under this subsection to the Judge 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 hearing of that application, shall not, except with the leave of the Judge, be permitted to make an application under subsection (3).

(5) A person who makes an application under subsection (1) or (3) shall give not less than fourteen days' written notice thereof to the Director of Public Prosecutions, who shall be a party to any proceedings in respect of the application.

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

(7) Where a person has obtained an order under subsection (2) and the period allowed by rules of court with respect to the making of appeals has expired or any appeal from that order made pursuant to subsection (6) has been determined in the person's favour, the Attorney-General shall, on application of the person aforesaid, direct that—

- (a) the property or the part thereof to which the applicant's interest relates, be returned to the applicant; or
- (b) an amount equal to the value of the applicant's interest, as declared in the order, be paid to the applicant.

Discharge
of forfei-
ture order
or pecuniary
penalty
order on
appeal and
quashing of
conviction.

11.—(1) Where a forfeiture order or a pecuniary penalty order is made in respect of a person's conviction of a prescribed offence, and the conviction is subsequently quashed the quashing of the conviction discharges the order.

(2) Where a forfeiture order is discharged as provided in subsection (1) or, as the case may be, by the Court on an appeal against the order, any person who claims to have had an interest in the property immediately before the making of the forfeiture order, may apply to the Attorney-General in writing for the return or, as the case may be, the transfer of the interest to him.

(3) On receipt of an application under subsection (2), the Attorney-General shall—

- (a) if the interest is still vested in the Crown, direct that the property or part thereof to which the applicant's interest relates, be transferred or returned to the applicant; or
- (b) in any other case, direct that there be payable to the applicant, an amount equal to the value of the interest at the time when the order is made.

(4) In the exercise of the powers conferred by this section and section 10, the Attorney-General shall have power to do or authorize 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.

Payment
instead of
forfeiture
order.

12. Where the Judge is satisfied that a forfeiture order should be made against the property of a person convicted of a prescribed offence but that the property or any part thereof or any 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 Jamaica;
- (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 Judge may, instead of ordering forfeiture of the property or part thereof, or interest therein, order the person to pay to the Crown an amount equal to the value of the property, part or interest.

13. Where the Judge orders a person to pay an amount under section 12 that order shall be enforceable against any realizable property of that person.

Enforcement of orders made under section 12.

Pecuniary Penalty Orders

14.—(1) Subject to this section, where the Director of Public Prosecutions applies to the Judge for a pecuniary penalty order against a person in respect of that person's conviction of a prescribed offence the Judge shall, if 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 Judge certifies in accordance with section 17 to be the amount that might be realized at the time when the pecuniary penalty order is made.

Pecuniary penalty order on conviction.

(2) The Judge shall in accordance with sections 15 to 18, assess the value of the benefits derived by a person from the commission of a prescribed offence.

(3) The Judge shall not make a pecuniary penalty order under this section—

- (a) until the period allowed by 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 conviction has been lodged, until the appeal lapses in accordance with the rules of court or is finally determined.

Rules for
determin-
ing benefit
and assess-
ing value.

15.—(1) Where a person obtains property as the result of, or in connection with the commission of, a prescribed 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 prescribed offence, his advantage shall be deemed to be a sum of money equal to the value of the advantage so derived.

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

(4) 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 prescribed offence exceeded the value of the person's property before the commission of the offence, then the Judge shall, for the purposes of section 14 (2) and subject to subsection (5), treat the value of the benefits as not being less than the amount of the excess.

(5) If, after evidence of the kind referred to in subsection (4) is given, the person satisfies the Judge that the

whole or part of the excess was due to causes unrelated to the commission of the prescribed offence, subsection (4) shall not apply to the excess or, as the case may be, that part.

16.—(1) Where—

- (a) a person is convicted of a prescribed offence and the Director of Public Prosecutions tenders to the Judge a statement as to any matters relevant—

Statements relating to benefits from commission of prescribed offences.

- (i) to determining whether the person has benefited from the offence or from any other prescribed offence of which he is convicted in the same proceedings; or
- (ii) to an assessment of the value of the person's benefit from any such offence as is referred to in sub-paragraph (i); and

- (b) the person accepts to any extent an allegation in the statement,

the Judge 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 to the Judge as mentioned in subsection (1); and
- (b) the Judge is satisfied that a copy of that statement has been served on the person,

the Judge 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 on which he proposes to rely.

(3) If 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 accepting every allegation in the statement other than—

- (a) any allegation in respect of which he has complied with the requirement; and
- (b) any allegation that he has benefited from the prescribed 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 Judge a statement as to any matters relevant to determining the amount that might be realized at the time when the pecuniary penalty order is made; and
 - (b) the Director of Public Prosecutions accepts to any extent any allegation in such statement,
- the Judge may, for the purposes of that determination, treat the acceptance by the Director of Public Prosecutions as conclusive of the matters to which it relates.

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

- (a) orally before the Judge; or
- (b) in writing in accordance with rules of court.

(6) No acceptance by a person under this section that he received any benefits from the commission of a prescribed offence shall be admissible in any proceedings for any offence.

Amount to
be recovered
under
pecuniary
penalty
order.

17.—(1) Subject to subsection (2), the amount to be recovered under a pecuniary penalty order shall be the amount which the Judge assesses to be the value of the person's benefit from the prescribed offence or, if more than one, all the offences in respect of which the order may be made.

(2) Where the Judge is satisfied as to any matter relevant for determining the amount which might be realized

at the time the pecuniary penalty order is made (whether by an acceptance under section 16 or otherwise) the Judge may issue a certificate giving his opinion as to the matters concerned, and shall do so if satisfied that the amount that might be realized at the time the pecuniary penalty order is made is less than the amount that the Judge assesses to be the value of the person's benefit from the prescribed offence or, if more than one, all the offences in respect of which the pecuniary penalty order may be made.

18.—(1) Where—

- (a) the Judge makes a pecuniary penalty order against a person in relation to a prescribed offence;
- (b) in calculating the amount payable under the pecuniary penalty order the Judge took into account a forfeiture order or a proposed forfeiture order, in respect of property; and
- (c) an appeal against the forfeiture or forfeiture order is allowed or, as the case may be, the proceedings for the proposed forfeiture order are terminated without such an order being made,

Variation
of pecu-
niary pen-
alty orders.

the Director of Public Prosecutions may apply to the Judge for a variation of the pecuniary penalty order so as to increase the amount of the order by the value of the property not forfeited as aforesaid and the Judge may, if he considers it appropriate to do so, vary the order accordingly.

(2) Where—

- (a) in calculating the amount payable under a pecuniary penalty order, the Judge took into account, in accordance with section 2 (3) and (4), an amount of tax paid by the person against whom the order is made; and
- (b) an amount is repaid or refunded to the person in respect of the tax so paid,

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

Judge may
lift
corporate
veil.

19.—(1) In assessing the value of benefits derived by or accruing to a person from the commission of a prescribed offence, the Judge may treat as that person's property, any property that the Judge is satisfied 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 Judge may have regard to—

- (a) shareholding in, debentures over or directorships in, any company that has an interest (direct or indirect) in the property, and for this purpose the Judge may order the investigation and inspection of the books of a company named in the order;
- (b) any trust that has a relationship with the property;
- (c) any relationship between persons having interests in the property or in such company or trusts as is referred to in paragraph (a) or (b), and any other persons.

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

(4) Where a declaration is made by an order under subsection (3)—

(a) the order may be enforced against the property named in the order; and

(b) a restraint order may be made in respect of that property,

as if it were property of the person against whom the order is made.

(5) The Director of Public Prosecutions shall, in making an application for an order under subsection (3)—

(a) give written notice of the application to the person against whom the pecuniary penalty order is made and to any other person who the Director of Public Prosecutions has reason to believe may have an interest in the property; and

(b) the person against whom the pecuniary penalty order is made and any other person who claims an interest in the property may appear and adduce evidence at the hearing.

PART III. *Provisions relating to investigations and Preservation of Property liable to Forfeiture and Pecuniary Penalty Orders*

Powers of Search and Seizure

20.—(1) Subject to section 21, where a Justice of the Peace is satisfied by information on oath that there are reasonable grounds for suspecting that tainted property is to be found on any premises specified in the information, he may issue a search warrant in accordance with subsection (2).

Warrant to search premises for tainted property.

(2) The warrant mentioned in subsection (1) may authorize a constable named in the warrant to enter the premises specified in the warrant, with such assistance and

by such force as is necessary and reasonable to—

- (a) enter upon the premises;
- (b) search the premises for tainted property;
- (c) seize property found in the course of the search that the constable believes, on reasonable grounds, to be tainted property.

Restrictions
on issue of
search
warrants.

21. A warrant shall not be issued under section 20 unless the informant or some other person has given to the Justice of the Peace, on oath, any further information that the Justice of the Peace may require concerning the grounds on which the issue of the warrant is sought.

Matters to
be included
in search
warrant.

22. A warrant issued under section 20 shall include—

- (a) a statement of the purpose for which the warrant is issued, and a reference to the nature of the prescribed offence;
- (b) a description of the kind of property to be seized;
- (c) a time, not being later than twenty-eight days, upon the expiration of 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.

Other
tainted
property
may be
seized.

23. A warrant issued pursuant to section 20 shall be deemed to authorize the constable to seize property that he believes, on reasonable grounds, to be—

- (a) tainted property in relation to the prescribed offence, although not of a kind specified in the warrant; or
- (b) tainted property in relation to another prescribed offence,

if the constable 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 connection with the offence specified as aforesaid or any other offence.

24.—(1) A constable who executes a warrant issued under section 20 shall—

Record of
property
seized.

- (a) detain the property seized, taking reasonable care to ensure that it is preserved so that it may be dealt with in accordance with this Act;
- (b) upon the execution of the warrant, prepare a list of the property seized and give a copy thereof to the owner or occupier of the premises who is present at the time of seizure; and
- (c) as soon as is practicable after the execution of the warrant, but within a period of seventy-two hours thereafter, prepare a written report, identifying the property seized and the location where the property is being detained and send a copy of the report to the Clerk of Courts in that location.

(2) The Clerk of Courts referred to in subsection (1) (c) shall furnish a copy of the report to—

- (a) the person from whom the property was seized; and
- (b) any other person who appears to the Clerk of Courts to have an interest in the property.

25.—(1) Where property has been seized otherwise than because it may afford evidence as to the commission of a prescribed offence, any person who claims an interest in the property may apply to the Judge for an order that the property be returned to him.

Return of
property
seized.

(2) The following provisions of this section shall

apply in respect of the return of property referred to in subsection (1).

(3) Where application is made under subsection (1), the Judge shall order the return of the property to the applicant if the Judge is satisfied that—

- (a) the applicant is entitled to possession of the property;
- (b) the property is not tainted property in relation to a prescribed offence; and
- (c) the person in respect of whose conviction, charging or proposed charging the seizure was made, has no interest in the property.

(4) Subject to section 26, the property shall be returned to the person from whose possession it was seized as soon as practicable after the end of a period of seventy-two hours after seizure if at the end of that period an information had not been laid in respect of a prescribed offence.

Retention
of property
seized.

26.—(1) Subject to subsections (2) and (3), where property is seized under section 23 otherwise than because it may afford evidence as to the commission of a prescribed offence and—

- (a) but for this subsection, the property would be returned to a person as soon as practicable after a particular period; and
- (b) before the end of that period, a restraint order is made in relation to the property,

it shall be dealt with in accordance with the restraint order or with any other provision of this Act.

(2) If, at the time when a restraint order is made against property referred to in subsection (1), the property is in the possession of the Commissioner, the Commissioner

may apply to the Judge who made the restraint order for an order that he retain possession of the property.

(3) The Judge may, if satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of a prescribed offence, make an order that the Commissioner retain the property for so long as it is required as evidence as aforesaid.

(4) In any proceedings on an application under subsection (2), a witness shall not be required to answer any question or to produce any document if the Judge is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

(5) Where an application for a restraint order has been refused in relation to property referred to in subsection (1), and at the time of such refusal, the property is in the possession of the Commissioner the property shall as soon as practicable after the refusal, be returned to the person from whose possession it was seized.

(6) Where property has been seized under section 23 and while the property is in the possession of the Commissioner a forfeiture order is made in respect thereof, the property shall be dealt with in accordance with the forfeiture order.

Restraint Orders

27.—(1) Where a person (in this section and section 28 called “the defendant”)—

Applica-
tion for
restraint
order.

- (a) has been convicted of a prescribed offence; or
 - (b) has been charged with a prescribed offence,
- the Director of Public Prosecutions may apply to the Judge for a restraint order against any realizable property held by the defendant or by a person other than the defendant.

(2) An application for a restraint order may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating—

- (a) where the defendant has been convicted of a prescribed offence, the prescribed offence for which the defendant was convicted, the date of the conviction, the Judge before which the conviction was obtained and whether an appeal has been lodged against the conviction;
- (b) where the defendant has been charged with a prescribed offence, the prescribed offence for which he is charged and the grounds for believing that the defendant committed the offence;
- (c) a description of the property in respect of which the restraint order is sought;
- (d) the name and address of the person who is believed to be in possession of the property;
- (e) the grounds for believing that the property is tainted property in relation to the offence;
- (f) the grounds for believing that the defendant derived a benefit directly or indirectly from the commission of the offence;
- (g) where the application seeks a restraint order against property of a person other than the defendant, the grounds for believing that the property is tainted property in relation to the offence or is subject to the effective control of the defendant;
- (h) the grounds for believing that a forfeiture order or a pecuniary penalty order may be or is likely to be made under this Act.

Restraint
orders.

28.—(1) Subject to this section, the Judge may, on the application of the Director of Public Prosecutions, make a

restraint order against property if the Judge is satisfied that—

- (a) the defendant has been convicted of a prescribed offence or charged with a prescribed offence, as the case may be;
- (b) where the defendant has been charged with a prescribed offence, there are reasonable grounds for believing that the defendant committed the offence;
- (c) there are reasonable grounds for believing that the property is tainted property in relation to the prescribed offence of which the defendant has been convicted or with which he has been charged or that the defendant derived a benefit directly or indirectly from the commission of the offence;
- (d) where the application seeks a restraint order against property of a person other than the defendant, there are reasonable grounds for believing that the property is tainted property in relation to the prescribed offence of which the defendant has been convicted or with which he has been charged or that the property is subject to the effective control of the defendant;
- (e) there are reasonable grounds for believing that a forfeiture order or a pecuniary penalty order is likely to be made under this Act.

(2) A restraint order may—

- (a) prohibit the defendant or any other person from disposing of, or otherwise dealing with, the property or such part thereof or interest therein as is specified in the order, except in such manner as may be specified in the order; and

(b) at the request of the Director of Public Prosecutions, where the Judge is satisfied that the circumstances so require—

- (i) direct the Commissioner or such other person as the Judge may appoint to take custody of the property or such part thereof as is specified in the order and to manage or otherwise deal with all or any part of the property in accordance with the directions of the Judge; and
- (ii) require any person having possession of the property to give possession thereof to the Commissioner or to the person appointed under sub-paragraph (i) to take custody of the property.

(3) A restraint order may be made subject to such conditions as the Judge thinks fit and, without limiting the generality of the foregoing, may make provision for meeting out of the property or a specified part of the property, all or any of the following—

- (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants (if any)) and reasonable business expenses;
- (b) the person's reasonable expenses in defending the criminal charge and any proceedings under this Act.

(4) In determining whether there are reasonable grounds for believing that property is subject to the effective control of the defendant the Judge may have regard to the matters referred to in section 19 (2).

(5) Where the Commissioner or other person appointed under subsection (2) (b) (i) is given a direction in relation to any property, the Commissioner or the other

person may apply to the Judge for directions on any question respecting the management or preservation of the property concerned.

(6) An application under subsection (5) shall be served upon all persons interested in the application or such of them as the Judge thinks expedient and all such persons shall be entitled to appear and be heard at the hearing.

(7) The Commissioner or person appointed under subsection (2) (b) (i) shall, in acting on directions given by the Judge, be deemed to have discharged his duty in the subject-matter of the application.

29.—(1) Before making an order under section 28, the Judge may require the Crown to give such undertakings as the Judge considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

Under-
takings by
Crown.

(2) For the purposes of this section, the Director of Public Prosecutions may, after consultation with the Attorney-General, on behalf of the Crown, give to the Judge such undertakings with respect to the payment of damages or costs, or both, as are required by the Judge.

30. Before making a restraint order, the Judge may require notice to be given to, and may hear, any person who, in the opinion of the Judge, appears to have an interest in the property, unless the Judge is of the opinion that given such notice before making the order would result in the disappearance, dissipation or reduction in the value of the property.

Notice of
applica-
tion for
restraint
order.

31. A copy of a restraint order shall be served on a person affected by the order in such manner as the Judge directs or as may be prescribed by rules of court.

Service of
restraint
order.

Registration of restraint order.

32.—(1) A copy of a restraint order which affects registered land in Jamaica shall be registered with the Registrar of the Supreme Court and with the Registrar of Titles who shall record the particulars of the order in the Register Book of Titles.

(2) A restraint order is of no effect with respect to registered land unless it is so registered.

(3) Where particulars of a restraint order are registered as required by this section, a person who subsequently deals with the property concerned shall, for the purposes of section 33, be deemed to have notice of the order at the time of the dealing.

(4) The registration of a restraint order under this section shall be exempt from the payment of fees under the Registration of Titles Act and stamp duty under the Stamp Duty Act.

Contravention of restraint order.

33.—(1) A person who knowingly contravenes a restraint order by disposing of, or otherwise dealing with, property that is subject to the restraint order is guilty of an offence and is liable—

(a) on summary conviction in a Resident Magistrate's Court—

(i) in the case of an individual to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or

(ii) in the case of a body corporate to a fine not exceeding two hundred thousand dollars;

(b) on conviction on indictment in a Circuit Court—

(i) in the case of an individual to a fine or to imprisonment for a term not exceeding seven

years or to both such fine and imprisonment;
or

(ii) in the case of a body corporate to such fine as the Court may impose.

(2) Where a restraint order is made against property and—

- (a) the property is disposed of or otherwise dealt with in contravention of the restraint order; and
- (b) the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice,

the Director of Public Prosecutions may apply to the Judge for an order that the disposition or dealing be set aside.

(3) The Judge may, on the application of the Director of Public Prosecutions under subsection (2)—

- (a) set aside the disposition or dealing as from the day on which the disposition or dealing took place; or
- (b) set aside the disposition or dealing as from the day of the order under this subsection and declare the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place, and before the day of the order under this subsection.

34.—(1) A restraint order remains in force until—

- (a) it is revoked under section 35 or 37;
- (b) it ceases to be in force under section 36;
- (c) a forfeiture order or a pecuniary penalty order, as the case may be, is made in respect of property which is the subject of the order; or
- (d) the property which is the subject of the order becomes forfeited to the Crown under any other enactment.

Duration
of restraint
order.

(2) A restraint order shall cease to be in force in respect of any property or interest therein or any part thereof which is excluded from its application pursuant to section 35 (5).

Review of Search Warrants

Review of
search
warrants
and
restraint
orders.

35.—(1) A person who has an interest in property that was seized under a warrant issued pursuant to section 20 or in respect of which a restraint order was made may, at any time, apply to the Judge—

- (a) for an order under subsection (5); or
- (b) for permission to examine the property.

(2) An application under subsection (1) shall not be heard by the Judge unless the applicant has given to the Director of Public Prosecutions not less than three days' notice in writing of the application.

(3) The Judge may require notice of the application to be given to, and may hear, any person who, in the opinion of the Judge, appears to have an interest in the property.

(4) On an application made under subsection (1) (a) in respect of any property, the Judge may, after hearing the applicant, the Director of Public Prosecutions or any other person who is notified under subsection (3), act in accordance with subsection (5).

(5) For the purposes of subsection (4) the Judge may order that the property or any part thereof be returned to the applicant or, in the case of a restraint order, revoke the order or vary it to exclude the property or any interest therein or any part thereof from the application of the order, or make the order subject to such conditions as the Judge thinks fit—

- (a) if the applicant enters into a recognizance before the Judge, with or without sureties, in such amount

and with such conditions, as the Judge directs, and where the Judge considers it appropriate, deposits with the Judge such sum of money or other valuable security as the Judge directs;

(b) if the conditions referred to in subsection (6) are satisfied; or

(c) for the purpose of—

(i) meeting the reasonable living expenses of the person who was in possession of the property at the time the warrant was executed or the order was made or any person who, in the opinion of the Judge, has an interest in the property and of the dependants of that person;

(ii) meeting the reasonable business or legal expenses of a person referred to in subparagraph (i).

(6) An order under subsection (5) in respect of property may be made if the Judge is satisfied that—

(a) a warrant should not have been issued pursuant to section 20 or a restraint order should not have been made, in respect of the property;

(b) the applicant is the lawful owner of, or lawfully entitled to possession of, the property and appears innocent of any complicity in a prescribed offence or of any collusion in relation to such offence; and

(c) the property will no longer be required for the purpose of any investigation or as evidence in any proceedings.

(7) On an application to the Judge under subsection (1) (b), the Judge may order that the applicant be permitted to examine the property subject to such terms as appear to the Judge to be necessary or desirable to ensure that the

property is safeguarded and preserved for the purpose for which it may subsequently be required.

Automatic
expiry of
restraint
orders.

36.—(1) Subject to this section, a restraint order shall not continue in force for a period of more than six months after the date when the order is made unless, before the expiration of that period, the Director of Public Prosecutions applies to the Judge for an extension of the period of operation of the order.

(2) Where the Director of Public Prosecutions applies for an extension of the period of operation of a restraint order and the Judge is satisfied that—

- (a) a forfeiture order may be made in respect of the property concerned or part thereof; or
- (b) a pecuniary penalty order may be made against a person in relation to the property concerned,

the Judge may extend, for such further period as the Judge may specify, the period of operation of the restraint order and may make such other order as he considers appropriate in relation to the operation of the order.

Disposal of
property
seized or dealt
with.

37.—(1) Where the Judge is satisfied that property will no longer be required for the purposes of—

- (a) section 7 (forfeiture order on conviction) or section 14 (pecuniary penalty order on conviction);
- (b) any other enactment providing for forfeiture;
- (c) any investigation; or
- (d) evidence in any proceeding,

the Judge shall on the application of the Director of Public Prosecutions or any person having an interest in the property, act in accordance with the following subsections.

(2) The Judge may revoke any restraint order made

in respect of the property or cancel any recognizance entered into pursuant to section 35.

(3) Where property has been seized under a warrant issued under section 20 or where the property is under the control of a person appointed pursuant to section 28 (2) (b) (i), the Judge may—

- (a) order that the property be returned to the person from whom it was taken if that person's possession of the property is lawful;
- (b) order that the property be returned to the lawful owner or the person who is lawfully entitled to possession of it if—
 - (i) the person from whom it was taken was not lawfully entitled to possession of it; and
 - (ii) the lawful owner or the person lawfully entitled to its possession is known;
- (c) order that the property be forfeited to the Crown if—
 - (i) possession of it by the person from whom it was taken is unlawful; and
 - (ii) the lawful owner or person lawfully entitled to its possession is not known or cannot, upon reasonable enquiry, be ascertained.

*Production Orders and other Information
Gathering Powers*

38.—(1) Where—

- (a) a person has been convicted of a prescribed offence and a constable has reasonable grounds for suspecting that any person has possession or control of a document relevant to—
 - (i) identifying, locating or quantifying property of the person who committed the offence

Production
and inspec-
tion orders.

or to identifying or locating a document necessary for the transfer of such property; or

(ii) identifying, locating or quantifying tainted property in relation to the offence; or

(iii) identifying or locating a document necessary for the transfer of such tainted property; or

(b) a constable has reasonable grounds for suspecting that a person has committed a prescribed offence and that any person has possession or control of a document referred to in paragraph (a),

the constable may apply to a Judge in Chambers in accordance with subsection (2) for an order under subsection (4) against the person suspected of having possession or control of the document.

(2) An application under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit.

(3) Where a constable applies for an order under subsection (4) and includes in the affidavit a statement to the effect that the constable has reasonable grounds for believing that—

(a) the person who was convicted of the offence or who is believed to have committed the offence, derived a benefit directly or indirectly from the commission of the offence; and

(b) property specified in the affidavit is subject to the effective control of that person,

the Judge in Chambers may treat any document relevant to identifying, locating or quantifying that property as a document in respect of which an order may be issued under subsection (4), and for that purpose the Judge may have regard to the matters referred to in section 19 (2).

(4) Where an application is made for an order against a person, the Judge in Chambers may, subject to subsections (5) and (6), make an order requiring the person to—

- (a) produce to a constable any documents of the kind referred to in subsection (1) that are in the person's possession or control; or
- (b) make available to the constable for inspection, any such document as aforesaid.

(5) An order under subsection (4) (a) shall not be made in respect of accounting records used in the ordinary business of banking, including ledgers, day-books, cash books and account books.

(6) A Judge in Chambers shall not make an order under this section unless—

- (a) the applicant or some other person has given the Judge, either orally or by affidavit, such information as the Judge requires concerning the grounds on which the order is sought; and
- (b) the Judge is satisfied that there are reasonable grounds for making the order.

(7) An order that a person produce a document or documents to the constable shall specify the time when, and the place where, the document or documents are to be produced.

(8) An order that a person make a document or documents available to a constable for inspection shall specify the time or times when the document or documents is or are to be made available.

Scope of
police
powers
under pro-
duction
order, etc.

39.—(1) Where a document is produced or made available to a constable pursuant to an order under section 38, the constable may—

(a) in the case of a document produced—

- (i) inspect it;
- (ii) take extracts from it;
- (iii) make copies of it; or
- (iv) retain it if, and for so long as, its retention is reasonably necessary for the purposes of this Act; or

(b) in the case of a document made available—

- (i) inspect it;
- (ii) take extracts from it; or
- (iii) make copies of it.

(2) Where a constable retains a document pursuant to an order under section 38, the constable shall give to the person to whom the order was addressed a receipt for the document and a copy of the document certified by the constable in writing to be a true copy of that document.

Evidential
value of
informa-
tion.

40.—(1) Where a document is produced or made available by a person pursuant to an order under section 38, the production or making available of—

- (a) the document; or
- (b) any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document,

is not admissible against the person in any criminal proceedings except a proceeding for an offence under section 42.

(2) For the purposes of subsection (1), proceedings on an application for a restraint order, a forfeiture order or a pecuniary penalty order are not criminal proceedings.

(3) A person is not excused from producing or making available a document when required to do so by an order under section 38 on the grounds that the production or making available of the document—

- (a) might tend to incriminate the person or make the person liable to a penalty; or
- (b) would be in breach of an obligation, whether imposed by law or otherwise, of the person not to disclose the existence or contents of the document.

41. The person who is required to produce a document to a constable may apply to a Judge in Chambers for a variation of the order and if the Judge is satisfied that the document is essential to the business activities of that person, the Judge may vary the production order so that it requires the person to make the document available to a constable for inspection.

Variation
of produc-
tion order.

42.—(1) A person commits an offence against this Act if he—

Failure to
comply with
production
order.

- (a) without reasonable excuse, fails to comply with an order to produce a document to a constable or to make it available to a constable for inspection;
- (b) in purported compliance with such an order, produces or makes available a document which he knows to be false or misleading in a material particular and he does not—
 - (i) indicate to the constable to whom the document is produced or made available that it is false or misleading; and
 - (ii) provide to the constable such correct information as he has in his possession or as he can reasonably acquire.

(2) A person is liable on summary conviction of an offence under subsection (1)—

- (a) in the case of an individual to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or
- (b) in the case of a body corporate to a fine not exceeding two hundred thousand dollars.

Search
warrant to
facilitate
investiga-
tions.

43.—(1) Where a constable has reasonable grounds for suspecting that—

- (a) in relation to a person convicted of a prescribed offence, a document of a kind referred to in section 38 is in any premises; or
- (b) a person has committed a prescribed offence and such a document is in any premises,

the constable may apply to a Judge in Chambers for a warrant under subsection (2) to search the premises.

(2) Subject to subsections (3) and (4), a Judge may, on an application made under subsection (1), issue a warrant authorizing a constable named in the warrant with such assistance as may be necessary and reasonable to—

- (a) enter the premises;
- (b) search the premises for such documents as aforesaid; and
- (c) seize and detain any document found in the course of the search that, in the opinion of the constable, is likely to be of substantial value (whether by itself or together with other documents) to the investigation in respect of which the application is made.

(3) A Judge in Chambers shall not issue a warrant under subsection (2) unless he is satisfied that—

- (a) a production order has been made in respect of the document and has not been complied with;
- (b) a production order in respect of the document would be unlikely to be effective because there are reasonable grounds for suspecting that such a production order would not be complied with;
- (c) the document involved cannot be identified or described with sufficient particularity to enable a production order to be made in respect thereof;
- (d) it is not practicable to communicate with any person having the power to grant entry to the premises;
- (e) entry to the premises will not be granted unless a warrant is produced; or
- (f) the relevant investigation might be seriously prejudiced unless the constable is granted immediate access to the document without notice to any person.

(4) A search warrant shall not be issued under subsection (2) unless—

- (a) the applicant or some other person has given the Judge, either orally or by affidavit, any further information that the Judge requires concerning the grounds on which the warrant is sought; and
- (b) the Judge is satisfied that there are reasonable grounds for issuing the warrant.

(5) A search warrant issued under subsection (2) shall state—

- (a) the purpose for which it is issued, including a reference to the prescribed offence that has been, or is believed to have been, committed;
- (b) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;

- (c) a description of the kind of documents authorized to be seized; and
- (d) the date, not being later than twenty-eight days after the day of issue of the warrant upon which the warrant ceases to have effect.

(6) Where a constable enters premises in execution of a warrant issued under this section, he may seize and retain—

- (a) any document, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other documents) to the investigation for the purpose of which the warrant was issued; and
- (b) anything that the constable believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence.

(7) In this section—

- (a) the expression “items subject to legal privilege” means—
 - (i) communication between an attorney-at-law and his client; and
 - (ii) communication made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings, being communication which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communication;
- (b) “premises” includes any place and in particular any building, receptacle or vehicle.

Monitoring Orders

44.—(1) The Director of Public Prosecutions may apply to a Judge in Chambers in accordance with subsection (3) for an order (in this section called a “monitoring order”) directing a financial institution to give to a constable named by the Director of Public Prosecutions in the application, information and such documents as the Director of Public Prosecutions may specify in the application, other than items subject to legal privilege.

Monitoring orders.

29/1996
S. 2 (a).

(2) The constable referred to in subsection (1) shall be a constable designated in writing by the Commissioner.

(3) An application under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit.

(4) A monitoring order shall direct a financial institution to disclose information or to produce documents, or both, obtained by or under the control of the institution about transactions conducted through an account held by a particular person with the institution.

29/1996
S. 2 (b).

(5) A monitoring order shall apply in relation to transactions conducted during the period specified in the order, being a period commencing not earlier than the day on which notice of the order is given to the financial institution and ending not later than three months after the date of the order.

(6) A Judge shall not make a monitoring order unless he is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is or documents are sought—

29/1996
S. 2 (c).

(a) has committed, or is about to commit a prescribed offence;

(b) was involved in the commission, or is about to be involved in the commission, of a prescribed offence;

or

- (c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a prescribed offence.

(7) A monitoring order shall specify—

- (a) the name or names in which the account is believed to be held;
- (b) the class of information and a description of any documents that the institution is required to give; and
- (c) the name of the constable to whom the information is or documents are to be given and the manner in which it is or they are to be given.

29/1996
S. 2 (d).

29/1996
S. 2 (e)(i)
(ii).

(8) A financial institution that is notified of a monitoring order and knowingly—

- (a) contravenes the order; or
- (b) provides false or misleading information or documents in purported compliance with the order, is guilty of an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred thousand dollars.

29/1996
S. 2 (f).

(9) A reference in this section to a transaction conducted through an account includes a reference to—

- (a) the making of a fixed term deposit;
- (b) in relation to a fixed term deposit, the transfer of the amount deposited or any part thereof at the end of the term; and
- (c) the opening, existence or use of a deposit box held by the institution.

Monitoring
orders not
to be dis-
closed.

45.—(1) A financial institution that is, or has been, subject to a monitoring order shall not disclose the existence or the operation of the order to any person except—

- (a) an officer or agent of the institution, for the purpose of ensuring that the order is complied with;

- (b) an attorney-at-law, for the purpose of obtaining legal advice or representation in relation to the order.

(2) A person referred to in subsection (1) (a) and (b) to whom disclosure of the existence or operation of a monitoring order has been made and a constable referred to in subsection (1) of section 44 shall not—

- (a) disclose the existence or operation of the order except to another person referred to in that subsection for the purposes of—

- (i) the performance of that person's duties, if the disclosure is made by the constable referred to in section 44 (1);

- (ii) ensuring that the order is complied with or obtaining legal advice or representation in relation to the order, if the disclosure is made by an officer or agent of the institution; or

- (iii) giving legal advice or making representations in relation to the order, if the disclosure is made by an attorney-at-law; or

- (b) make a record of, or disclose, the existence of the operation of the order in any circumstances even when he ceases to be a person referred to in subsection (1).

(3) Nothing in subsection (2) prevents the disclosure by a person referred to in subsection (1) (b) of the existence or operation of a monitoring order—

- (a) for the purposes of, or in connection with, legal proceedings; or

- (b) in the course of proceedings before a court.

(4) A person referred to in subsection (1) (b) shall not be required to disclose to any court the existence or operation of a monitoring order.

(5) A person who contravenes subsection (1) or (2) is guilty of an offence and is liable on summary conviction in a Resident Magistrate's Court—

(a) in the case of an individual, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment;

(b) in the case of a body corporate, to a fine not exceeding two hundred thousand dollars.

(6) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which that person could reasonably be expected to infer the existence or operation of the monitoring order.

Retention
of records
of financial
institutions.

46.—(1) Subject to this section and section 47, 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 financial institution in its capacity as such and, without limiting the generality of the foregoing, 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 Jamaica 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 financial institution in its capacity as such 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 five 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 five 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 five 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 two hundred thousand dollars or such larger amount as may be prescribed for the purposes of this subsection.

(4) A financial institution required to retain documents under this section shall retain them in such manner that makes retrieval of the information contained in the

documents or, as the case may be, the documents, reasonably practicable.

(5) A financial institution that contravenes subsection (1) or (4) is guilty of an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred thousand dollars.

(6) Nothing in this section limits any other obligation of a financial institution to retain documents.

Register of
original
documents.

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

(2) Where a financial institution is required 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 first occurs.

(3) A financial institution that contravenes subsection (1) or (2) is guilty of an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred thousand dollars.

Communi-
cation of
information
to law
enforcement
authorities.

48.—(1) Where a financial institution has information about an account held with the institution and the institution has reasonable grounds for believing that the information—

- (a) may be relevant to an investigation of, or the prosecution of, a person for a prescribed offence; or
- (b) would otherwise be of assistance in the enforcement of this Act or any regulations made hereunder,

the institution may give the information to a constable or the Director of Public Prosecutions.

- (2) No action, suit or proceedings shall lie against—
- (a) a financial institution; or
 - (b) a person who is an officer, agent or employee of the institution acting in the execution of his duties as such,
- in relation to an action taken by the institution or person pursuant to subsection (1).

49. For the purposes of sections 44 to 48, “financial institution” means— Interpretation.

- (a) a bank licensed under the Banking Act;
- (b) a financial institution licensed under the Financial Institutions Act;
- (c) a building society registered under the Building Societies Act;
- (d) a society registered under the Co-operative Societies Act;
- (e) an insurance company registered under the Insurance Act.

PART IV. *General*

50.—(1) A person who has an interest in property against which a forfeiture order is made may appeal against that order— Appeals.

- (a) in the case of a person convicted of the prescribed offence in respect of which the order was made, in the same manner as if the order were or were part of a sentence imposed on that person in respect of that offence; or
- (b) in any other case, in the same manner as if the person had been convicted of the prescribed offence in respect of which the order was made and the

order were, or were part of, a sentence imposed on that person in respect of that offence.

(2) A person against whom a pecuniary penalty order or an order under section 12 is made may appeal against that order in the same manner as if it were, or were a part of, a sentence imposed on that person in respect of the person's conviction of a prescribed offence.

(3) Where a court—

(a) makes a pecuniary penalty order; and

(b) makes an order under section 19 (3) declaring that particular property is available to satisfy the order, a person who has an interest in the property may appeal against the order referred to in paragraph (b) in the same manner as if the person had been convicted of the prescribed offence in reliance on which the order was made and the order were, or were part of, a sentence imposed on the person in respect of that offence.

(4) On an appeal against a forfeiture order, a pecuniary penalty order or an order referred to in subsection (3) (b), the order may be confirmed, discharged or varied.

(5) Nothing in this section shall be taken to affect any right of appeal that a person would have apart from this section.

Amendment
of Schedule.

51. The Minister may, by order subject to affirmative resolution, amend the Schedule.

Compensa-
tion.

52.—(1) Where a Judge refuses an application for a forfeiture order or a pecuniary penalty order, the Judge shall, on the application of a person who held realizable property, order that compensation be paid to that person if the requirements of subsection (2) are fulfilled.

(2) The Judge shall order payment of compensation if the Judge is satisfied that—

- (a) there has been some serious default in the investigation or conduct of the matter and that, but for that default, the application would not have been instituted or continued; and
- (b) 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 Judge under section 28.

(3) The amount of compensation payable under this section is such amount as the Judge thinks just in all the circumstances.

(4) Compensation payable under this section shall be paid out of the Consolidated Fund.

53.—(1) The Minister may make regulations generally for giving effect to the provisions of this Act, and in particular, but without prejudice to the generality of the foregoing, may make regulations prescribing anything required by this Act to be prescribed.

Regulations.

(2) Regulations made under subsection (1) shall be subject to affirmative resolution.

54. Where—

Courts.

- (a) a person brings, or appears at, proceedings before a Judge under this Act in order to—
 - (i) prevent a forfeiture order, pecuniary penalty order, an order under section 12 or a restraint order from being made; or
 - (ii) have property of that person excluded from a forfeiture order, pecuniary penalty order or restraint order;

- (b) the person is successful in those proceedings; and
- (c) the Judge is satisfied that the person was not involved in any way in the commission of the offence in respect of which the relevant order was sought or made,

the Judge may order the Crown to pay all costs reasonably incurred by that person in connection with the proceedings or such part of those costs as the Judge may determine.

Standard
of proof.

55. Except as otherwise provided in this Act any question of fact to be decided by a Judge on an application under this Act shall be decided on the balance of probabilities.

Savings.

56. Nothing in this Act shall prejudice, limit or restrict—

- (a) the operation of any other enactment which provides for the forfeiture of property or the imposition of penalties or fines;
- (b) the remedies available to the Crown (apart from this Act) for the enforcement of its rights and the protection of its interests; or
- (c) any power of search or any power to seize or detain property which is exercisable by a constable apart from this Act.

SCHEDULE

(Section 2)

List of prescribed offences

1. Producing, manufacturing, supplying or otherwise dealing in any dangerous drug in contravention of the Dangerous Drugs Act.
2. Transporting or storing a dangerous drug where possession of that drug contravenes the Dangerous Drugs Act.
3. Importing or exporting a dangerous drug in contravention of the Dangerous Drugs Act.
4. A money laundering offence under section 3 of the Money Laundering Act.
5. Aiding, abetting, counselling or procuring the commission of any of the offences specified in paragraphs 1 to 4.
6. Conspiring to commit any of the offences specified in paragraphs 1 to 4.

29/1996
S. 3 (a).

29/1996
S. 3 (b).

29/1996
S. 3 (b).