

MONTSERRAT

NO. 1 OF 2010

THE PROCEEDS OF CRIME ACT 2010

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I ASSENT

Peter Waterworth
Governor

DATE: 9.2.10

MONTSERRAT

NO. 1 OF 2010

AN ACT TO REPEAL AND REPLACE THE PROCEEDS OF CRIME ACT (CAP. 4.04), THE DRUG TRAFFICKING OFFENCES ACT (CAP. 4.08), AND SECTIONS OF THE CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT (CAP. 04.06) WITH THE INTENT OF CONSOLIDATING AND UPDATING THE LAW RELATING TO CONFISCATION ORDERS IN RELATION TO PERSONS WHO BENEFIT FROM CRIMINAL CONDUCT, RESTRAINT ORDERS TO PROHIBIT DEALING WITH PROPERTY, MONEY LAUNDERING OFFENCES, COURT ORDERS TO ASSIST IN INVESTIGATIONS RELATING TO MONEY LAUNDERING OR A PERSON'S BENEFIT FROM CRIMINAL CONDUCT AND COOPERATION WITH OVERSEAS AUTHORITIES, TO INTRODUCE NEW PROVISIONS ALLOWING FOR THE FORFEITURE OF PROPERTY WHICH IS, OR REPRESENTS, PROPERTY OBTAINED THROUGH UNLAWFUL CONDUCT, TO ESTABLISH A FRAMEWORK FOR THE PREVENTION AND DETECTION OF MONEY LAUNDERING AND TERRORIST FINANCING AND FOR INCIDENTAL AND CONNECTED PURPOSES.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council of Montserrat and by the Authority of the same as follows:—

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Proceeds of Crime Act, 2010, and shall come into force on a day to be appointed by the Governor by Order.

Interpretation**2. (1)** In this Act—

“**AML/CFT obligation**”, in relation to a service provider, means an obligation of the service provider under this Act, the Anti-money Laundering and Terrorist Financing Regulations or an applicable Code, and includes an obligation imposed by a direction given under sections 166;

“**Anti-money Laundering and Terrorist Financing Regulations**” means the regulations made under section 175(2)(a);

“**Anti-terrorist Financing Order**” means the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002, or such Order or other law as may replace that Order;

“**applicable Code**”, in relation to a service provider, means a Code that applies to the service provider;

“**cash**” includes—

- (a) notes and coins in any currency;
- (b) postal orders;
- (c) cheques of any kind, including travellers’ cheques;
- (d) bankers’ drafts;
- (e) bearer bonds and bearer shares; and
- (f) any other monetary instrument that is prescribed as cash;

“**cash forfeiture order**” means an order for the forfeiture of cash under section 105;

“**civil forfeiture order**” means an order made under section 65;

“**commencement date**” means the date on which this Act comes into operation;

“**company**” means a body corporate, wherever incorporated, registered or formed and includes a foundation;

“**conduct**” includes omissions;

“**confiscation order**” means an order made under section 7(3);

“**country**” includes a territory;

“**Court**” means the High Court;

“**criminal conduct**” is conduct which constitutes an offence or would constitute an offence if it had occurred in Montserrat;

“**criminal lifestyle**”, in relation to a defendant, has the meaning specified in section 11;

“**criminal property**” has the meaning specified in section 116;

“**date of conviction**”, means—

- (a) in relation to an offence, the date on which the defendant was convicted of the offence concerned; or
- (b) if there are two or more offences and the convictions were on different dates, the date of the latest;

“**dealing**” with property includes disposing of it, taking possession of it or removing it from Montserrat;

“defendant” means, except in Part 3, a person against whom proceedings have been instituted for an offence, whether or not he has been convicted;

“document” means a document in any form and includes—

- (a) any writing or printing on any material;
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form;
- (c) any storage medium, including discs and tapes;
- (d) books and drawings; and
- (e) a photograph, film, tape, negative or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced;

“drug trafficking offence” means—

- (a) an offence under section 5(3), 6(2) or (3), 7(3) or 21 of the Drugs (Prevention of Misuse) Act (Cap. 4.07);
- (b) an offence under section 11 or 17 of the Criminal Justice (International Co-operation) Act (Cap. 4.06);
- (c) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a) or (b); or
- (d) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a) or (b);

“enforcement receiver” means a receiver appointed under section 47(1);

“FATF” means the international body known as the Financial Action Task Force;

“financial institution” has the meaning specified in the Financial Services Commission Act, 2008;

“financial intelligence unit” means a central public body or agency responsible for receiving (and if permitted, requesting), analysing and disseminating disclosures of financial information—

- (a) concerning the proceeds of crime or the suspected proceeds of crime; or
- (b) required by any law or enactment for the purposes of combating money laundering;

“Financial Services Commission” or **“Commission”** means the Financial Services Commission established under the Financial Services Commission Act (Cap. 11.02) and preserved and continued under the Financial Services Commission Act, 2008;

“general criminal conduct” has the meaning specified in section 9(1);

“gift” has the meaning specified in section 17;

“interim receiving order” means an order made by the Court under section 86;

“management receiver” means a receiver appointed under section 46(1);

“Minister” means the Minister responsible for Finance and Economic Development;

“money laundering” means an act which—

- (a) constitutes a money laundering offence; or

(b) would constitute a money laundering offence if done in Montserrat;

“money laundering offence” means—

- (a) an offence under section 118, 119 or 120;
- (b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a); or
- (c) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a);

“Money Laundering Reporting Officer” means the person appointed as Money Laundering Reporting Officer by a service provider under and in accordance with the Anti-money Laundering and Terrorist Financing Regulations;

“non-financial service provider” means a service provider that is not a regulated person;

“non-profit organisation” means an organisation that—

- (a) is established solely or primarily for charitable, religious, cultural, educational, social or fraternal purposes or for the purpose of benefiting the public or a section of the public; and
- (b) raises or disburses funds in pursuance of those purposes;

“NPO Supervisor” means the person or body prescribed as the supervisory authority for non-profit organisations under section 164;

“offence” means an offence—

- (a) that is or may be proceeded with on indictment; or
- (b) that may only be tried summarily and for which, if the offence was to be committed by an individual, the maximum penalty would be a term of imprisonment of 1 year or more;

“organisation” means a body of persons (whether incorporated or unincorporated), any legal entity and any equivalent or similar structure or arrangement and includes persons acting as trustees of a trust;

“particular criminal conduct” has the meaning specified in section 9(2);

“Penal Code compensation order” means an order to pay compensation made under section 28, 217 or 270 of The Penal Code (Cap. 4.02);

“police officer” includes a person appointed as a customs officer;

“premises” includes—

- (a) any place;
- (b) any vehicle, vessel, aircraft or hovercraft;
- (c) any offshore installation; and
- (d) any tent or movable structure;

“prescribed” means prescribed by regulations made under section 175;

“privileged material” has the meaning specified in section 133;

“property” has the meaning specified in section 3;

“realisable property” has the meaning specified in section 14;

- “**recoverable amount**” means the amount that the Court determines should be recovered from a defendant under a confiscation order;
- “**Registrar**” means the Registrar of the Court;
- “**regulated business**” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;
- “**regulated person**” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;
- “**regulated service provider**” means a service provider that is a regulated person;
- “**relevant business**” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;
- “**repealed Drug Trafficking Offences Act**” means the Drug Trafficking Offences Act, Act 4 of 1990, repealed under section 180;
- “**repealed Proceeds of Crime Act**” means the Proceeds of Crime Act, Act 20 of 1999, repealed under section 180;
- “**Reporting Authority**” means the Money Laundering Reporting Authority established under section 126;
- “**restraint order**” means an order made under section 42(1);
- “**senior police officer**” means a police officer of the rank of inspector or above or, in relation to the exercise of a power by a customs officer, an officer of the rank of senior customs officer or above;
- “**sentencing**” shall be construed in accordance with subsection (2)(a);
- “**service provider**” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;
- “**supervisory authority**” means—
- (a) in the case of a regulated service provider, the Financial Services Commission; and
 - (b) in the case of a non-financial service provider, such person as is prescribed as the supervisory authority for non-financial service providers;
- “**tainted gift**” has the meaning specified in section 18;
- “**taken into consideration**” shall be construed in accordance with subsection (2)(b);
- “**terrorism**” has the meaning specified in article 2 of the Terrorism (United Nations Measures) (Overseas Territories) Order 2001;
- “**terrorist financing**” means—
- (a) conduct referred to in—
 - (i) articles 3, 4, 5(9) and 6 of the Terrorism (United Nations Measures) (Overseas Territories) Order 2001;
 - (ii) articles 7, 8(9) and 9 of the Al-Qa’ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002;
 - (iii) articles 6, 7, 8 and 9 of the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002; or
 - (b) wilfully providing or collecting funds by any means, directly or indirectly, with the knowledge or intention that they are to be used or should be used

in full or in part to facilitate the commission of terrorist acts, or to any persons or entities acting on behalf of, or at the direction of a person who finances terrorism;

“**value**”, in relation to property, means the value of the property determined in accordance with sections 15, 16 and 19.

(2) A reference in this Act—

(a) to sentencing a defendant for an offence includes a reference to otherwise dealing with him in respect of the offence; and

(b) to an offence that has been, or will be, “taken into consideration”, means an offence that has been, or will be, taken into consideration under the Criminal Procedure Code.

(3) Except in relation to a fine imposed by the Court or the Magistrate’s Court, a reference in this Act to an amount expressed in dollars, includes a reference to an equivalent amount in any other currency.

Meaning of, and provisions relating to, “property”

3. (1) Property means property of every kind, whether situated in Montserrat or elsewhere, and includes—

(a) money;

(b) all forms of real or personal property; and

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

(2) The following provisions apply in relation to property for the purposes of this Act—

(a) property is held by a person if he holds an interest in it;

(b) property is obtained by a person if he obtains an interest in it;

(c) property is transferred by one person to another if the first person transfers or grants to the other person an interest in the property;

(d) a reference to property held by a person includes a reference to property vested in his trustee in bankruptcy or, in the case of a company, its liquidator; and

(e) a reference to an interest held by a person beneficially in property includes a reference to an interest that would be held by that person beneficially if the property were not vested in his trustee in bankruptcy or, in the case of a company, its liquidator.

(3) “**Interest**”, in relation to property includes—

(a) a right, including a right to possession of the property;

(b) any legal interest or estate; and

(c) any equitable interest or power.

Benefit from criminal conduct and pecuniary advantage

4. (1) For the purposes of this Act—

(a) a person benefits from conduct if he obtains property as a result of or in connection with the conduct;

- (b) if a person benefits from conduct, his benefit is the value of the property obtained as a result of or in connection with the conduct; and
- (c) if a person derives a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain, as a result of or in connection with the conduct, a sum of money equal to the value of the pecuniary advantage.

(2) References to property obtained or a pecuniary advantage derived in connection with conduct include references to property obtained or a pecuniary advantage derived both in that connection and in some other connection.

Institution and conclusion of proceedings

5. (1) Institution of criminal proceedings for an offence in Montserrat has the same meaning as in the Criminal Procedure Code.

(2) Proceedings for an offence are concluded—

- (a) when the defendant is acquitted on all counts or every charge against him is dismissed, as the case may be;
- (b) if the defendant is convicted in the proceedings and the conviction is set aside or the defendant is pardoned before a confiscation order is made, when the conviction is set aside or the defendant is pardoned;
- (c) if a confiscation order is made against the defendant in the proceedings, when the order is satisfied or discharged or when the order is set aside and the decision to set aside the proceedings is no longer subject to appeal;
- (d) if the defendant is convicted on one or more counts or charges but the Court decides not to make a confiscation order against him, when the Court's decision is no longer subject to appeal by the prosecutor;
- (e) if he is sentenced without the Court having considered whether or not to proceed under section 25 in his case, when he is sentenced.

(3) An application under section 27, 28, 29, 30, 35 or 36 is concluded—

- (a) if the Court decides not to make or vary, as the case may be, any order against the defendant on that application, when it makes that decision;
- (b) if an order against the defendant is made or varied on that application, when the order is satisfied or discharged or, when the order is set aside, the application is no longer subject to appeal; and
- (c) if the application is withdrawn, when the prosecutor notifies the withdrawal of the application to the Court.

(4) For the purposes of this section—

- (a) a confiscation order is satisfied when no amount is due under it; and
- (b) an order is subject to appeal until, disregarding any power of a court to grant leave to appeal out of time, there is no further possibility of an appeal on which the order could be varied or set aside.

PART 2

CONFISCATION

*Preliminary***Purpose of this Part**

6. (1) The purpose of this Part is to enable the Court to confiscate from a defendant who has been convicted of an offence, the financial benefit that the defendant has obtained from his criminal conduct.

(2) Where the Court determines that a defendant has a criminal lifestyle, the Court must make certain assumptions for the purposes of determining—

- (a) whether the defendant has benefited from his general criminal conduct; and
- (b) his benefit from that conduct.

*Confiscation order***Confiscation order**

7. (1) The Court must proceed under this section if—

- (a) a defendant is—
 - (i) convicted by the Court of an offence or offences;
 - (ii) committed to the Court for sentencing in respect of an offence or offences; or
 - (iii) committed to the Court by the Magistrate's Court in respect of an offence or offences under section 57; and
- (b) either—
 - (i) the prosecutor asks the Court to proceed under this section; or
 - (ii) the Court considers that it is appropriate for it to do so.

(2) Where this section applies, the Court must determine whether, in accordance with section 11, the defendant has a criminal lifestyle, and—

- (a) if it determines that the defendant does have a criminal lifestyle, whether he has benefited from his general criminal conduct; or
- (b) if it determines that the defendant does not have a criminal lifestyle, whether he has benefited from his particular criminal conduct.

(3) If the Court determines, in accordance with subsection (2), that the defendant has benefited from his general or particular criminal conduct, it must—

- (a) determine the amount to be recovered from him (the "recoverable amount") in accordance with section 13;
- (b) make a confiscation order requiring him to pay the recoverable amount; and
- (c) direct that, subject to any payments or deductions properly made in accordance with this Part, all monies recovered under the confiscation order shall be paid into the National Forfeiture Fund.

(4) If the Court is satisfied that any victim of the defendant's criminal conduct has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the defendant's conduct—

- (a) it must treat the duty in subsection (3) as a power; and
- (b) the recoverable amount is such amount as the Court considers just, but the recoverable amount must not exceed the amount that it would have been if this subsection did not apply.

(5) The Court must determine any question arising under subsection (2) or (3) on a balance of probabilities.

(6) Unless the Court postpones the proceedings for a confiscation order under section 25, it must proceed under this section before sentencing the defendant with respect to the offence or offences referred to in subsection (1).

Effect of confiscation order on Court's other powers

8. (1) Where the Court makes a confiscation order against a defendant, it must, in respect of any offence of which he is convicted in those proceedings, take account of the confiscation order before—

- (a) imposing a fine on him;
- (b) making any order involving any payment by him, other than a Penal Code compensation order; or
- (c) making any order under article 15 or 16 of the Anti-terrorist Financing Order or section 28 of the Drugs (Prevention of Misuse) Act (Cap. 4.07) (forfeiture order).

(2) Subject to subsection (1), the Court must leave the confiscation order out of account in deciding the appropriate sentence for the defendant.

(3) The Court must make an order under subsection (4) if it—

- (a) makes a confiscation order and a Penal Code compensation order against the same person in the same proceedings; and
- (b) believes that the person concerned will not have sufficient means to satisfy both orders in full.

(4) Where subsection (3) applies, the Court must order that such amount of the Penal Code compensation order that it believes will not be recoverable because of the insufficiency of the person's means, must be paid out of any sums recovered under the confiscation order.

Meaning of principle terms used

General and particular criminal conduct

9. (1) General criminal conduct, with respect to a defendant, means all his criminal conduct and, for the purposes of this definition, it is immaterial—

- (a) whether the conduct occurred before or after the commencement date; or
- (b) whether property constituting a benefit from his conduct was obtained before or after the commencement date.

(2) Particular criminal conduct, with respect to a defendant, means all his criminal conduct which constitutes—

- (a) the offence of which he was convicted;
- (b) any other offence of which he was convicted in the same proceedings; and
- (c) an offence which has been or will be taken into consideration by the Court in sentencing the defendant for the offence specified in paragraph (a).

Defendant's benefit

10. (1) In determining, for the purposes of this Part, whether a defendant has benefited from his particular or general conduct, and his benefit from that conduct, the Court must—

- (a) take account of conduct occurring up to the time it makes its determination; and
- (b) take account of property obtained up to that time.

(2) Where the conduct concerned is the defendant's general criminal conduct, a confiscation order has previously been made against the defendant under this Act or a specified Act and his benefit for the purposes of that order was his benefit from his general criminal conduct—

- (a) his benefit determined at the time the last confiscation order was made against him must be taken, for the purposes of this section, to be his benefit from his general criminal conduct at that time; and
- (b) the Court must deduct the aggregate of the following amounts—
 - (i) the amount ordered to be paid under each confiscation order previously made against the defendant under this Act; and
 - (ii) the amount ordered to be paid under each confiscation order previously made against him under a specified Act.

(3) Subsection (2)(b) does not apply to an amount which has been taken into account for the purposes of a deduction under that subsection on any earlier occasion.

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

(5) In this section, “**specified Act**” means the repealed Drug Trafficking Offences Act or the repealed Proceeds of Crime Act.

Criminal lifestyle

11. (1) A defendant has a criminal lifestyle if he is convicted of—

- (a) a drug trafficking offence or a money laundering offence; or
- (b) an offence that constitutes conduct forming part of a course of criminal activity within the meaning of subsection (2).

(2) For the purposes of subsection (1)(b), conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and—

- (a) in the proceedings in which he was convicted, he was convicted of at least one other qualifying offence; or

(b) he has been convicted on at least one previous occasion in the period of six years prior to the commencement of those proceedings of at least one qualifying offence.

(3) Subsection (1)(b) does not apply to a defendant if the value of the relevant benefit obtained is less than \$10,000.

(4) In this section—

(a) “**relevant benefit**” means the total benefit from—

(i) all offences comprising the course of criminal activity; and

(ii) conduct which constitutes an offence which has been or will be taken into consideration by the Court in sentencing the defendant for an offence specified in this section; and

(b) “**qualifying offence**” means an offence which constitutes conduct from which the defendant has benefited.

Assumptions to be made where Court determines defendant has criminal lifestyle

12. (1) Subject to subsection (3), if the Court determines that a defendant has a criminal lifestyle, it must make the assumptions specified in subsection (2) for the purposes of—

(a) determining whether the defendant has benefited from his general criminal conduct; and

(b) determining his benefit from the conduct.

(2) The assumptions referred to under subsection (1) are—

(a) that any property transferred to the defendant at any time after the relevant date was obtained by him—

(i) as a result of his general criminal conduct; and

(ii) at the earliest time he appears to have held it;

(b) that any property held by the defendant at any time after the date of conviction was obtained by him—

(i) as a result of his general criminal conduct; and

(ii) at the earliest time he appears to have held it;

(c) that any expenditure incurred by the defendant at any time after the relevant date was met from property obtained by him as a result of his general criminal conduct; and

(d) that, for the purpose of valuing any property obtained, or assumed to have been obtained, by the defendant, he obtained it free of any other interests in it.

(3) The Court must not make an assumption under subsection (1) in relation to particular property or expenditure if—

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

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

(4) If the Court does not make one or more of the assumptions under subsection (1), it must state its reasons.

(5) For the purposes of this section, the relevant date is the first day of the period of six years ending with—

- (a) the date when proceedings for the offence concerned were instituted against the defendant; or
- (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.

(6) If a confiscation order has been made against the defendant under this Act or a specified Act, within the meaning of section 10(5), at any time during the period referred to in subsection (5)—

- (a) the relevant date is the date when the defendant's benefit was calculated for the purposes of the last such confiscation order;
- (b) the assumption specified in subsection (2)(b) does not apply to any property which was held by him on or before the relevant date.

Recoverable amount

13. (1) Subject to this section, the recoverable amount is an amount equal to the defendant's benefit from the conduct concerned.

(2) Subsection (3) applies where the defendant proves that the value of the benefit under subsection (1) is greater than the amount available to him, being the aggregate of—

- (a) the total of the values, at the time the confiscation order is made, of all the realisable property then held by the defendant less the total amount payable pursuant to obligations which then have priority; and
- (b) the total of the values, at the time the confiscation order is made, of all tainted gifts.

(3) In the circumstances referred to in subsection (2), the recoverable amount is—

- (a) the amount the defendant proves is available to him in accordance with that subsection; or
- (b) a nominal amount, if that amount is nil.

(4) For the purposes of subsection (2), an obligation has priority if it is an obligation of the defendant—

- (a) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the confiscation order is made; or
- (b) to pay a sum which would be included among the preferential debts of the defendant if the defendant's bankruptcy or, in the case of a company, its liquidation had commenced on the date of the confiscation order.

(5) “**Preferential debt**” means a debt that, in the bankruptcy of an individual or the liquidation of a company, is payable in priority to the debts of other creditors.

(6) In calculating the defendant's benefit from the conduct concerned for the purposes of subsection (1), any property in respect of which a civil forfeiture order or a forfeiture order is in force must be ignored.

Realisable property

14. (1) Subject to subsection (2), “**realisable property**” means—

- (a) any property held by the defendant; or
- (b) any property held by the recipient of a tainted gift.

(2) Property is not realisable property if an order under any of the following provisions is in force in respect of that property—

- (a) section 28 of the Drugs (Prevention of Misuse) Act (forfeiture order);
- (b) section 65, 79, 86 or 105 of this Act; or
- (c) Article 15 or 16 of the Anti-terrorist Financing Order.

Value of property

15. (1) The value of property held by a person at any time is—

- (a) if at that time another person holds an interest in property, the value of the first-mentioned person's interest in the property at that time, ignoring any charging order made against the interest under—
 - (i) section 11 of the repealed Drugs Trafficking Offences Act; or
 - (ii) section 20 of the repealed Proceeds of Crime Act; or
- (b) in any other case, the market value of the property.

(2) This section has effect subject to sections 16 and 19.

Value of property obtained from conduct

16. (1) The value of property obtained by a person as a result of or in connection with his criminal conduct at the time when the Court makes its decision (the material time) is the greater of the following—

- (a) the value of the property, at the time the person obtained it, adjusted to take account of later changes in the value of money;
- (b) the value, at the material time, of the property specified under subsection (2).

(2) The property specified for the purposes of subsection (1) is as follows—

- (a) if the person holds the property obtained, the property specified under this subsection is that property;
- (b) if the person holds no part of the property obtained, the property specified under this subsection is any property which directly or indirectly represents it in his hands;
- (c) if he holds part of the property obtained, the property specified under this subsection is that part and any property which directly or indirectly represents the other part in his hands.

Gifts

17. (1) If a defendant transfers property to another person for no consideration or for a consideration the value of which is significantly less than the value of the property at the time of the transfer, he is to be treated as making a gift.

(2) Where subsection (1) applies, the property given is to be treated as such share in the property transferred as is represented by the fraction—

- (a) the numerator of which is the difference between the two values specified in subsection (1); and
- (b) the denominator of which is the value of the property at the time of the transfer.

Tainted gifts

18. (1) Where the Court has determined that section 16 applies to a defendant or where the Court has not yet made a determination as to whether or not that section applies to a defendant, a gift is tainted—

- (a) if it was made by the defendant at any time after the relevant date; or
- (b) if it was made by the defendant at any time on or after 28 February 2000 and was of property—
 - (i) which was obtained by the defendant as a result of or in connection with his general criminal conduct; or
 - (ii) which, in whole or part and whether directly or indirectly, represented in the defendant's hands property obtained by him as a result of or in connection with his general criminal conduct.

(2) For the purposes of subsection (1), the relevant date is the first day of the period of six years ending with—

- (a) the day when proceedings for the offence concerned were instituted against the defendant; or
- (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.

(3) In the case of a defendant with respect to whom the Court has determined that section 16 does not apply, a gift is tainted if it was made by the defendant at any time after—

- (a) the date on which the offence concerned was committed; or
- (b) if his particular criminal conduct consists of two or more offences and they were committed on different dates, the date of the earliest offence.

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

- (a) an offence which is a continuing offence is committed on the first occasion when it is committed; and
- (b) the defendant's particular conduct includes any conduct which constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.

(5) A gift may be a tainted gift whether it was made before or after the commencement date.

(6) References to the recipient of a tainted gift are to the person to whom the defendant has made the gift.

Value of tainted gifts

19. (1) The value at any time (the material time) of a tainted gift is the greater of the following—

- (a) the value (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money;
 - (b) the value (at the material time) of the property specified under subsection (2).
- (2) The property specified under this subsection is as follows—
- (a) if the recipient holds the property given, the property specified under this subsection is that property;
 - (b) if the recipient holds no part of the property given, the property specified under this subsection is any property which directly or indirectly represents it in his hands;
 - (c) if the recipient holds part of the property given, the property specified under this subsection is that part and any property which directly or indirectly represents the other part in his hands.

Satisfaction of confiscation order

Payment of confiscation order

20. (1) Subject to this section, the amount ordered to be paid under a confiscation order must be paid on the making of the order.

(2) If the defendant shows that he needs time to pay the amount ordered to be paid, the Court may make an order allowing payment to be made within a period not exceeding six months after the date of the confiscation order.

(3) If, on the application of the defendant, the Court is satisfied that there are exceptional circumstances, it may extend the period specified in subsection (2) so that it ends on a date no later than twelve months after the date of the confiscation order.

(4) An order under subsection (3)—

- (a) may be made after the end of the period originally given for payment; but
- (b) must not be made after the end of the period of twelve months starting with the date on which the confiscation order is made.

(5) The Court must not make an order under subsection (2) or (3) unless it gives the prosecutor an opportunity to make representations to the Court.

Interest on sums unpaid under confiscation order

21. (1) If the amount required to be paid by a person under a confiscation order is not paid when it is required to be paid, he must pay interest on the amount unpaid for the period for which it remains unpaid at the rate for the time being applying to a civil judgment debt.

(2) For the purposes of subsection (1), no amount is required to be paid under a confiscation order if—

- (a) an application has been made under section 20(3);
- (b) the application has not been determined by the Court; and
- (c) the period of 12 months starting with the day on which the confiscation order was made has not ended.

(3) The amount of interest payable under this section must be treated as part of the amount to be paid under the confiscation order.

Procedural matters

Statement of information

22. (1) If the Court is proceeding under section 7, the prosecutor must give the Court a statement of information—

- (a) in a case where section 7(1)(b)(i) applies, within the period ordered by the Court; and
- (b) in a case where section 7(1)(b)(ii) applies, if the Court orders him to give it a statement of information, within the period ordered by the Court.

(2) If the prosecutor believes that the defendant has a criminal lifestyle, the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding—

- (a) whether the defendant has a criminal lifestyle;
- (b) whether he has benefited from his general criminal conduct; and
- (c) his benefit from the conduct.

(3) A statement under subsection (2) must include information the prosecutor believes is relevant—

- (a) in connection with the making by the Court of an assumption under section 12; and
- (b) for the purpose of enabling the Court to determine if the circumstances are such that it must not make such an assumption.

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

- (a) whether the defendant has benefited from his particular criminal conduct; and
- (b) his benefit from the conduct.

(5) If the prosecutor gives the Court a statement of information, he—

- (a) may at any time give the Court a further statement of information; and
- (b) must give the Court a further statement of information if it orders him to do so, within the period ordered by the Court.

(6) The Court may, at any time, vary an order made under this section.

Defendant's response to statement of information

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

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

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

(2) If the defendant accepts to any extent an allegation in a statement of information, the Court may treat his acceptance as conclusive of the matters to which it relates for the purpose of deciding the issues referred to in section 22(2) or (4), as the case may be.

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

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

(b) any allegation that he has benefited from his general or particular criminal conduct.

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

(5) The Court may, at any time, vary an order made under this section.

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

Provision of information by defendant

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

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

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

(4) Subsection (3) does not affect any power of the Court to deal with the defendant in respect of a failure to comply with an order under this section.

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

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

(b) in any other statement given to the Court in relation to any matter relevant to determining the amount available to him for the purposes of section 13(2),

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

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

(7) The Court may, at any time, vary an order made under this section.

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

Postponement

25. (1) If the Court considers it appropriate to do so, it may—

- (a) postpone proceedings under section 7 for a specified period (the postponement period); and
- (b) extend the postponement period for a specified period on one or more occasions.

(2) Unless the Court is satisfied that there are exceptional circumstances, the postponement period, whether as originally ordered or as extended, must not exceed a period of two years from the date of the conviction of the defendant.

(3) Where the defendant appeals against his conviction, the Court may, on that account—

- (a) postpone making any of the determinations mentioned in subsection (1) for such period as it may specify; or
- (b) where it has already exercised its powers under this section to postpone, extend the postponement period.

(4) Unless the Court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (3), must not exceed a period of three months from the date on which the appeal is determined or otherwise disposed of.

(5) A postponement or extension under subsection (1) or (3) may be made—

- (a) on application by the defendant or the prosecutor; or
- (b) by the Court of its own motion.

(6) An application to extend the postponement period may be granted after the postponement period has ended, provided that the application is made before it ends.

Effect of postponement

26. (1) Subject to subsection (2), where the Court exercises its power to postpone proceedings under section 25, it may nevertheless proceed to sentence the defendant in respect of the offence or any of the offences concerned.

(2) In sentencing the defendant in respect of the offence, or any of the offences, concerned during the postponement period, the Court must not—

- (a) impose a fine on him;
- (b) make any order involving any payment by him, other than a Penal Code compensation order; or
- (c) make an order referred to in section 8(1)(b) or (c).

(3) Subject to subsection (4), where the Court has sentenced the defendant under subsection (1) during the postponement period, it may, after the end of that period, vary the sentence by—

- (a) imposing a fine on him;
- (b) making any order involving any payment by him, including a Penal Code compensation order; or
- (c) making an order referred to in section 8(1)(b) or (c).

(4) The Court may proceed under subsection (3) only within the period of twenty-eight days commencing on the last day of the postponement period.

(5) If the Court proceeds to sentence the defendant under subsection (1), section 7 has effect as if the defendant's particular criminal conduct included conduct which

constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.

Reconsideration

Reconsideration of case where no confiscation order made

27. (1) This section applies if—

- (a) section 7(1)(a) applies in respect of a defendant, but the Court has not proceeded under that section;
- (b) there is evidence which was not available to the prosecutor on the relevant date;
- (c) before the end of the period of six years starting with the date of conviction, the prosecutor applies to the Court to consider the evidence; and
- (d) after considering the evidence the Court believes it is appropriate for it to proceed under section 7.

(2) Where subsection (1) applies, the Court must proceed under section 7 and subsections (3) to (8) apply for that purpose.

(3) If the Court has already sentenced the defendant for the offence (or any of the offences) concerned, section 7 has effect as if his particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.

(4) Instead of taking account of the matters specified in section 10(1)(a) and (b), the Court must take account of—

- (a) conduct occurring before the relevant date;
- (b) property obtained before the relevant date; and
- (c) property obtained on or after the relevant date if it was obtained as a result of or in connection with conduct occurring before the relevant date.

(5) For the purposes of this section—

- (a) the assumptions specified in section 12(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the relevant date;
- (b) the assumption specified in section 12(2)(c) does not apply with regard to expenditure incurred by the defendant on or after the relevant date; and
- (c) the assumption specified in section 12(2)(d) does not apply with regard to property obtained, or assumed to have been obtained, by the defendant on or after the relevant date.

(6) The recoverable amount for the purposes of section 7 is such amount, not exceeding the amount determined in accordance with section 13, as the Court considers just.

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

- (a) the recoverable amount determined in accordance with section 13;
- (b) any fine imposed on the defendant in respect of the offence or any of the offences concerned;

- (c) any order within section 8(1)(b) or (c) that has been made against him in respect of the offence, or any of the offences, concerned and has not already been taken into account by the Court in determining what is the realisable property held by him for the purposes of section 11; and
- (d) any Penal Code compensation order that has been made against him in respect of the offence, or any of the offences, concerned.

(8) If a Penal Code compensation order has been made against the defendant in respect of the offence or offences concerned subsections (5) and (6) do not apply.

(9) For the purposes of this section, the relevant date is—

- (a) if the Court made a decision not to proceed under section 7, the date of the decision; or
- (b) if the Court did not make such a decision, the date of conviction.

Reconsideration of benefit where no confiscation order made

28. (1) This section applies if—

- (a) in proceeding under section 7, the Court has determined that—
 - (i) the defendant has a criminal lifestyle but he has not benefited from his general criminal conduct; or
 - (ii) the defendant does not have a criminal lifestyle and he has not benefited from his particular criminal conduct;
- (b) there is evidence which was not available to the prosecutor when the Court determined that the defendant had not benefited from his general or particular criminal conduct;
- (c) before the end of the period of six years starting with the date of conviction the prosecutor applies to the Court to consider the evidence; and
- (d) after considering the evidence, the Court concludes that it would have determined that the defendant had benefited from his general or particular criminal conduct, as the case may be, if the evidence had been available to it.

(2) If this section applies, the Court—

- (a) must make a fresh determination under section 7(2)(a) or (b) as to whether the defendant has benefited from his general or particular criminal conduct, as the case may be; and
- (b) may make a confiscation order under section 7.

(3) Subsections (4) to (8) apply if the Court proceeds under section 7 pursuant to this section.

(4) If the Court has already sentenced the defendant for the offence, or any of the offences, concerned, section 7 has effect as if the defendant's particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.

(5) Instead of taking account of the matters specified in section 10(1)(a) and (b), the Court must take account of—

- (a) conduct occurring before the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
 - (b) property obtained before that date; and
 - (c) property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.
- (6) For the purposes of this section—
- (a) the assumptions specified in section 12(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the date of the original decision that the defendant had not benefited from his general or particular criminal conduct;
 - (b) the assumption specified in section 12(2)(c) does not apply with regard to expenditure incurred by him on or after that date; and
 - (c) the assumption specified in section 12(2)(d) does not apply with regard to property obtained, or assumed to have been obtained, by him on or after that date.
- (7) The recoverable amount for the purposes of section 13 is such amount as the Court considers just, but that amount must not exceed the amount that the recoverable amount would have been under section 13 if this subsection did not apply.
- (8) In arriving at the just amount the Court must have regard in particular to—
- (a) the recoverable amount determined in accordance with section 13;
 - (b) any fine imposed on the defendant in respect of the offence, or any of the offences, concerned;
 - (c) any order within section 8(1)(b) or (c) that has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the Court in determining what is the realisable property held by him for the purposes of section 13; and
 - (c) any Penal Code compensation order that has been made against him.

Reconsideration of benefit where compensation order made

29. (1) This section applies if—

- (a) the Court has made a confiscation order;
 - (b) there is evidence which was not available to the prosecutor at the relevant time;
 - (c) the prosecutor believes that if the Court were to determine the amount of the defendant's benefit pursuant to this section it would exceed the relevant amount;
 - (d) before the end of the period of six years starting with the date of conviction the prosecutor applies to the Court to consider the evidence; and
 - (e) after considering the evidence the Court believes it is appropriate for it to proceed under this section.
- (2) Where this section applies, the Court must make a new calculation of the defendant's benefit from the conduct concerned, and subsections (3) to (11) apply for this purpose.

(3) If the Court has already sentenced the defendant for the offence, or any of the offences, concerned, section 15 has effect as if his particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.

(4) Instead of taking account of the matters specified in section 10(1)(a) and (b), the Court must take account of—

- (a)* conduct occurring up to the time it determined the defendant's benefit for the purposes of the confiscation order;
- (b)* property obtained up to that time; and
- (c)* property obtained after that time if it was obtained as a result of or in connection with conduct occurring before that time.

(5) In applying section 13(3)(b), the confiscation order must be ignored.

(6) For the purposes of this section—

- (a)* the assumptions specified in section 12(2)(a) and (b) do not apply with regard to property first held by the defendant after the time the Court determined his benefit for the purposes of the confiscation order;
- (b)* the assumption specified in section 12(2)(c) does not apply with regard to expenditure incurred by him after that time; and
- (c)* the assumption specified in section 12(2)(d) does not apply with regard to property obtained (or assumed to have been obtained) by him after that time.

(7) If the amount determined under the new calculation of the defendant's benefit exceeds the relevant amount, the Court—

- (a)* must make a new calculation of the recoverable amount for the purposes of section 7; and
- (b)* if it exceeds the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid such amount as it believes is just.

(8) In applying subsection (7)(a) the Court must—

- (a)* take the new calculation of the defendant's benefit; and
- (b)* apply section 13 as if references to the time the confiscation order is made were to the time of the new calculation of the recoverable amount and as if references to the date of the confiscation order were to the date of that new calculation.

(9) In applying subsection (7)(b) the Court—

- (a)* must have regard in particular to—
 - (i)* any fine imposed on the defendant for the offence (or any of the offences) concerned;
 - (ii)* any order within section 8(1)(b) or (c) that has been made against him in respect of the offence, or any of the offences, concerned and has not already been taken into account by the Court in determining what is the realisable property held by him for the purposes of section 11; and
 - (iii)* any Penal Code compensation order that has been made against him in respect of the offence, or any of the offences, concerned; but

(b) must not have regard to an order falling within subparagraph (a)(iii) if an order has been made under section 8(4).

(10) In determining under this section whether one amount exceeds another, the Court must take account of any change in the value of money.

(11) For the purposes of this section,

(a) the relevant time is—

(i) when the Court calculated the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously; or

(ii) when the Court last calculated the defendant's benefit pursuant to this section, if this section has applied previously; and

(b) the relevant amount is—

(i) the amount determined as the defendant's benefit for the purposes of the confiscation order, if this section has not applied previously; or

(ii) the amount last determined as the defendant's benefit pursuant to this section, if this section has applied previously.

Reconsideration of amount available to defendant where order made

30. (1) This section applies if—

(a) the Court has made a confiscation order;

(b) the amount required to be paid was the amount determined in accordance with section 13(3); and

(c) the prosecutor or a receiver appointed under section 47(1) applies to the Court to make a new calculation of the amount available to the defendant.

(2) In a case where this section applies the Court must make the new calculation, and in doing so it must apply section 13 as if references to the time the confiscation order is made were to the time of the new calculation and as if references to the date of the confiscation order were to the date of the new calculation.

(3) If the amount determined under the new calculation exceeds the relevant amount, the Court may vary the order by substituting for the amount required to be paid such amount as the Court considers just, but that amount must not exceed the amount determined as the defendant's benefit from the conduct concerned.

(4) In deciding what is just the Court—

(a) must have regard, in particular to—

(i) any fine imposed on the defendant for the offence, or any of the offences, concerned;

(ii) any order within section 8(1)(b) or (c) that has been made against him in respect of the offence, or any of the offences, concerned and has not already been taken into account by the Court in determining what is the realisable property held by him for the purposes of section 13; and

(iii) any Penal Code compensation order that has been made against him in respect of the offence, or any of the offences, concerned; but

(b) must not have regard to an order falling within paragraph (a)(iii) if an order has been made under section 8(4).

(5) In determining under this section whether one amount exceeds another, the Court must take account of any change in the value of money.

(6) The relevant amount is—

- (a) the amount determined as the amount available to the defendant for the purposes of the confiscation order, if this section has not applied previously; or
- (b) the amount last determined as the amount available to the defendant pursuant to this section, if this section has applied previously.

(7) The amount determined as the defendant's benefit from the conduct concerned is—

- (a) the amount determined when the confiscation order was made; or
- (b) if one or more new calculations of the defendant's benefit have been made under section 29 the amount determined on the occasion of the last such calculation.

Variation and discharge

Variation of order where amount available to defendant is inadequate

31. (1) This section applies if—

- (a) the Court has made a confiscation order; and
- (b) the defendant, or a receiver appointed under section 47(1), applies to the Court to vary the order under this section.

(2) Where this section applies, the Court must calculate the amount available to the defendant, and in doing so it must apply section 13 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(3) If the Court determines that the amount available to the defendant calculated in accordance with subsection (2) is inadequate for the payment of any amount remaining to be paid under the confiscation order, it may vary the order by substituting for the amount required to be paid such smaller amount as the Court considers is just.

(4) If a person has been adjudged bankrupt or his estate has been sequestrated, or if an order for the winding up of a company has been made, the Court must take into account the extent to which realisable property held by that person or that company may be distributed among creditors.

(5) The Court may disregard any inadequacy which it believes is attributable, wholly or partly, to anything done by the defendant for the purpose of preserving property held by the recipient of a tainted gift from any risk of realisation under this Act.

(6) In subsection (4) “**company**” means a company which may be wound up under or in accordance with the Companies Act (Cap. 11.12) and includes—

- (a) a company in respect of which notice has been given under section 96 of the International Business Companies Act (Cap. 11.13); or
- (b) that is being wound up by the Court under section 97 of the International Business Companies Act (Cap. 11.13).

Discharge of order for inadequacy of amount available to defendant

32. (1) This section applies if—

- (a) the Court has made a confiscation order;
- (b) the Magistrate's Court Clerk applies to the Court for the discharge of the order; and
- (c) the amount remaining to be paid under the order is less than the prescribed amount.

(2) Where this section applies, the Court must calculate the amount available to the defendant and, in doing so, it must apply section 13 as if references to the time the confiscation order is made were to the time of the calculation and as if references to the date of the confiscation order were to the date of the calculation.

(3) If the Court—

- (a) determines that the amount available to the defendant calculated in accordance with subsection (2) is inadequate to meet the amount remaining to be paid, and
- (b) is satisfied that the inadequacy is due wholly to a one or more of the reasons specified in subsection (4),

it may discharge the confiscation order.

(4) The reasons referred to in subsection (3) are—

- (a) in a case where any of the realisable property consists of money in a currency other than dollars, that fluctuations in currency exchange rates have occurred;
- (b) such other reasons as may be prescribed.

Discharge of order where small amount outstanding

33. The Court may discharge a confiscation order if—

- (a) the Magistrate's Court Clerk applies to the Court for the discharge of the order; and
- (b) the amount remaining to be paid under the order is the prescribed sum or less.

Information

34. Where the Court proceeds under section 7 pursuant to section 27 or 28 or the prosecutor applies under section 29—

- (a) the prosecutor must give the Court a statement of information within such period as the Court orders;
- (b) section 22 applies, with appropriate modifications where the prosecutor applies under section 29; and
- (c) section 25 and 26 apply.

*Defendant absconds***Defendant convicted or committed**

35. (1) This section applies if—

- (a) a defendant absconds after—
 - (i) he is convicted of an offence or offences in proceedings before the Court;
 - (ii) is committed to the Court by the Magistrate’s Court under section 107 of the Criminal Procedure Code (Cap. 4.01) in respect of an offence or offences; or
 - (iii) he is committed to the Court in respect of an offence or offences under section 57;
- (b) the prosecutor applies to the Court to proceed under this section; and
- (c) the Court believes it is appropriate for it to do so.

(2) Where this section applies, subject to subsection (3), the Court must proceed under section 7.

(3) Where the Court proceeds under section 7 as applied by this section, this Part has effect with the following modifications—

- (a) any person the Court believes is likely to be affected by an order under section 7 is entitled to appear before the Court and make representations;
- (b) the Court must not make an order under section 7 unless the prosecutor has taken reasonable steps to contact the defendant;
- (c) sections 12, 22(3), 23 and 24 must be ignored; and
- (d) sections 27, 28 and 29 must be ignored while the defendant is still an absconder.

(4) Once the defendant ceases to be an absconder, section 27 applies as if subsection (1)(a) provided—

“(a)at a time when section 35(1)(a) applies, the Court did not proceed under section 7;”.

Defendant neither convicted nor acquitted

36. (1) This section applies if—

- (a) proceedings for an offence or offences are instituted against a defendant but are not concluded;
- (b) the defendant absconds;
- (c) the period of two years, starting with the day the Court believes he absconded, has ended;
- (d) the prosecutor applies to the Court to proceed under this section; and
- (e) the Court believes it is appropriate for it to do so.

(2) If subsection (1) applies, subject to subsection (3), the Court must proceed under section 7.

(3) Where the Court proceeds under section 7 as applied by this section, this Part has effect with the following modifications—

- (a) any person the Court believes is likely to be affected by an order under section 7 is entitled to appear before the Court and make representations;
- (b) the Court must not make an order under section 7 unless the prosecutor has taken reasonable steps to contact the defendant;
- (c) sections 12, 22(3) and sections 23, 24 and 28 must be ignored; and
- (d) section 29 must be ignored while the defendant is still an absconder.

(4) Once the defendant has ceased to be an absconder, section 29 has effect as if references to the date of conviction were to—

- (a) the day when proceedings for the offence concerned were instituted against the defendant; or
- (b) if there are two or more offences and proceedings for them were instituted on different days, the earliest of those days.

(5) If—

- (a) the Court makes an order under section 7 as applied by this section, and
- (b) the defendant is later convicted in proceedings before the Court of the offence, or any of the offences, concerned,

section 7 does not apply so far as that conviction is concerned.

Variation of order

37. (1) This section applies if—

- (a) the Court makes a confiscation order under section 7 as applied by section 36;
- (b) the defendant ceases to be an absconder;
- (c) the defendant is convicted of an offence, or any of the offences, mentioned in section 36(1)(a);
- (d) the defendant believes that the amount required to be paid was too large, taking into account the circumstances prevailing when the amount was determined for the purposes of the order; and
- (e) before the end of the relevant period the defendant applies to the Court to consider the evidence on which his belief is based.

(2) If, after considering the evidence, the Court concludes that the defendant's belief is well founded—

- (a) it must determine the amount which should have been the amount required to be paid, taking into account the circumstances prevailing when the amount was determined for the purposes of the order; and
- (b) it may vary the order by substituting for the amount required to be paid such amount as it believes is just.

(3) The relevant period is the period of 28 days starting with—

- (a) the date on which the defendant was convicted of the offence mentioned in section 36(1)(a); or

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

(4) In a case where section 36(1)(a) applies to more than one offence, the Court must not make an order under this section unless it is satisfied that there is no possibility of any further proceedings being taken or continued in relation to any such offence in respect of which the defendant has not been convicted.

Discharge of order

38. (1) Where the Court makes a confiscation order under section 7 as applied by section 36, it must discharge the order if—

(a) the defendant is later tried for the offence or offences concerned and acquitted on all counts; and

(b) he applies to the Court to discharge the order.

(2) Subsection (3) applies if—

(a) the Court makes a confiscation order under section 7 as applied by section 36;

(b) the defendant ceases to be an absconder;

(c) subsection (1)(a) does not apply; and

(d) he applies to the Court to discharge the order.

(3) In the circumstances specified in subsection (2), the Court may discharge the order if it determines that—

(a) there has been undue delay in continuing the proceedings mentioned in section 36(1); or

(b) the prosecutor does not intend to proceed with the prosecution.

(4) If the Court discharges a confiscation order under this section it may make such a consequential or incidental order as it considers is appropriate.

Appeals

Appeal to Court of Appeal

39. (1) If the Court makes a confiscation order, the prosecutor or the defendant may appeal to the Court of Appeal in respect of the order.

(2) If the Court decides not to make a confiscation order, the prosecutor may appeal to the Court of Appeal against the decision.

(3) Subsections (1) and (2) do not apply to an order or decision made by virtue of section 27, 28, 35 or 36 unless the appellant is the defendant.

Court's powers on appeal

40. (1) On an appeal under section 39(1) the Court of Appeal may confirm, set aside or vary the confiscation order.

(2) On an appeal under section 39(2), the Court of Appeal may confirm the decision, or if it believes the decision was wrong it may—

(a) itself proceed under section 7 (ignoring subsections (1) to (3)); or

(b) direct the Court to proceed afresh under section 7.

(3) In proceeding afresh pursuant to this section, the Court must comply with any directions the Court of Appeal may make.

(4) If the Court of Appeal makes or varies a confiscation order under this section or the Court does so pursuant to a direction under this section it must have regard to—

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

(b) any order within section 8(1)(b) or (c) that has been made against him in respect of the offence, or any of the offences, concerned, unless the order has already been taken into account by the Court in determining what is the realisable property held by the defendant for the purposes of section 13(2).

(5) If the Court of Appeal proceeds under section 7 or the Court proceeds afresh under that section pursuant to a direction under this section, subsections (6) to (11) apply, and in those subsections, “**Court**” means the Court of Appeal or the High Court, as the case may be.

(6) If the High Court has already sentenced the defendant for the offence, or any of the offences, concerned, section 7 has effect as if his particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.

(7) If a Penal Code compensation order has been made against the defendant in respect of the offence, or any offences, concerned—

(a) the Court must have regard to it; and

(b) section 21(3) and (4) do not apply.

(8) Instead of taking account of the matters specified in section 13(1)(a) and (b), the Court must take account of—

(a) conduct occurring before the relevant date;

(b) property obtained before that date; and

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

(9) For the purposes of this section—

(a) the assumptions specified in section 12(2)(a) and (b) do not apply with regard to property first held by the defendant on or after the relevant date;

(b) the assumption specified in section 12(2)(c) does not apply with regard to expenditure incurred by him on or after that date; and

(c) the assumption specified in section 12(2)(d) does not apply with regard to property obtained, or assumed to have been obtained, by him on or after that date.

(10) Section 34 applies as it applies in the circumstances specified in that section.

(11) The relevant date is the date on which the High Court decided not to make a confiscation order.

*Restraint orders***Conditions for exercise of powers**

41. (1) The Court may exercise the powers conferred by section 42 if—

- (a) a criminal investigation has been started in Montserrat with regard to an offence and there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct;
- (b) proceedings for an offence have been instituted in Montserrat and not concluded and there is reasonable cause to believe that the defendant has benefited from his criminal conduct;
- (c) an application by the prosecutor has been made under section 27, 28, 35 or 36 and not concluded, or the Court believes that such an application is to be made, and there is reasonable cause to believe that the defendant has benefited from his criminal conduct;
- (d) an application by the prosecutor has been made under section 29 and not concluded, or the Court believes that such an application is to be made, and there is reasonable cause to believe that the Court will decide under that section that the amount determined under the new calculation of the defendant's benefit exceeds the relevant amount, as defined in that section; or
- (e) an application by the prosecutor has been made under section 30 and not concluded, or the Court believes that such an application is to be made, and there is reasonable cause to believe that the Court will decide under that section that the amount determined under the new calculation of the amount available to the defendant exceeds the relevant amount (as defined in that section).

(2) Subsection (1)(b) is not satisfied if the Court believes that—

- (a) there has been undue delay in continuing the proceedings; or
- (b) the prosecutor does not intend to proceed.

(3) If an application mentioned in subsection (1)(c), (d) or (e) has been made, the condition specified in the relevant paragraph is not satisfied if the Court believes that—

- (a) there has been undue delay in continuing the application; or
- (b) the prosecutor does not intend to proceed.

(4) If subsection (1)(a) is satisfied—

- (a) references in this Part to the defendant are to the alleged offender;
- (b) references in this Part to the prosecutor are to the person the Court believes is to have conduct of any proceedings for the offence; and
- (c) section 7(2) has effect as if proceedings for the offence had been instituted against the defendant when the investigation was started.

Restraint orders

42. (1) If any paragraph in section 41(1) is satisfied, the Court may, on the application of the prosecutor, by order, prohibit any person specified in the order from dealing with any realisable property held by him, subject to such conditions and exceptions as may be specified in the order.

(2) Without limiting subsection (1) and subject to subsection (3), a restraint order may make such provision as the Court thinks fit for—

- (a) reasonable living expenses and reasonable legal expenses; or
- (b) enabling any person to carry on any trade, business, profession or occupation.

(3) A restraint order may apply—

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

(4) On the application of the prosecutor, whether made as part of the application for the restraint order or subsequent thereto, the Court may make such order as it considers appropriate for ensuring the restraint order is effective.

(5) A restraint order does not affect property for the time being subject to a charging order under—

- (a) section 11 of the repealed Drug Trafficking Offences Act; or
- (b) section 20 of the repealed Proceeds of Crime Act.

(6) Where the Court has made a restraint order, a police officer may, for the purpose of preventing any property to which the order applies being removed from Montserrat, seize the property.

(7) Property seized under subsection (6) must be dealt with in accordance with the Court's directions.

Application, discharge and variation

43. (1) A restraint order—

- (a) may be made on an ex parte application to a judge in chambers; and
- (b) must provide for notice to be given to persons affected by the order.

(2) An application to discharge or vary a restraint order or an order made under section 42(5) may be made to the Court by the prosecutor or by any person affected by the order.

(3) On an application under subsection (2), the Court—

- (a) may discharge or vary the restraint order;
- (b) if the application was made on the basis that proceedings were instituted or an application was made, the Court must discharge the restraint order on the conclusion of the proceedings or the application, as the case may be;
- (c) if the application was made on the basis that an investigation was started or an application was to be made, the Court must discharge the restraint order if within a reasonable period proceedings for the offence are not instituted or the application is not made, as the case may be.

Hearsay evidence

44. (1) Evidence must not be excluded on the ground that it is hearsay, of whatever degree, in proceedings—

- (a) for a restraint order;
- (b) for an application to discharge or vary a restraint order; or
- (c) on an appeal against a restraint order or an order discharging or varying a restraint order.

(2) For the purposes of this section, “**hearsay**” is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.

(3) This section does not affect the admissibility of evidence which is admissible apart from this section.

Prosecutor may lodge caution

45. (1) Where the prosecutor has applied for a restraint order, he must be treated as a person having an unregistrable interest in any registered land, lease or charge to which the application relates, or to which a restraint order made on the application relates, and he may lodge a caution with the Registrar of Lands under section 127(1) of the Registered Land Act (Cap. 8.01) forbidding the registration of dispositions of, and the making of entries affecting, the land, lease or charge.

(2) Sections 127 to 131 of the Registered Land Act (Cap. 8.01) apply with respect to a caution lodged by the prosecutor under subsection (1).

Appointment of management receiver

46. (1) If the Court makes a restraint order, it may, on the application of the prosecutor, whether as part of the application for the restraint order or at any time afterwards, appoint a management receiver in respect of any realisable property to which the restraint order applies.

(2) The Court may, by order, give the management receiver the following powers, or any of them, in relation to any realisable property to which the restraint order applies—

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to start, carry on or defend any legal proceedings in respect of the property;
- (d) power to realise so much of the property as is necessary to meet his remuneration and expenses; and
- (e) power to exercise such other powers as the Court considers it appropriate to confer on him for the purpose of exercising his functions.

(3) The Court may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the management receiver.

(4) The Court—

- (a) may order a person holding an interest in any realisable property to which the restraint order applies to make to the management receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; and

(b) may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(5) For the purposes of this section, managing or otherwise dealing with property includes—

(a) selling the property or any part or interest in it;

(b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property; or

(c) incurring capital expenditure in respect of the property.

(6) The Court must not in respect of any property give the receiver the powers specified in subsections (2)(b) or (d) or exercise the powers conferred by subsections (3) or (4) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.

Appointment of enforcement receiver

47. (1) On the application of the prosecutor, the Court may appoint an enforcement receiver in respect of realisable property, except property subject to a charge specified in section 42(6), if—

(a) a confiscation order is made;

(b) the confiscation order is not satisfied; and

(c) the confiscation order is not subject to appeal.

(2) Subject to such directions, exceptions and conditions as may be specified by the Court, an enforcement receiver has the following powers in relation to the realisable property—

(a) to take possession of the property;

(b) to manage or otherwise deal with the property;

(c) to realise the property, in such manner as the Court may specify;

(d) to start, carry on or defend any legal proceedings in respect of the property; and

(e) to exercise such other powers as the Court considers it appropriate to confer on him for the purpose of exercising his functions.

(3) The Court may require any person having possession of realisable property to give possession of it to the enforcement receiver.

(4) The Court may—

(a) order a person holding an interest in realisable property to make to the receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; and

(b) on the payment being made, by order transfer, grant or extinguish any interest in the property.

(5) For the purposes of this section, managing or otherwise dealing with property includes—

(a) selling the property or any part or interest in it;

(b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;

(c) incurring capital expenditure in respect of the property.

(6) The Court must not in respect of any property exercise the powers conferred by subsection (3), (4) or (5) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.

Effect of restraint order

48. (1) Where a restraint order is made, or an enforcement receiver is appointed, no distress may be levied against any realisable property to which the order applies except with the leave of the Court and subject to any terms the Court may impose.

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

(3) If proceedings are pending before the Court in respect of any property and the Court is satisfied that a restraint order, or an order for the appointment of an enforcement receiver, has been applied for or made in respect of the property, the Court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(4) Before exercising any power conferred by subsection (3), the Court must give an opportunity to be heard to—

(a) the prosecutor; and

(b) the enforcement receiver or, in the case of a restraint order, any receiver appointed in respect of the property under this Part.

Application of proceeds of realisation and other sums

49. (1) Subject to subsection (2), the following sums in the hands of an enforcement receiver, that is—

(a) the proceeds of the realisation of any property under section 46, and

(b) any other sums in which the defendant holds an interest,

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

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

(a) among such of those who held property which has been realized under this Act, and

(b) in such proportions,

as the Court may direct after giving a reasonable opportunity for such persons to make representations to the Court.

(3) The receipt of any sum by the Registrar on account of an amount payable under a confiscation order must reduce the amount so payable, but the Registrar must apply the money received for the purposes specified in this section and in the order so specified.

(4) The Registrar must first pay the receiver's remuneration and expenses if the money was paid to the Registrar by a receiver appointed under this Act.

(5) If the Court made an order under section 8(4), the Registrar must, after making any payment required by subsection (4), next apply any balance in his hands in payment of such amount of the Penal Code compensation order as may be outstanding.

(6) Any balance in the hands of the Registrar after he has made all payments required by this section must be treated as if it were a fine imposed by the Court.

Further provisions with respect to receivers

50. (1) If a management or enforcement receiver—

- (a) takes action in relation to property which is not realisable property,
- (b) would be entitled to take the action if it were realisable property, and
- (c) believes on reasonable grounds that he is entitled to take the action,

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

(2) Application may be made to the Court for an order giving directions as to the exercise of the powers of a management or enforcement receiver by—

- (a) the receiver;
- (b) any person affected by action taken by the receiver; or
- (c) any person who may be affected by action the receiver proposes to take.

(3) On an application under this section, the Court may make such order as it considers appropriate.

Discharge and variation

51. (1) Application may be made to the Court to vary or discharge an order made under section 46 or 47 by—

- (a) the receiver;
- (b) the prosecutor; or
- (c) any person affected by the order.

(2) On an application under this section the Court may discharge or vary the order.

(3) In the case of an order under section 46—

- (a) if the condition in section 41 which was satisfied was that proceedings were instituted or an application was made, the Court must discharge the order on the conclusion of the proceedings or of the application, as the case may be;
- (b) if the condition which was satisfied was that an investigation was started or an application was to be made, the Court must discharge the order if within a reasonable time proceedings for the offence are not instituted or the application is not made, as the case may be.

Discharge of management receiver

52. (1) Where a management receiver is appointed in respect of realisable property and the Court appoints an enforcement receiver, the Court must order the management

receiver to transfer to the enforcement receiver all property that he holds by virtue of the exercise of his powers.

(2) Subsection (1) does not apply to property which the management receiver holds by virtue of the exercise by him of his power under section 46(2)(d).

(3) If the management receiver complies with an order under subsection (1) he is discharged—

(a) from his appointment under section 46; and

(b) from any obligation under this Act arising from his appointment.

(4) Where this section applies, the Court may make such a consequential or incidental order as it considers appropriate.

Winding up of company holding realisable property

53. (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) must not be exercisable in relation to—

(a) property for the time being subject to a restraint order made before the relevant time; and

(b) any proceeds of property for the time being in the hands of a receiver appointed under this Act.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Court by sections 40 to 48 must not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—

(a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or

(b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Subsection (2) does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(4) In this section—

“**company**” means a company which may be wound up under or in accordance with the Companies Act (Cap. 11.12) and includes—

(a) a company in respect of which notice has been given under section 96 of the International Business Companies Act (Cap. 11.13); or

(b) that is being wound up by the Court under section 97 of the International Business Companies Act (Cap. 11.13); and

“**the relevant time**” means—

(a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;

- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the Court, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

Exercise of powers by Court or receiver

54. (1) This section applies to—

- (a) the powers conferred on the Court by sections 42 to 50; and
- (b) the powers of a receiver appointed under this Part.

(2) Subject to this section, the powers—

- (a) must be exercised with a view to the value for the time being of realisable property being made available, by the property's realisation, for satisfying any confiscation order that has been, or may be, made against the defendant;
- (b) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property;
- (c) must be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift if the obligation conflicts with the objective of satisfying any confiscation order that has been made, or may be made, against the defendant; and
- (d) may be exercised in respect of a debt owed by the Crown.

(3) Subsection (2) has effect subject to the following—

- (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him;
- (b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift; and
- (c) in a case where a confiscation order has not been made against the defendant, property must not be sold if the Court so orders under subsection (4).

(4) If on an application by the defendant, or by the recipient of a tainted gift, the Court decides that property cannot be replaced it may order that it must not be sold.

(5) An order under subsection (4) may be revoked or varied.

Miscellaneous

Compensation

55. (1) If proceedings are instituted against a person for an offence or offences to which this Act applies and either—

- (a) the proceedings do not result in his conviction for any such offence, or

- (b) where he is convicted of one or more such offences—
 - (i) the conviction or convictions concerned are quashed, or
 - (ii) he is pardoned by the Governor acting in his discretion in respect of the conviction or convictions concerned,

the Court may, subject to this section, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

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

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned; and
- (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or pursuant to an order under this Act.

(3) The Court must not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued even if the serious default had not occurred.

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

Enforcement abroad

56. (1) This section applies if—

- (a) any of the conditions in section 41(1) is satisfied;
- (b) the prosecutor believes that realisable property is situated in a country outside Montserrat (the receiving country); and
- (c) the prosecutor sends a request for assistance to the Attorney General with a view to it being forwarded under this section.

(2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property.

(3) In a case where a confiscation order has been made and has not been satisfied, discharged or set aside, a request for assistance is a request to the government of the receiving country to secure that—

- (a) any person is prohibited from dealing with realisable property;
- (b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.

(4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or set aside.

(5) If the Attorney General believes it is appropriate to do so he may forward the request for assistance to the government of the receiving country.

(6) If property is realised pursuant to a request under subsection (3) the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of realisation.

(7) A certificate issued by or on behalf of the requested government is admissible as evidence of the facts it states if it states—

- (a) that property has been realised pursuant to a request under subsection (3);
- (b) the date of realisation; and
- (c) the proceeds of realisation.

(8) If the proceeds of realisation made pursuant to a request under subsection (3) are expressed in a currency other than dollars, they must be taken to be the dollar equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation.

Magistrate's Court

Committal by Magistrate's Court

57. (1) This section applies if—

- (a) a defendant is convicted of an offence by the Magistrate's Court; and
- (b) the prosecutor asks the Magistrate's Court to commit the defendant to the Court with a view to a confiscation order being considered.

(2) In such a case the Magistrate's Court—

- (a) must commit the defendant to the Court in respect of the offence; and
- (b) may commit him to the Court in respect of any other offence falling within subsection (3).

(3) An offence falls within this subsection if—

- (a) the defendant has been convicted of it by the Magistrate's Court; and
- (b) the Magistrate's Court has power to deal with him in respect of it.

(4) If a committal is made under this section in respect of an offence or offences—

- (a) section 7 applies accordingly; and
- (b) the committal operates as a committal of the defendant to be dealt with by the Court in accordance with section 59.

(5) A committal under this section may be in custody or on bail.

Confiscation orders by Magistrate's Court

58. (1) Subject to subsection (2), the regulations may provide for the making of a confiscation order under section 7 by the Magistrate's Court.

(2) The regulations must not enable the Magistrate's Court to make a confiscation order in respect of an amount exceeding \$100,000.

(3) The provisions of this Act relating to confiscation orders must apply with respect to confiscation proceedings before, and confiscation orders made by, the Magistrate's Court, subject to such modifications as may be provided for in the regulations.

Sentencing by Court

59. If a defendant is committed to the Court under section 57 in respect of an offence or offences, the Court—

- (a) must inquire into the circumstances of the case; and

- (b) may deal with the defendant in any way in which the Magistrate's Court could deal with him if it had just convicted him of the offence.

PART 3

CIVIL FORFEITURE

Preliminary

Purpose of this Part

60. (1) The purpose of this Part is to—

- (a) enable the Civil Forfeiture Authority to obtain in civil proceedings before the Court, an order forfeiting to the Crown property which is, or represents—
- (i) property obtained through unlawful conduct; or
 - (ii) property that has been used in, or in connection with, or is intended to be used in, or in connection with, unlawful conduct; and
- (b) enable cash which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before the Magistrate's Court.

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

Interpretation for this Part

61. (1) In this Part—

“associated property” means property, including property held by the respondent, which is not itself recoverable property but which is—

- (a) an interest in recoverable property;
- (b) an interest in the property in which the recoverable property subsists;
- (c) if the recoverable property is a proprietorship in common, the share of the other proprietor; or
- (d) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property;

“bona fide purchaser”, in relation to recoverable property, means, subject to subsection (2), a person who obtains recoverable property on its disposal in good faith, for value and without notice that it is recoverable property;

“Civil Forfeiture Authority” means the Attorney General;

“disposal” in relation to property, includes—

- (a) the making of a payment, whatever form the payment takes;
- (b) the devolving of property under a will or intestacy or the passing of property by operation of law;
- (c) the disposal of part of the property; and
- (d) the granting of an interest in the property;

and references to the property disposed of are to any property obtained on the disposal;

“excepted joint owner”, in relation to recoverable property that belongs to joint proprietors, means a joint proprietor who obtained the property in circumstances in which it would not be recoverable as against him, and references to the excepted joint owner’s share of the recoverable property are to so much of the recoverable property as would have been his if the joint proprietorship had been severed;

“mixed property” has the meaning specified in subsections (3) and (4);

“plaintiff” includes claimant;

“property freezing order” means an order made under section 79;

“property obtained through unlawful conduct” means property that a person obtains by or in return for unlawful conduct, whether the unlawful conduct is his own or another person’s, whether or not—

- (a) any money, goods or services were provided in order to put the person in question in a position to carry out the conduct; or
- (b) it can be shown that the conduct was of a particular kind, if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct;

“recoverable profits” means profits that accrue to a person in respect of recoverable property;

“recoverable property” means, subject to section 62, any property of the following types, whoever holds the property—

- (a) property obtained through unlawful conduct;
- (b) tainted property;
- (c) representative property;
- (d) mixed property; and
- (d) recoverable profits;

“representative property” means property obtained by a person on the disposal of recoverable property;

“respondent” means—

- (a) where proceedings are brought by the Civil Forfeiture Authority under this Part, the person against whom the proceedings are brought; and
- (b) where no such proceedings have been brought but the Civil Forfeiture Authority has applied for an interim receiving order, the person against whom the Authority intends to bring such proceedings;

“tainted property” means property that—

- (a) has been used in, or in connection with, unlawful conduct; or
- (b) is intended to be used in, or in connection with, unlawful conduct;

“unlawful conduct” is conduct which—

- (a) if it occurs in Montserrat, is unlawful under the criminal law of Montserrat; or
- (b) if it occurs in a country outside Montserrat—

- (i) is unlawful under the criminal law applying in that country; and
- (ii) if it occurred in Montserrat, would be unlawful under the criminal law of Montserrat; and

“**value**” means market value.

(2) For the purposes of the definition of “bona fide purchaser”, a person is only to be treated as having obtained property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

(3) Where recoverable property held by a person is mixed with other property, whether the property is his or another person’s property, the portion of the mixed property which is attributable to the recoverable property is mixed property.

(4) Without limiting subsection (3), recoverable property is mixed with other property if it is used—

- (a) to increase funds held in a bank account;
- (b) in part payment for the acquisition of an asset;
- (c) for the restoration or improvement of land; or
- (d) by a person holding a leasehold interest in the property to acquire the freehold.

Property excluded from definition of recoverable property

62. (1) Property is not recoverable property—

- (a) while a restraint order applies to it, whether made under this Act or under an equivalent provision in the repealed Drug Trafficking Offences Act or the repealed Proceeds of Crime Act;
- (b) if it has been taken into account in determining the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order—
 - (i) under this Act; or
 - (ii) under an equivalent provision in the repealed Drug Trafficking Offences Act or the repealed Proceeds of Crime Act.

(2) In relation to an order mentioned in subsection (1)(b)(ii), the reference to the amount of a person's benefit from criminal conduct is to be construed as a reference to the corresponding amount under the Act in question.

(3) Property ceases to be recoverable property if—

- (a) it is disposed of to a bona fide purchaser;
- (b) the following apply—
 - (i) pursuant to a judgment in civil proceedings, whether in Montserrat or elsewhere, the defendant makes a payment to the plaintiff or the plaintiff otherwise obtains property from the defendant;
 - (ii) the plaintiff’s claim is based on the defendant's unlawful conduct; and
 - (iii) apart from this paragraph, the sum received, or the property obtained, by the plaintiff would be recoverable property; or

- (c) a payment is made to a person under a Penal Code compensation order and, apart from this paragraph, the sum received would be recoverable property; or
- (d) it is vested, forfeited or otherwise disposed of pursuant to powers conferred by virtue of this Part, including regulations made under this Part.

(4) The disposal of property to a bona fide purchaser or pursuant to powers conferred by virtue of this Part does not affect the recoverability of any property obtained on the transaction in place of the property disposed of as representative property.

Granting of interests in recoverable property

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

(2) Accordingly, on his granting an interest in the property (“the property in question”)—

- (a) where the property in question is property obtained through unlawful conduct or is tainted property, the interest is also to be treated as obtained through that conduct or as tainted property, as the case may be; and
- (b) where the property in question represents in his hands property obtained through unlawful conduct or tainted property, the interest is also to be treated as representing in his hands the property so obtained or the tainted property, as the case may be.

Civil forfeiture order

Application for civil forfeiture order

64. (1) The Civil Forfeiture Authority may apply to the Court for a civil forfeiture order against any person who the Civil Forfeiture Authority believes holds recoverable property the value of which exceeds any minimum threshold prescribed under section 96.

(2) An application under subsection (1) must be served on—

- (a) the respondent;
- (b) unless the Court dispenses with service, any person who the Civil Forfeiture Authority believes—
 - (i) has an interest in the property to which the application relates; or
 - (ii) holds any associated property which the Authority wishes to be subject to the civil forfeiture order; and
- (c) any other person who the Court, at any time prior to the final determination of the application, directs.

(3) The Civil Forfeiture Authority must, in the application—

- (a) identify, by particularising or by a general description, the property in relation to which the Authority seeks a civil forfeiture order;
- (b) state, in relation to each item or description of property identified in the application—

- (i) whether it is alleged that the property is recoverable property or associated property; and
 - (ii) either, who is alleged to hold the property or, where the Authority is unable to identify who holds the property, the steps that have been taken to establish their identity; and
- (c) nominate a suitably qualified person for appointment by the Court as the civil forfeiture trustee.

Civil forfeiture order

65. (1) Subject to sections 71 to 76, on an application under section 64, the Court must make a civil forfeiture order if it is satisfied, on the balance of probabilities, that any property specified in the application is recoverable property.

(2) A civil forfeiture order is an order—

- (a) that subject to section 66, any property specified in the order is forfeited to the Crown;
- (b) that the person specified in the order is appointed by the Court as the civil forfeiture trustee for the purposes of giving effect to the order;
- (c) if section 67 applies, for the payment of the amount specified in the order by the person who holds associated property or the excepted joint owner to the civil forfeiture trustee;
- (d) for such payments by the civil forfeiture trustee and the creation of such interests and the imposition of such liabilities and conditions in relation to the property as the Court determines in accordance with section 68; and
- (e) subject to section 78, the payment of the proceeds of realisation of the property specified in the order and such other payments made to the civil forfeiture trustee to be paid into the National Forfeiture Fund.

(3) A civil forfeiture order may—

- (a) sever title to any property;
- (b) impose conditions as to the manner in which the civil forfeiture trustee may deal with any property vested by the order for the purpose of realising it; or
- (c) provide for payment under section 78 of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—
 - (i) the proceedings under this Part in which the order is made; or
 - (ii) any related proceedings under this Part;
- (d) provide for such other matters as are permitted by any provision in this Part, including by regulations made under this Part, or in any other enactment.

Associated and joint property

66. Sections 67 and 68 apply if the Court makes a civil forfeiture order in respect of any recoverable property, and—

- (a) if—

- (i) the property to which the proceedings relate includes property which is associated with the recoverable property and is specified or described in the application; and
 - (ii) if the associated property is not the respondent's property, the claim form or application has been served on the person whose property it is or the Court has dispensed with service; or
- (b) if—
- (i) the recoverable property belongs to joint proprietors; and
 - (ii) one of the proprietors is an excepted joint owner.

Payment to trustee, associated and joint property

67. (1) Where—

- (a) this section applies, and
- (b) the Civil Forfeiture Authority (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other) agree,

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

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

(3) The amount of the payment must be the amount which the Civil Forfeiture Authority and that person agree represents—

- (a) in the circumstances specified in section 66(a), the value of the recoverable property; or
- (b) in a case within section 66(b), the value of the recoverable property less the value of the excepted joint owner's share.

(4) If—

- (a) a property freezing order or an interim receiving order applied at any time to the associated property or joint proprietorship, and
- (b) the Civil Forfeiture Authority agrees that the person has suffered loss as a result of the property freezing order or interim receiving order,

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

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

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

Associated and joint property: default of agreement

68. (1) Where this section applies, the Court may make the following provision if—

- (a) there is no agreement under section 67; and
- (b) the Court thinks it just and equitable to do so.

(2) The civil forfeiture order may provide—

- (a) for the associated property to vest in the trustee for civil forfeiture or, as the case may be, for the excepted joint owner's interest to be extinguished; or
- (b) in the case of an excepted joint owner, for the severance of his interest.

(3) A civil forfeiture order making any provision by virtue of subsection (2)(a) may provide for either or both of the following—

- (a) for the trustee for civil forfeiture to pay an amount to the person who holds the associated property or who is an excepted joint owner;
- (b) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee for civil forfeiture.

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

- (a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to him of that property or, as the case may be, of his share, including any value which cannot be assessed in terms of money; and
- (b) the Civil Forfeiture Authority's interest in receiving the realised proceeds of the recoverable property.

(5) If—

- (a) a property freezing order or an interim receiving order applied at any time to the associated property or joint proprietorship, and
- (b) the Court is satisfied that the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the property freezing order or interim receiving order,

a civil forfeiture order making any provision by virtue of subsection (2) or (3) may require the Civil Forfeiture Authority to pay compensation to that person.

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

Order staying civil forfeiture proceedings

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

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

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

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

(3) Section 78 applies to property vested in the trustee for civil forfeiture, or money paid to him, pursuant to the agreement as it applies to property vested in him by a civil forfeiture order or money paid under section 67.

Effect of civil forfeiture order

Effect of civil forfeiture order

70. (1) Where a civil forfeiture order is made, the property specified in the order vests in, and is subject to the control of, the civil forfeiture trustee.

(2) A civil forfeiture order has effect in relation to any property despite any provision, of whatever nature, which would otherwise prevent, penalise or restrict the vesting of the property.

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

(4) A right of return means any right under a provision for the return or reversion of property in specified circumstances.

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

(6) References to rights in subsections (3), (4) and (5) do not include any rights in respect of which the civil forfeiture order was made.

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

Limitations on, and relief from, civil forfeiture orders

Circumstances when civil forfeiture order must not be made

71. (1) The Court must not make a civil forfeiture order against any property if—

(a) all the conditions in subsection (2) are met; and

(b) it would not be just and equitable to do so.

(2) The conditions referred to in subsection (1)(a) are that—

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

(b) the respondent took any action, or omitted to take any action, after obtaining the property which he would not have taken, or omitted to take, if he had not obtained the property or he took any action, or omitted to take any action, before obtaining the property which he would not have taken, or omitted to take, if he had not believed he was going to obtain it;

(c) when he took, or omitted to take, the action referred to in paragraph (b), he had no notice that the property was recoverable; and

(d) if a civil forfeiture order were made in respect of the property, it would, by reason of his action or omission be detrimental to him.

(3) In deciding whether it would be just and equitable to make the provision in the civil forfeiture order where the conditions in subsection (2) are met, the Court must have regard to—

- (a) the degree of detriment that would be suffered by the respondent if the provision were made;
- (b) the Civil Forfeiture Authority's interest in receiving the realised proceeds of the recoverable property.

Tainted property

72. (1) The Court must not make a civil forfeiture order against any tainted property if—

- (a) the relevant unlawful conduct is not the unlawful conduct of the owner of the property; and
- (b) the owner did not give his consent, express or implied, for the use or intended use of his property in, or in connection with, the relevant unlawful conduct.

(2) A person who has an interest in tainted property may apply to the Court for relief from a civil forfeiture order.

(3) The Court may, on an application under subsection (2), grant relief from the civil forfeiture order if it is satisfied that—

- (a) the applicant did not give his consent, express or implied, for the use or intended use of the property in, or in connection with, the relevant unlawful conduct; and
- (b) that it would be just and equitable to grant relief

(4) Where subsection (3) applies, the Court must make one of the following orders—

- (a) that the tainted property is excluded from the civil forfeiture order;
- (b) that the applicant is entitled to paid a specified amount equal to the value of his interest by the civil forfeiture trustee on the realisation of the property concerned;
- (c) vesting the property concerned in the applicant on the payment of a specified amount by the applicant to the civil forfeiture trustee; or
- (d) transferring the interest to the applicant.

(5) In this section “**relevant unlawful conduct**” means the unlawful conduct, by reason of which, the property concerned is tainted property.

Application by owner for declaration that property not recoverable property

73. (1) A person who claims that any property alleged to be recoverable property, or any part of the property, belongs to him may apply, in the civil forfeiture proceedings, for a declaration that the property is not recoverable property.

(2) The Court may make a declaration on an application under subsection (1) if it appears to the Court that—

- (a) the applicant was deprived of the property he claims, or of property which it represents, by unlawful conduct;

- (b) the property the applicant was deprived of was not recoverable property immediately before he was deprived of it; and
- (c) the property he claims belongs to him.

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

Limit on forfeiture

74. (1) This section applies if the Civil Forfeiture Authority seeks a civil forfeiture order—

- (a) in respect of both property which is or represents property obtained through unlawful conduct, or tainted property, and related property; or
- (b) in respect of property which is or represents property obtained through unlawful conduct, or tainted property, where such an order, or an order under section 69, has previously been made in respect of related property.

(2) For the purposes of this section—

- (a) the original property means the property obtained through unlawful conduct or the tainted property, as the case may be; and
- (b) the original property, and any items of property which represent the original property, are to be treated as related to each other.

(3) The Court must not make a civil forfeiture order if it thinks that the Civil Forfeiture Authority's right to recover the original property has been satisfied by a previous civil forfeiture order or an order under section 69.

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

- (a) a civil forfeiture order may be made in respect of two or more related items of recoverable property; but
- (b) the making of a civil forfeiture order in respect of both or all of them is not required in order to satisfy the Civil Forfeiture Authority's right to recover the original property.

(5) The Court may in order to satisfy that right to the extent required make a civil forfeiture order in respect of—

- (a) only some of the related items of property; or
- (b) only a part of any of the related items of property;

or both.

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

(7) If—

- (a) a cash forfeiture order is made, and
- (b) the Civil Forfeiture Authority subsequently seeks a civil forfeiture order in respect of related property,

the cash forfeiture order is to be treated for the purposes of this section as if it were a civil forfeiture order obtained by the Authority in respect of the forfeited property.

(8) If—

- (a) pursuant to a judgment in civil proceedings, whether in Montserrat or elsewhere, the plaintiff has obtained property from the defendant (“the judgment property”),
- (b) the claim was based on the defendant's having obtained the judgment property or related property through unlawful conduct, and
- (c) the Civil Forfeiture Authority subsequently seeks a civil forfeiture order in respect of property which is related to the judgment property,

the judgment is to be treated for the purposes of this section as if it were a civil forfeiture order obtained by the Civil Forfeiture Authority in respect of the judgment property.

(9) If—

- (a) property has been taken into account in determining the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order, and
- (b) the Civil Forfeiture Authority subsequently seeks a civil forfeiture order in respect of related property,

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

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

- (a) an order under section 7, or
- (b) an order under a corresponding provision of the repealed Drug Trafficking Offences Act or the repealed Proceeds of Crime Act,

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

Examples for the purpose of section 74

75. (1) Subsections (2) and (3) give examples of the satisfaction of the Civil Forfeiture Authority's right to recover the original property.

(2) If—

- (a) there is a disposal, other than a part disposal, of the original property, and
- (b) other property (“the representative property”) is obtained in its place,

the Civil Forfeiture Authority's right to recover the original property is satisfied by the making of a civil forfeiture order in respect of either the original property or the representative property.

(3) If—

- (a) there is a part disposal of the original property, and
- (b) other property (“the representative property”) is obtained in place of the property disposed of,

the Civil Forfeiture Authority's right to recover the original property is satisfied by the making of a civil forfeiture order in respect of the remainder of the original property together with either the representative property or the property disposed of.

(4) In this section, the “**original property**” has the same meaning as in section 74.

Limitations by regulations

76. (1) The Governor in Council may prescribe that—

- (a) specified property is not recoverable or, as the case may be, associated property;
- (b) specified property is not recoverable or, as the case may be, associated property if it is disposed of pursuant to a specified enactment or an enactment of a specified description;
- (c) if property is disposed of pursuant to a specified enactment or an enactment of a specified description, it is to be treated for the purposes of section 74 as if it had been disposed of pursuant to a civil forfeiture order;
- (d) proceedings for a civil forfeiture order may not be taken—
 - (i) against any person in specified circumstances and the circumstances may relate to the person, to the property or to any other matter;
 - (ii) in respect of cash found at any place in Montserrat, unless the proceedings are also taken in respect of property other than cash which is property of the same person;
 - (iii) against the Financial Services Commission in respect of any recoverable property held by the Commission; or
 - (iv) against any person in respect of any recoverable property which he holds by reason of his acting, or having acted, as trustee in bankruptcy appointed under the Bankruptcy Act (Cap. 3.03), or as liquidator of a company appointed by, or supervised, the Court.

(2) The Governor in Council may prescribe that the regulations apply to property, or a disposal of property, only in specified circumstances and the circumstances may relate to the property or disposal itself or to a person who holds or has held the property or to any other matter.

(3) In this subsection (1)(d)(iv), “**company**” means a company which may be wound up under or in accordance with the Companies Act (Cap. 11.12) and includes—

- (a) a company in respect of which notice has been given under section 96 of the International Business Companies Act (Cap. 11.13); or
- (b) that is being wound up by the Court under section 97 of the International Business Companies Act (Cap. 11.13).

Provisions giving effect to civil forfeiture order

Civil forfeiture trustee

77. (1) The functions of the trustee for civil forfeiture are—

- (a) to secure the detention, custody or preservation of any property vested in him by the civil forfeiture order;
- (b) in the case of property other than money, to realise the value of the property for the benefit of the Civil Forfeiture Authority;
- (c) to otherwise give effect to the civil forfeiture order; and

(d) to perform any other functions conferred on him by virtue of this Part.

(2) In performing his functions, the trustee for civil forfeiture acts on behalf of the Civil Forfeiture Authority and must comply with any directions given to him by the Authority.

(3) The trustee for civil forfeiture must realise the value of property vested in him by the civil forfeiture order, so far as practicable, in the manner best calculated to maximise the amount payable to the Civil Forfeiture Authority.

(4) The trustee for civil forfeiture has the powers specified in Schedule 2.

(5) References in this section to a civil forfeiture order include a consent order made under section 69 and references to property vested in the trustee for civil forfeiture by a civil forfeiture order include property vested in him pursuant to such a consent order.

Applying realised proceeds

78. (1) This section applies to—

(a) sums which represent the realised proceeds of property which was vested in the trustee for civil forfeiture by a civil forfeiture order or which he obtained pursuant to a civil forfeiture order; and

(b) sums vested in the trustee for civil forfeiture by a civil forfeiture order or obtained by him pursuant to a civil forfeiture order.

(2) The trustee for civil forfeiture is to pay out of the sums—

(a) first, any payment required to be made by him by virtue of section 68;

(b) next, any payment of legal expenses which are payable under this subsection in pursuance of a provision under section 65(3)(c) contained in the civil forfeiture order;

(c) any fees payable to a liquidator of a company appointed by or supervised by the Court; and

(d) any sum which remains is to be paid into the National Forfeiture Fund.

(3) The Civil Forfeiture Authority may apply a sum received by it under subsection (2) in making payment of the remuneration and expenses of—

(a) the trustee for civil forfeiture; or

(b) any interim receiver appointed in, or in anticipation of, the proceedings for the civil forfeiture order.

(4) In this section, “**company**” means a company which may be wound up under or in accordance with the Companies Act (Cap. 11.12) and includes—

(a) a company in respect of which notice has been given under section 96 of the International Business Companies Act (Cap. 11.13); or

(b) that is being wound up by the Court under section 97 of the International Business Companies Act (Cap. 11.13).

*Property freezing orders***Property freezing order**

79. (1) Where the Civil Forfeiture Authority may apply for a civil forfeiture order, the Authority may apply to the Court for a property freezing order, whether before or after instituting the proceedings.

(2) A property freezing order is an order that, subject to any exclusions, prohibits any person whose property is specified or described in the order, from in any way dealing with the property.

(3) An application for a property freezing order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Civil Forfeiture Authority to obtain a civil forfeiture order in respect of any property.

(4) The Court may make a property freezing order if it is satisfied that—

(a) there is a good arguable case that—

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

(ii) if any of the property is not recoverable property, it is associated property; and

(b) if the property to which the application for the order relates includes property alleged to be associated property, and the Civil Forfeiture Authority has not established the identity of the person who holds it, the Authority has taken all reasonable steps to do so.

Variation and setting aside of property freezing order

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

(2) If the Court makes an interim receiving order, it must vary or set aside the property freezing order to exclude any property subject to the interim receiving order.

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

(4) Unless acting in accordance with subsection (2), the Court must give the parties to the proceedings and any person who may be affected by its decision an opportunity to be heard before varying or setting aside a property freezing order.

Exclusions

81. (1) The power to make or vary a property freezing order includes the power to—

(a) exclude specified property, or property described in the order, from the order; and

(b) otherwise make exclusions from the prohibition on dealing with the property to which the order applies.

(2) An exclusion may be made subject to such conditions as the Court considers appropriate and may, in particular, make provision for the purpose of enabling any person—

(a) to meet his reasonable living or reasonable legal expenses; or

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

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

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

(b) specifies the total amount that may be released for legal expenses pursuant to the exclusion.

(4) Subject to subsection (2) or (3), the power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Civil Forfeiture Authority to recover the property obtained through unlawful conduct or the tainted property is not unduly prejudiced.

Restriction on proceedings and remedies

82. (1) While a property freezing order has effect—

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

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

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

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

(4) Before exercising any power conferred by this section, the Court must give the parties to any of the proceedings concerned and any person who may be affected by the Court's decision an opportunity to be heard.

Receivers in connection with property freezing orders

83. (1) The Court may appoint a receiver in respect of any property to which the property freezing order applies if—

(a) the Court makes a property freezing order on an application by the Civil Forfeiture Authority; and

(b) the Civil Forfeiture Authority applies to the Court for the appointment of a receiver, whether as part of the application for the property freezing order or at any time afterwards.

(2) An application for an order under this section may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Civil Forfeiture Authority to obtain a civil forfeiture order in respect of any property.

(3) In its application for an order under this section, the Civil Forfeiture Authority must nominate a suitably qualified person for appointment as a receiver, who may be a member of staff of the Authority.

(4) The Civil Forfeiture Authority may apply a sum received by it under section 78 (2)(d) in making payment of the remuneration, if any, and expenses of a receiver appointed under this section.

Powers of receivers appointed under section 83

84. (1) If the Court appoints a receiver under section 83 on an application by the Civil Forfeiture Authority, the Court may, on the application of the Authority, by order, authorise or require the receiver —

- (a) to exercise any of the powers specified in Schedule 1 (management powers) in relation to any property in respect of which the receiver is appointed; and
- (b) to take any other steps the court thinks appropriate in connection with the management of any such property, including securing the detention, custody or preservation of the property in order to manage it.

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

- (a) to bring the property to a place specified by the receiver or to place it in the custody of the receiver; and
- (b) to do anything he is reasonably required to do by the receiver for the preservation of the property.

(3) The Court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in his possession or control to a place specified by the receiver or to place them in the custody of the receiver.

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

(5) If—

- (a) the receiver deals with any property which is not property in respect of which he is appointed; and
- (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so by virtue of his appointment, the receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except so far as the loss or damage is caused by his negligence.

Supervision of receiver

85. (1) Any of the following persons may at any time apply to the Court for directions as to the exercise of the functions of a receiver appointed under section 83—

- (a) the receiver;
- (b) any party to the proceedings for the appointment of the receiver or the property freezing order concerned;
- (c) any person affected by any action taken by the receiver; and
- (d) any person who may be affected by any action proposed to be taken by the receiver.

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

- (a) the receiver;
- (b) the parties to the proceedings for the appointment of the receiver and for the property freezing order concerned; and
- (c) any person who may be interested in the application under subsection (1).

(3) The Court may at any time vary or set aside the appointment of a receiver under section 83, any order under section 84 or any directions under this section.

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

- (a) the receiver;
- (b) the parties to the proceedings for the appointment of the receiver, for the order under section 84 or, as the case may be, for the directions under this section;
- (c) the parties to the proceedings for the property freezing order concerned; and
- (d) any person who may be affected by the court's decision.

Interim receiving orders

Interim receiving order

86. (1) Where the Civil Forfeiture Authority may apply for a civil forfeiture order, the Authority may apply to the Court for an interim receiving order, whether before or after instituting the proceedings.

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

- (a) the detention, custody or preservation of property; and
- (b) the appointment of an interim receiver.

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

(4) The Court may make an interim receiving order on the application—

- (a) if it is satisfied there is a good arguable case—
 - (i) that the property to which the application for the order relates is or includes recoverable property; and
 - (ii) that, if any of it is not recoverable property, it is associated property; and
- (b) if the property to which the application for the order relates includes property alleged to be associated property and the Civil Forfeiture Authority has not established the identity of the person who holds it, the Authority has taken all reasonable steps to do so.

(5) The Civil Forfeiture Authority must, in its application for an interim receiving order, nominate a suitably qualified person for appointment as interim receiver.

Powers of interim receiver

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

- (a) to exercise any of the powers specified in Schedule 1,
- (b) to take any other steps the Court thinks appropriate,

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

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

- (a) whether or not the property to which the order applies is recoverable property or associated property;
- (b) whether or not any other property is recoverable property, in relation to the same unlawful conduct and, if it is, who holds it; or
- (c) whether or not any other property is tainted property, in relation to the same unlawful conduct and, if it is, who holds it.

(3) If—

- (a) the interim receiver deals with any property which is not property to which the order applies, and
- (b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so pursuant to the order,

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

Duties of respondent

88. An interim receiving order may require any person to whose property the order applies—

- (a) to bring the property to such place as may be specified by the interim receiver or to place it in the custody of the interim receiver and to do anything he is reasonably required to do by the interim receiver for the preservation of the property; and
- (b) to bring any documents relating to the property which are in his possession or control to such place as may be specified by the interim receiver or to place them in the custody of the interim receiver.

Supervision of interim receiver and variation of interim receiving order

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

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

(3) Before giving any directions under subsection (1) or exercising any power to vary or set aside an interim receiving order, the Court must give the following an opportunity to be heard—

- (a) the parties to the proceedings;

- (b) the interim receiver; and
- (c) any person who may be interested in an application under subsection (1) or affected by the Court's decision under subsection (2), as the case may be.

Restrictions on dealing etc. with property

90. (1) Subject to subsection (2), an interim receiving order—

- (a) must prohibit any person to whose property the order applies from dealing with the property; and
- (b) may be made subject to such conditions as the Court considers appropriate.

(2) The Court may, when the interim receiving order is made or on an application to vary the order, make such exclusions from the order as it considers just, including making provision for the purpose of enabling any person—

- (a) to meet his reasonable living expenses;
- (b) to meet his reasonable legal expenses; or
- (c) to carry on any trade, business, profession or occupation.

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

(4) The power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the Civil Forfeiture Authority to recover the property obtained through unlawful conduct or tainted property is not unduly prejudiced.

Restriction on proceedings and remedies

91. (1) While an interim receiving order has effect—

- (a) the Court may stay any action, execution or other legal process in respect of the property to which the order applies; and
- (b) no distress may be levied against the property to which the order applies except with the leave of the Court and subject to any terms the Court may impose.

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

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

(4) Before exercising any power conferred by this section, the Court must give the following the right to be heard—

- (a) the parties to any of the proceedings in question;
- (b) the interim receiver, if appointed; and
- (c) any person who may be affected by the Court's decision.

Exclusion of property which is not recoverable

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

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

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

Reporting

93. (1) An interim receiving order must require the interim receiver to inform the Civil Forfeiture Authority and the Court as soon as reasonably practicable if he thinks that—

- (a)* any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property;
- (b)* any property to which the order applies by virtue of a claim that it is associated property is not associated property;
- (c)* any property to which the order does not apply is recoverable property (in relation to the same unlawful conduct) or associated property;
- (d)* any property to which the order applies is held by a person who is different from the person it is claimed holds it; or
- (e)* there has been any other material change of circumstances.

(2) An interim receiving order must require the interim receiver—

- (a)* to report his findings to the Court; and
- (b)* to serve copies of his report on the Civil Forfeiture Authority and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

Civil Forfeiture Authority may lodge caution

94. (1) Where the Civil Forfeiture Authority has applied for a property freezing order or an interim receiving order, he must be treated as a person having an unregistrable interest in any registered land, lease or charge to which the application relates, or to which a property freezing order or an interim receiving order made on the application relates, and he may lodge a caution with the Registrar of Lands under section 127(1) of the Registered Land Act (Cap. 8.01) forbidding the registration of dispositions of, and the making of entries affecting, the land, lease or charge.

(2) Sections 127 to 131 of the Registered Land Act (Cap. 8.01) apply with respect to a caution lodged by the Civil Forfeiture Authority under subsection (1).

*Miscellaneous***Compensation**

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

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

- (a)* has made a declaration in respect of the property by virtue of section 73; or
- (b)* makes a consent order under section 69.

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

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

(5) If the Court is satisfied that the applicant has suffered loss as a result of the property freezing order or the interim receiving order, it may require the Civil Forfeiture Authority to pay compensation to him.

(6) If, but for section 70(3), any right mentioned there would have operated in favour of, or become exercisable by, any person, he may make an application to the Court for compensation.

(7) The application for compensation under subsection (6) must be made within the period of three months beginning with the vesting referred to in section 70(2).

(8) If the Court is satisfied that, in consequence of the operation of section 70, the right in question cannot subsequently operate in favour of the applicant or, as the case may be, become exercisable by him, it may require the Civil Forfeiture Authority to pay compensation to him.

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

Financial threshold

96. (1) If the regulations prescribe a minimum threshold for the purposes of this section, the Civil Forfeiture Authority may not start proceedings for a civil forfeiture order unless the Authority reasonably believes that the aggregate value of the recoverable property which the Authority wishes to be subject to a civil forfeiture order is equal to or greater than the prescribed threshold.

(2) If the Civil Forfeiture Authority applies for a property freezing order or an interim receiving order before starting the proceedings, subsection (1) applies to the application for the property freezing order or interim receiving order instead of to the start of the proceedings.

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

Limitation

97. (1) Proceedings must not be brought for a civil forfeiture order in respect of any recoverable property after the expiration of six years from—

- (a) in the case of proceedings for a civil forfeiture order in respect of property obtained through unlawful conduct, when the property was so obtained;
- (b) in the case of proceedings for a civil forfeiture order in respect of tainted property, when the property became tainted property; or
- (c) in the case of proceedings for a civil forfeiture order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.

(2) For the purposes of subsection (1), proceedings for a civil forfeiture order are brought when—

- (a) an application is filed with the Court under section 64; or
- (b) an application is made for an interim receiving order or a property freezing order.

Property acquired before commencement date

98. For the purposes of determining whether property was recoverable at any time, including times before the commencement date, this Part is deemed to have been in force at that time and at any other relevant time.

Cash seizure and forfeiture

Interpretation for sections 100 to 109

99. (1) For the purposes of sections 100 to 109—

“**minimum amount**” means such amount as is prescribed as the minimum amount; and

“**recoverable cash**” means cash—

- (a) which is recoverable property or is intended by any person for use in unlawful conduct; and
- (b) the amount of the cash is not less than the minimum amount.

(2) The amount of cash held in a currency other than Eastern Caribbean dollars is its equivalent in Eastern Caribbean dollars at the prevailing rate of exchange.

(3) Sections 100 to 109 apply only to cash found anywhere in Montserrat.

Searches

100. (1) A police officer who is lawfully on any premises and who has reasonable grounds for suspecting that there is recoverable cash on the premises, may search for the cash there.

(2) If a police officer has reasonable grounds for suspecting that a person (the suspect) is carrying recoverable cash, he may—

(a) so far as he thinks it necessary or expedient, require the suspect—

(i) to permit a search of any article he has with him; and

(ii) to permit a search of his person; and

(b) for the purposes of exercising his power under subparagraph (a)(ii), detain the suspect for so long as is necessary for the exercise of that power.

(3) The powers conferred by this section are exercisable only so far as reasonably required for the purpose of finding cash and this section does not require a person to submit to an intimate search.

(4) The powers conferred under this section may be exercised only with the prior approval of a senior police officer unless, in the circumstances, it is not practicable to obtain the authority before exercising the power.

(5) Where the powers conferred under this section are exercised without prior approval as required by subsection (4), the police officer exercising the power must make a written report to a senior officer as soon as is reasonably practicable.

(6) The written report made under subsection (5) must include particulars of the circumstances that led the police officer to believe—

(a) where no cash is seized or any cash seized is not detained for more than 48 hours, that the powers were exercisable; and

(b) that it was not practicable to obtain the prior approval of a senior police officer.

Seizure of cash

101. A police officer may seize cash if he has reasonable grounds for suspecting that—

(a) it is recoverable cash; or

(b) part of the cash is recoverable cash and it is not reasonably practicable to seize only that part.

Detention of seized cash

102. (1) While a police officer who has seized cash under section 101 continues to have reasonable grounds for his suspicion, the cash seized under that section may be detained initially for a period of 72 hours.

(2) The period for which the cash or any part of it may be detained may be extended by an order made by the Magistrate's Court, but the order may not authorise the detention of any of the cash—

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

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

(3) An application for an order under subsection (2) may be made by a senior police officer, and the Magistrate's Court may make the order if satisfied, in relation to any cash to be further detained, that—

- (a) there are reasonable grounds for suspecting that the cash is recoverable cash and that either—
 - (i) its continued detention is justified while its derivation is further investigated or consideration is given to bringing proceedings, whether in or outside Montserrat, against any person for an offence with which the cash is connected; or
 - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded; or
 - (b) there are reasonable grounds for suspecting that the cash is intended to be used in unlawful conduct and that either—
 - (i) its continued detention is justified while its intended use is further investigated or consideration is given to bringing proceedings, whether in or outside Montserrat, against any person for an offence with which the cash is connected; or
 - (ii) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.
- (4) An application for an order under subsection (2) may also be made in respect of any cash seized under section 101(b), and the Court may make the order if satisfied that—
- (a) either subsection (3)(a) or (b) applies in respect of part of the cash; and
 - (b) it is not reasonably practicable to detain only that part.
- (5) An order under subsection (2) must provide for notice to be given to any persons affected by it.
- (6) For the purposes of this Part, proceedings against a person for an offence are concluded when—
- (a) the person is convicted or acquitted;
 - (b) the prosecution is discontinued; or
 - (c) the jury is discharged *without* a finding.

Interest

103.(1) If cash is detained under section 102 for more than 48 hours, it must, at the first opportunity, be paid into an interest-bearing account and held there, and the interest accruing on it is to be added to it on its forfeiture or release.

(2) In the case of cash detained under section 102 which was seized under section 101(b), the police officer, must as soon as practicable after paying the cash seized into an interest bearing account, release the part of the cash to which the suspicion does not relate.

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

Release of detained cash

104.(1) While any cash is detained under section 102, the Magistrate's Court may direct the release of the whole or any part of the cash if the Magistrate's Court is satisfied, on an application by the person from whom the cash was seized, that the

grounds for the detention of the cash specified in section 102(3) or 102(4) are no longer met in relation to the cash to be released.

(2) A police officer may, after notifying the Magistrate's Court under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.

Cash forfeiture

105.(1) While cash is detained under section 102, an application for the forfeiture of the whole or any part of it may be made to the Magistrate's Court by a police officer.

(2) The Magistrate's Court may order the forfeiture of the cash, or any part of it, if satisfied that the cash or part—

(a) is recoverable cash; or

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

(3) In the case of recoverable cash which belongs to joint proprietors, one of whom is an excepted joint owner, the order may not apply to so much of it as the Magistrate's Court thinks is attributable to the excepted joint owner's share.

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

Appeal against forfeiture of cash

106.(1) Any party to proceedings in which a cash forfeiture order is made who is aggrieved by the order may appeal to the Court.

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

(3) An appeal under subsection (1) is to be by way of a rehearing by the Court which may make any order that it considers appropriate.

(4) If the Court upholds the appeal, it may order the release of the cash.

Application of forfeited cash

107. After the period within which an appeal under section 106 may be made or, if a person appeals under that section, after the appeal has been determined or disposed of, cash forfeited under section 105, and any accrued interest on it, must be paid into the National Forfeiture Fund.

Application by owner for release of cash

108.(1) A person who claims that any cash, or any part of it, that is detained under this Part belongs to him, may apply to the Magistrate's Court for the cash or part to be released to him.

(2) An application under subsection (1) may be made in the course of detention or forfeiture proceedings or at any other time.

(3) If, on an application under subsection (1), it appears to the Magistrate's Court that—

- (a) the applicant was deprived of the cash to which the application relates, or of property which it represents, by unlawful conduct,
- (b) the property he was deprived of was not, immediately before he was deprived of it, recoverable property, and
- (c) that cash belongs to him,

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

(4) The Magistrate's Court may order the cash to which the application relates to be released to the applicant or to the person from whom it was seized if—

- (a) an applicant under subsection (1) is not the person from whom the cash to which the application relates was seized;
- (b) it appears to the Magistrate's Court that that cash belongs to the applicant;
- (c) the Magistrate's Court is satisfied that the grounds specified in section 102(3) or (4) for the detention of the cash are no longer met or, if an application has been made under section 105, the Court decides not to make an order under that section in relation to that cash; and
- (d) no objection to the making of an order under this subsection has been made by the person from whom that cash was seized.

Compensation

109.(1) If no cash forfeiture order is made in respect of any cash detained under this Part, the person to whom the cash belongs or from whom it was seized may make an application to the Magistrate's Court for compensation.

(2) If, for any period beginning with the first opportunity to place the cash in an interest-bearing account after the initial detention of the cash for 48 hours, the cash was not held in an interest-bearing account while detained, the Magistrate's Court may order an amount of compensation to be paid to the applicant.

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

(4) If the Magistrate's Court is satisfied that, taking account of any interest to be paid under section 103 or any amount to be paid under subsection (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the Magistrate's Court may order compensation (or additional compensation) to be paid to him.

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

(6) Compensation is to be paid from the National Forfeiture Fund.

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

PART 4

COOPERATION

Interpretation for this Part and Schedule 3

110. In this Part, and Schedule 3—

- (a) an external order is an order which—
 - (i) is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct; and
 - (ii) is for the recovery of specified property or a specified sum of money;
- (b) an external request is a request by an overseas authority to prohibit dealing with relevant property which is identified in the request;
- (c) an overseas money laundering offence is an act carried out in a country outside Montserrat, which if carried out in Montserrat, would—
 - (i) constitute an offence under section 118, 119 or 120;
 - (ii) constitute an attempt, conspiracy or incitement to commit an offence specified in subparagraph (i); or
 - (iii) constitute aiding, abetting, counselling or procuring the commission of an offence specified in subparagraph (i);
- (d) property is “**relevant property**” if there are reasonable grounds to believe that it may be needed to satisfy an external order which has been or which may be made;
- (e) an overseas court is a court of a country outside Montserrat; and
- (f) an overseas authority is an authority which has responsibility in a country outside Montserrat for making a request to an authority in another country (including Montserrat) to prohibit dealing with relevant property.

External requests and orders

111. Schedule 3 applies to external requests and the enforcement of external orders.

PART 5

NATIONAL FORFEITURE FUND

National Forfeiture Fund established

112. (1) There is established a fund to be known as the National Forfeiture Fund.

- (2) The following must be paid into the National Forfeiture Fund—
- (a) all money recovered under a confiscation order or a under a forfeiture order made under the Anti-terrorist Financing Order;
 - (b) all money recovered under a civil forfeiture order;
 - (c) all cash forfeited under a cash forfeiture order or under the Anti-terrorist Financing Order; and

- (d) all money paid to the Government by a foreign jurisdiction in respect of confiscated or forfeited assets.
- (3) The Governor in Council may, on the recommendation of the Reporting Authority, authorise payments to be made out of the National Forfeiture Fund—
- (a) for purposes relating to—
- (i) law enforcement, including in particular, the investigation of money laundering and other financial crime, terrorist financing and drug trafficking;
 - (ii) training and public awareness with respect to money laundering, terrorist financing and drug trafficking;
 - (iii) training and public awareness with respect to drug addiction and the treatment and rehabilitation of persons with a drug addiction;
 - (iv) the rehabilitation of offenders; and
 - (v) the administration of the Fund;
- (b) to meet the costs and expenses of the Reporting Authority;
- (c) to satisfy any obligation of the Government to a foreign Government or with respect to confiscated asset;
- (d) to meet the costs and expenses of a receiver appointed under this Act;
- (e) to meet the costs of special investigations into the misuse of the financial system for money laundering or other financial crime or terrorist financing; and
- (f) to pay compensation or costs awarded under this Act.

Administration of the National Forfeiture Fund

113.(1) The National Forfeiture Fund shall be held and administered by the Reporting Authority.

(2) The Reporting Authority must open and maintain an account with a bank in Montserrat which holds a licence granted under the Banking Act (Cap. 11.03), into which all monies payable to the National Forfeiture Fund must be paid.

(3) The Reporting Authority may, with the approval of the Governor in Council, invest monies of the National Forfeiture Fund that, at any time are not required to be paid out the Fund under section 112(3).

(4) Income earned from investments made under subsection (3) is part of the National Forfeiture Fund.

Preparation of financial statements

114.(1) The financial year of the National Forfeiture Fund ends on December 31st in each year.

(2) The Reporting Authority must—

- (a) keep proper records of the money paid into and out of the National Forfeiture Fund and of investments made pursuant to section 112(3); and
- (b) ensure that—
- (i) all money received is properly brought to account;

- (ii) all payments are correctly made and properly authorised; and
 - (iii) adequate control is maintained over the assets of the Fund.
- (3) The financial records kept under subsection (2) must—
- (a) be sufficient to show and explain all transactions relating to the Fund;
 - (b) enable the financial position of the Fund to be determined with reasonable accuracy at any time; and
 - (c) be sufficient to enable financial statements to be prepared and audited in accordance with this section.
- (4) Within two months after the end of each financial year, the Reporting Authority must prepare—
- (a) financial statements containing—
 - (i) a statement of the assets of the National Forfeiture Fund at the end of the financial year; and
 - (ii) a statement of the money received into the National Forfeiture Fund and the payments made out of the Fund during the financial year;
 - (b) such other financial statements for the financial year as may be specified by the Governor in Council; and
 - (c) proper and adequate explanatory notes to the financial statements prepared under paragraphs (a) and (b).

Audit of financial statements and annual report

115.(1) The Reporting Authority must cause the financial statements prepared under section 114 to be audited and certified by an auditor to be appointed annually by the Reporting Authority, after consultation with the Governor, within three months after the end of the financial year.

(2) The auditor appointed under subsection (1) may be the Auditor General or another suitably qualified person.

(3) The auditor must prepare a report of his audit of the financial statements of the Fund which must include statements as to whether, in his opinion—

- (a) he has obtained all the information and explanations necessary for the purposes of the audit; and
- (b) to the best of his information and according to the explanations given to him, the financial statements give a true and fair view of—
 - (i) the assets of the Fund as at the end of the financial year; and
 - (ii) the money received into the National Forfeiture Fund and the payments made out of the Fund during the financial year.

(4) Within six months after the end of each financial year, the Reporting Authority must prepare and submit to the Minister a copy of the audited financial statements, which must include the report of the auditor on the financial statements.

(5) The Minister must, as soon as reasonably practicable after their receipt, lay a copy of the audited financial statements, together with the auditor's report, before the Legislative Council.

PART 6
MONEY LAUNDERING
Preliminary

Meaning of “criminal property”

116.(1) Property is criminal property if—

- (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit, in whole or part and whether directly or indirectly; and
- (b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

(2) For the purposes of subsection (1), it is immaterial—

- (a) who carried out the conduct;
- (b) who benefited from it; or
- (c) whether the conduct occurred before or after the commencement date.

(3) References to property obtained or a pecuniary advantage derived in connection with conduct include references to property obtained or a pecuniary advantage derived in both that connection and some other connection.

(4) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct.

General provisions for sections 118 to 125

117.(1) This section has effect for the purposes of sections 118 to 125.

(2) In the sections specified in subsection (1)—

- (a) **“prohibited act”** means an act specified in section 118(1), 119(1) or 120(1);
- (b) a reference to the making by a person of a disclosure to **“the relevant Money Laundering Reporting Officer”**, means the Money Laundering Reporting Officer appointed by that person's employer; and
- (c) **“protected disclosure”** has the meaning specified in section 125.

(3) A disclosure by a person is an authorised disclosure if—

- (a) it is a disclosure made to the Reporting Authority or to the relevant Money Laundering Reporting Officer that property is criminal property;
- (b) the disclosure—
 - (i) in the case of a disclosure to the Reporting Authority, is made in the form and manner, if any, that may be prescribed in the Anti-money Laundering and Terrorist Financing Regulations; or
 - (ii) in the case of a disclosure to the relevant Money Laundering Reporting Officer, is made in the course of his employment and in accordance with the procedures established by his employer for the purpose; and
- (c) the disclosure—
 - (i) is made before the person does the prohibited act; or

- (ii) is made after the person does the prohibited act, there is good reason for his failure to make the disclosure before he did the prohibited act and the disclosure is made on his own initiative and as soon as it is practicable for him to make it.
- (4)** The appropriate consent is—
 - (a) where a person makes a disclosure to the relevant Money Laundering Reporting Officer, the consent of the relevant Money Laundering Reporting Officer to do the prohibited act; or
 - (b) where a person makes a disclosure to the Reporting Authority, the consent of the Reporting Authority to do the prohibited act.
- (5)** A person is deemed to have the appropriate consent if—
 - (a) he makes an authorised disclosure to the Reporting Authority;
 - (b) either—
 - (i) the Reporting Authority does not, on or before the last day of the notice period, notify the person that consent to doing the prohibited act is refused; or
 - (ii) on or before the last day end of the notice period he receives notice from the Reporting Authority that consent to the doing of the prohibited act is refused and the moratorium period has expired.
- (6)** For the purposes of subsection (5)—
 - (a) the notice period is the period of 7 working days commencing with the first working day after the person makes the disclosure; and
 - (b) the moratorium period is the period of 30 days commencing with the day on which the person receives notice that consent to the doing of the prohibited act is refused.
- (7)** A Money Laundering Reporting Officer must not consent to the doing of a prohibited act unless—
 - (a) he has made a disclosure that property is criminal property to the Reporting Authority; and
 - (b) the Reporting Authority gives consent to the doing of the prohibited act.
- (8)** A person who is a Money Laundering Reporting Officer is guilty of an offence if—
 - (a) he gives consent to the doing of a prohibited act where the Reporting Authority has not consented to the doing of the act; and
 - (b) he knows or suspects that the act is a prohibited act.
- (9)** A Money Laundering Reporting Officer guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$50,000 or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$100,000 or to both.

*Money laundering and other offences***Concealing, disguising, converting, transferring and removing criminal property**

118. (1) Subject to subsection (2), a person is guilty of an offence if he—

- (a) conceals criminal property;
- (b) disguises criminal property;
- (c) converts criminal property;
- (d) transfers criminal property; or
- (e) removes criminal property from Montserrat.

(2) A person is not guilty of an offence under subsection (1) if—

- (a) he makes an authorised disclosure and, if the disclosure is made before he does the act specified in subsection (1), he has the appropriate consent;
- (b) he intended to make such a disclosure but had a reasonable excuse for not doing so; or
- (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(4) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine without limit or to both.

Arrangements

119. (1) Subject to subsection (2), a person is guilty of an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates, by whatever means, the acquisition, retention, use or control of criminal property by or on behalf of another person.

(2) A person is not guilty of an offence under subsection (1) if—

- (a) he makes an authorised disclosure and, if the disclosure is made before he does the act specified in subsection (1), he has the appropriate consent;
- (b) he intended to make such a disclosure but had a reasonable excuse for not doing so; or
- (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine without limit or to both.

Acquisition, use and possession

120. (1) Subject to subsection (2), a person is guilty of an offence if he—

- (a) acquires criminal property;
- (b) uses criminal property; or
- (c) has possession of criminal property.

(2) A person is not guilty of an offence under subsection (1) if—

- (a) he makes an authorised disclosure and, if the disclosure is made before he does the act specified in subsection (1), he has the appropriate consent;
- (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
- (c) he acquired or used or had possession of the property
 - (i) for adequate consideration; and
 - (ii) without knowing or suspecting that the property was criminal property;or
- (d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) For the purposes of this section—

- (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
- (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession of the property; and
- (c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.

(4) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine without limit or to both.

Duty to disclose knowledge or suspicion of money laundering

121. (1) Where a person—

- (a) knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering, and
- (b) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to him in the course of a relevant business,

he must disclose the information or other matter as soon as is practicable after it comes to him to the relevant Money Laundering Reporting Officer or to the Reporting Authority.

(2) A disclosure under subsection (1) to the Reporting Authority must be in the form and manner, if any, that may be required by the Reporting Authority.

(3) Subject to subsection (4), a person who does not disclose any information or other matter as required by subsection (1) is guilty of an offence.

(4) A person is not guilty of an offence under subsection (3) if—

- (a)* he has a reasonable excuse for not disclosing the information or other matter;
- (b)* he is a professional legal advisor and the information or other matter came to him in privileged circumstances; or
- (c)* he is a trainee, paralegal, legal secretary or any other person who is employed by, or is in partnership with, a professional legal adviser to provide the adviser with assistance or support and the information or other matter—
 - (i)* came to him in connection with the provision of such assistance or support; and
 - (ii)* came to the professional legal adviser in privileged circumstances.

(5) Without limiting subsection (4)(a), a person has a reasonable excuse for not disclosing information or other matter under subsection (1) if—

- (a)* he does not know or suspect that another person is engaged in money laundering; and
- (b)* he has not been provided by his employer with anti-money laundering training as required by the Anti-money Laundering and Terrorist Financing Regulations.

(6) Subject to subsection (7), for the purposes of this section, any information or other matter comes to a professional legal advisor in privileged circumstances if it is communicated or given to him—

- (a)* by, or by a representative of, a client of his in connection with the giving by the advisor of legal advice to the client;
- (b)* by, or by a representative of, a person seeking legal advice from the advisor; or
- (c)* by a person in connection with legal proceedings or contemplated legal proceedings.

(7) Subsection (6) does not apply to any information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(8) For the purposes of subsection (1), a person makes a disclosure to the relevant Money Laundering Reporting Officer if he make the disclosure in the course of his employment and in accordance with the procedures established by his employer for the purpose.

(9) A person guilty of an offence under this section is liable—

- (a)* on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$75,000 or to both;

- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine not exceeding \$250,000 or to both.

Duty to disclose, Money Laundering Reporting Officer of service provider

122. (1) Where the Money Laundering Reporting Officer of a service provider—

- (a) knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering, and
- (b) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to him in consequence of an authorised or protected disclosure or a disclosure made under section 121 that is not an authorised or protected disclosure,

he must disclose the information or other matter as soon as is practicable after it comes to him to the Reporting Authority.

(2) A disclosure under subsection (1) to the Reporting Authority must be in the form and manner, if any, that may be prescribed in the Anti-money Laundering and Terrorist Financing Regulations.

(3) Subject to subsection (4), a person who does not disclose any information or other matter as required by subsection (1) is guilty of an offence.

(4) A person is not guilty of an offence under subsection (3) if he has a reasonable excuse for not disclosing the information or other matter.

(5) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$75,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine not exceeding \$250,000 or to both.

Prejudicing investigation and tipping off

123. (1) Subject to section 124, a person is guilty of an offence if—

- (a) he knows or suspects that the Reporting Authority, a police officer, the Civil Forfeiture Authority or any other authorised person is acting, or is proposing to act, in connection with—
- (i) a criminal recovery investigation;
- (ii) a civil forfeiture investigation; or
- (iii) a money laundering investigation; and
- (b) he—
- (i) makes a disclosure that is likely to prejudice that investigation, or proposed investigation; or
- (ii) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.

(2) Subject to section 124, a person is guilty of an offence if—

- (a) he knows or suspects that an authorised or protected disclosure has been made; and

(b) he makes a disclosure which is likely to prejudice any investigation which might be conducted following that disclosure.

(3) In this section, “**criminal recovery investigation**”, “**civil forfeiture investigation**” and “**money laundering investigation**” have the meaning specified in Part 6.

(4) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding five years or a fine not exceeding \$200,000 or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine without limit or to both.

Circumstances in which offence under section 123 not committed

124. (1) Nothing in section 123 makes it an offence for a person to make a disclosure to a professional legal adviser for the purposes of legal advice or for a professional legal adviser to make a disclosure—

(a) to, or to a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or

(b) to any person—

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

(2) Subsection (1) does not apply to a disclosure made with the intention of furthering any criminal purpose.

(3) In proceedings against a person for an offence under section 123(1) or (2), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way specified in section 123(1)(b)(i) or 123(2)(b), as the case may be.

(4) A person is not guilty of an offence under section 123(1)(b)(ii) if—

(a) he does not know or suspect that the documents are relevant to the investigation, or

(b) he does not intend to conceal any facts disclosed by the documents from any person carrying out the investigation.

(5) No member of the Reporting Authority, police officer or other person is guilty of an offence under section 123 in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of this Act.

Protection of disclosures

125. (1) A disclosure is a protected disclosure if—

(a) the information or other matter disclosed came to the person making the disclosure in the course of his trade, profession, business or employment;

(b) the information or other matter disclosed causes the person making the disclosure to know or suspect, or gives him reasonable grounds for knowing or suspecting, that another person is engaged in money laundering; and

- (c) the disclosure is made to the Reporting Authority, or to the relevant Money Laundering Reporting Officer in accordance with the procedures established by his employer for the purpose, as soon as is practicable after the information or other matter comes to the person making the disclosure.

(2) A protected disclosure, which for these purposes includes an authorised disclosure, shall not be treated as a breach of any enactment, rule of law or agreement restricting the disclosure of information and shall not give rise to civil proceedings.

Reporting Authority

Reporting Authority

126. (1) There is established a body to be known as the Reporting Authority.

(2) The Reporting Authority comprises—

- (a) the Attorney General;
- (b) a senior police officer appointed by the Governor after consulting with the Commissioner of Police;
- (c) the Commissioner of the Financial Services Commission;
- (d) a senior customs officer appointed by the Governor after consulting with the Comptroller of Customs;
- (e) a senior immigration officer appointed by the Governor after consulting with the Chief Immigration Officer; and
- (f) such other person, having appropriate qualifications or experience, as the Governor may appoint, for such term as the Governor specifies.

(3) The Governor may from time to time remove the person appointed as member under subsection (2)(f) and appoint another person in his place.

(4) The members of the Reporting Authority may agree to appoint persons to assist the Reporting Authority in the performance of its functions.

(5) A member of the Reporting Authority specified in subsection (2)(a) to (e) may appoint a member of his staff of suitable seniority to act as his alternate and to attend meetings of the Reporting Authority in his place.

(6) The members of the Reporting Authority may adopt procedures for the administration and proceedings of the Reporting Authority that are not inconsistent with this Act.

(7) In this section, “Governor” means the Governor acting in his discretion.

Functions of Reporting Authority

127. (1) The Reporting Authority is the financial intelligence unit for Montserrat and, as such, is responsible for receiving (and, where permitted by this or any other Act, requesting), analysing and disseminating—

- (a) disclosures made under this Act and, in accordance with subsection (3), terrorist financing disclosures; and
- (b) such other disclosures of financial information that may be required or permitted by any enactment for the purposes of combating money laundering or the financing of terrorism.

(2) Without limiting subsection (1), the Reporting Authority—

- (a) shall receive all disclosures of information, including information from a foreign financial intelligence unit, which—
 - (i) concern the proceeds of crime, money laundering, terrorism or the financing of terrorism or the suspected proceeds of crime, suspected money laundering, suspected terrorism or the suspected financing of terrorism; and
 - (ii) which are relevant to its responsibilities as a financial intelligence unit;
- (b) may, by written notice, require any person to provide the Reporting Authority with information, other than information that is privileged material, for the purpose of clarifying or amplifying information disclosed to the Reporting Authority;
- (c) shall receive requests for information from foreign financial intelligence units concerning the proceeds of crime, money laundering, terrorism or the financing of terrorism or the suspected proceeds of crime, suspected money laundering, suspected terrorism or the suspected financing of terrorism;
- (d) may enter into such written agreements, arrangements or memoranda of understanding with foreign financial intelligence units as the Reporting Authority considers necessary or desirable for the discharge or performance of the functions of the Reporting Authority, including for the exchange of information;
- (e) must retain for a minimum period of five years a written record of—
 - (i) all information received, requested or disseminated by the Reporting Authority; and
 - (ii) all agreements or arrangements entered into under paragraph (c);
- (f) may provide such feedback to persons who have disclosed information to the Reporting Authority as it considers appropriate;
- (g) must collect, compile and publish annually in such manner and form as the Reporting Authority determines, statistical information relating to disclosures made to the Reporting Authority and any dissemination of such disclosures by the Reporting Authority; and
- (h) has such other functions as may be specified in this or any other Act.

(3) Where a constable receives a terrorist financing disclosure, he must forthwith pass the disclosure to the Reporting Authority.

(4) The Governor must, after consultation with the Commissioner of Police, by Order designate a suitably qualified person who, subject to the direction and control of the members of the Reporting Authority, is responsible for—

- (a) the day-to-day management and operation of the Reporting Authority;
- (b) carrying out the functions of the Reporting Authority with respect to
 - (i) the receiving, (and where permitted by this or any other Act, requesting) and analysing of disclosures made to the Reporting Authority; and
 - (ii) the keeping of written records as required by subsection (2)(d); and

(c) carrying out such other functions of the Reporting Authority as the members of the Reporting Authority may direct.

(5) A person who, without reasonable excuse, fails to comply with a notice issued by the Reporting Authority under subsection (2)(b) is guilty of an offence and is liable—

(a) on summary conviction, to a fine not exceeding \$10,000;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine not exceeding \$50,000 or to both.

(6) For the purposes of this section “**terrorist financing disclosure**” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations.

Disclosure by Reporting Authority

128.(1) The Reporting Authority may disclose any information disclosed to it to any law enforcement agency in Montserrat.

(2) The Reporting Authority, having regard to the purpose for which the disclosure is to be made and the interests of third parties, may, subject to such conditions as it may impose, including as to further disclosure, disclose to a foreign financial intelligence unit information disclosed to it, in order to—

(a) report the possible commission of an offence;

(b) initiate a criminal investigation respecting the matter disclosed;

(c) assist with any investigation or criminal proceedings respecting the matter disclosed; or

(d) generally, give effect to the purposes of this Act.

Immunity

129. Neither the Reporting Authority, any member, alternate member employee or agent of the Reporting Authority nor any person appointed to assist the Reporting Authority under section 126(4) is liable in damages for anything done or omitted to be done in the discharge or purported discharge of any function or duty or the exercise or purported exercise of any power under this Act or any other enactment unless it is shown that the act or omission was in bad faith.

Confidentiality of information disclosed

130.(1) No person, including a member, alternate member, employee or agent of the Reporting Authority and a person appointed to assist the Reporting Authority under section 126(4) must disclose any information or matter that he acquires as a result of his connection with the Reporting Authority except as required or permitted—

(a) by this Act or any other enactment; or

(b) an Order of the Court.

(2) Subsection (1) does not apply to a person who discloses any information or matter with the authority of, and on behalf of, the Reporting Authority.

(3) A person who contravenes subsection (1) is guilty of an offence and is liable—

(a) on summary conviction, to imprisonment for a term of 12 months or to a fine of \$20,000 or to both; or

- (b) on conviction on indictment, to imprisonment for a term of 5 years or to a fine of \$100,000 or to both.

Annual report of Reporting Authority

131. The Reporting Authority must, on or before 30 April of each year, prepare and submit to the Governor a report of the work of the Reporting Authority for the twelve month period ending on the previous 31 December.

PART 7

INVESTIGATIONS

Preliminary

Criminal, civil forfeiture and money laundering investigations

132. (1) In this Part—

“**civil forfeiture investigation**” means, subsection to subsection (2), an investigation into—

- (a) whether property is recoverable property or associated property;
- (b) who holds the property; or
- (c) the extent or whereabouts of the property.

“**criminal recovery investigation**” means an investigation into whether a person has benefited from his criminal conduct or the extent or whereabouts of his benefit from his criminal conduct;

“**money laundering investigation**” means an investigation into whether a person has committed a money laundering offence;

(2) An investigation is not a civil forfeiture investigation if—

- (a) proceedings for a civil forfeiture order have been instituted in respect of the property in question;
- (b) an interim receiving order applies to the property in question; or
- (c) the property in question is cash detained under section 102.

Meaning of privileged material

133. (1) For the purposes of this Part, “**privileged material**” means—

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) material enclosed with or referred to in such communications and made—
 - (i) in connection with the giving of legal advice, or

- (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings;

when they are in the possession of a person who is entitled to possession of them.

(2) Material held with the intention of furthering a criminal purpose is not privileged material.

Production orders

Application for production order

134. (1) Application may be made to a judge for a production order under section 135 by—

- (a) a senior police officer; or
 - (b) a police officer who is authorised in writing to make the particular application by a senior police officer.
- (2) An application for a production order must state that—
- (a) a person specified in the application is subject to a criminal recovery investigation or a money laundering investigation or that the property specified in the application is subject to a civil forfeiture investigation;
 - (b) the order is sought—
 - (i) for the purposes of the investigation, and
 - (ii) in relation to material, or material of a description, specified in the application; and
 - (c) a person specified in the application appears to be in possession or control of the material.

Production order

135. (1) On an application made under section 134, a judge may make a production order if he is satisfied that—

- (a) there are reasonable grounds for suspecting that—
 - (i) in the case of a criminal recovery investigation, the person specified in the application as being subject to the investigation has benefited from his criminal conduct;
 - (ii) in the case of a civil forfeiture investigation, the property specified in the application as being subject to the investigation is recoverable property or associated property;
 - (iii) in the case of a money laundering investigation, the person specified in the application as being subject to the investigation has committed a money laundering offence;
- (b) there are reasonable grounds for believing that—
 - (i) the person specified in the application as appearing to be in possession or control of the specified material is in possession or control of it; and
 - (ii) there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or together with other

material, to the investigation for the purposes of which the order is sought; and

- (c) there are reasonable grounds for believing that it is in the public interest for the material to be produced or for access to be given to it having regard to—
 - (i) the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

(2) A production order is an order—

- (a) requiring the person specified in the order as appearing to be in possession or control of material to produce it to a senior police officer, or the applicant for the order, for him to take away, or
- (b) requiring that person to give a senior police officer, or the applicant for the order, access to it,

within the period stated in the order.

(3) The period specified in a production order must be seven days commencing on the date that the order is made, unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances.

(4) A production order does not require a person to produce, or give access to, privileged material.

Order to grant entry

136. Where the judge makes a production order in relation to material on any premises he may, on the application of a senior police officer or a police officer who is authorised in writing to make the particular application by a senior police officer, order any person who appears to a senior police officer to be entitled to grant entry to the premises to allow him to enter the premises to obtain access to the material.

Further provisions relating to production orders

137. (1) Where any material specified in an application for a production order consists of information contained in a computer, an order under section 135 has effect as an order—

- (a) to produce the material in a form in which it can be taken away and in which it is visible and legible; and
- (b) to give access to the material in a form in which it is visible and legible.

(2) A senior police officer, or the applicant for the order, may take copies of any material which is produced, or to which access is given, in compliance with a production order.

(3) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it, as opposed to copies of it, in connection with the investigation for the purposes of which the order was made.

(4) If a senior police officer, or the applicant for the order, has reasonable grounds for believing that—

- (a) the material may need to be produced for the purposes of any legal proceedings, and
 - (b) it might otherwise be unavailable for those purposes,
- it may be retained until the proceedings are concluded.

Search and seizure warrants

Application for search and seizure warrant

138.(1) Application may be made to a judge for a search and seizure warrant under section 139 by—

- (a) a senior police officer; or
 - (b) a police officer who is authorised in writing to make the particular application by a senior police officer.
- (2)** An application for a search and seizure warrant must state that—
- (a) a person specified in the application is subject to a criminal recovery investigation or a money laundering investigation or that property specified in the application is subject to a civil forfeiture investigation; and
 - (b) the warrant is sought—
 - (i) for the purposes of the investigation;
 - (ii) in relation to the premises specified in the application; and
 - (iii) in relation to material specified in the application, or that there are reasonable grounds for believing that there is material falling within section 139(5), (6) or (7) on the premises.
- (3)** A search and seizure warrant is a warrant authorising a senior police officer, or the applicant for the order—
- (a) to enter and search the premises specified in the application for the warrant; and
 - (b) to seize and retain any material found there which is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the application is made.

Search and seizure warrant

139.(1) On an application made under section 138, a judge may issue a search and seizure warrant if he is satisfied that—

- (a) a production order in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant; or
 - (b) subsection (2) applies and either—
 - (i) the conditions specified in subsection (3) are fulfilled; or
 - (ii) the conditions specified in subsection (4) are fulfilled.
- (2)** This subsection applies for the purposes of subsection (1)(b) if—
- (a) that there are reasonable grounds for suspecting that—

- (i) in the case of a criminal recovery investigation, the person specified in the application for the warrant has benefited from his criminal conduct; or
 - (ii) in the case of a civil forfeiture investigation, the property specified in the application for the warrant is recoverable property or associated property;
 - (iii) in the case of a money laundering investigation, the person specified in the application for the warrant has committed a money laundering offence.
- (3)** The conditions referred to in subsection (1)(b)(i) are—
- (a) that there are reasonable grounds for believing that—
 - (i) any material on the premises specified in the application for the warrant is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought; and
 - (ii) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and
 - (b) that it would not be appropriate to make a production order—
 - (i) that it is not practicable to communicate with any person against whom the production order could be made;
 - (ii) that it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises; or
 - (iii) that the investigation might be seriously prejudiced unless a police officer is able to secure immediate access to the material.
- (4)** The conditions referred to in subsection (1)(b)(ii) are—
- (a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that—
 - (i) in the case of a criminal recovery investigation, the material falls within subsection (5);
 - (ii) in the case of a civil forfeiture investigation, the material falls within subsection (6); or
 - (iii) in the case of a money laundering investigation, the material falls within subsection (7);
 - (b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and
 - (c) one of the following apply—
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation might be seriously prejudiced unless a police officer arriving at the premises is able to secure immediate entry to them.

(5) In the case of a criminal recovery investigation, material falls within this subsection if it cannot be identified at the time of the application but it—

- (a) relates to the person specified in the application, the question whether he has benefited from his criminal conduct or any question as to the extent or whereabouts of his benefit from his criminal conduct; and
- (b) is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought.

(6) In the case of a civil forfeiture investigation, material falls within this subsection if it cannot be identified at the time of the application but it—

- (a) relates to the property specified in the application, the question whether it is recoverable property or associated property, the question as to who holds any such property, any question as to whether the person who appears to hold any such property holds other property which is recoverable property, or any question as to the extent or whereabouts of any property mentioned in this paragraph; and
- (b) is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought.

(7) In the case of a money laundering investigation, material falls within this subsection if it cannot be identified at the time of the application but it—

- (a) relates to the person specified in the application or the question whether he has committed a money laundering offence; and
- (b) is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant is sought.

(8) A search and seizure warrant does not confer the right to seize privileged material.

Customer information orders

Customer information to be specified in regulations

140. The Governor in Council must prescribe types or categories of information that are “**customer information**” for the purposes of sections 141 and 142.

Application for customer information order

141. (1) Application may be made to a judge for a customer information order under section 142 by—

- (a) a senior police officer; or
- (b) a police officer who is authorised in writing to make the particular application by a senior police officer.

(2) An application for a customer information order must state that—

- (a) a person specified in the application is subject to a criminal recovery investigation or a money laundering investigation or that property specified

- in the application is subject to a civil forfeiture investigation and a person specified in the application appears to hold the property;
- (b) the order is sought for the purposes of the investigation; and
 - (c) the order is sought against the regulated person or regulated persons specified in the application.
- (3) An application for a customer information order may specify—
- (a) all financial institutions;
 - (b) a particular description, or particular descriptions, of financial institution; or
 - (c) a particular financial institution or particular financial institutions.

Customer information order

142. (1) On an application made under section 141, a judge may make a customer information order if he is satisfied that—

- (a) there are reasonable grounds for suspecting that—
 - (i) in the case of a criminal recovery investigation, the person specified in the application has benefited from his criminal conduct;
 - (ii) in the case of a civil forfeiture investigation, the property specified in the application is recoverable property or associated property and the person specified in the application holds all or some of the property; or
 - (iii) in the case of a money laundering investigation, the person specified in the application has committed a money laundering offence;
- (b) there are reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value, whether by itself or together with other information, to the investigation for the purposes of which the order is sought; and
- (c) there are reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

(2) A customer information order is an order that a financial institution covered by the application for the order must, on being required to do so by notice in writing given by an appropriate officer, provide any such customer information as it has relating to the person specified in the application.

(3) A financial institution which is required to provide information under a customer information order must provide the information to an appropriate officer in such manner, and at or by such time, as an appropriate officer requires.

(4) If a financial institution on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it.

(5) A customer information order has effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise.

Offences

- 143. (1)** A financial institution is guilty of an offence if—
- (a) without reasonable excuse, it fails to comply with a requirement imposed on it under a customer information order; or
 - (b) in purported compliance with a customer information order, it—
 - (i) makes a statement which it knows to be false or misleading in a material particular; or
 - (ii) recklessly makes a statement which is false or misleading in a material particular.
- (2)** A financial institution guilty of an offence under subsection (1)(a) is liable—
- (a) on summary conviction, to a fine not exceeding \$100,000;
 - (b) on conviction on indictment to a fine not exceeding \$250,000.
- (3)** A financial institution guilty of an offence under subsection (1)(b) is liable—
- (a) on summary conviction, to a fine not exceeding \$100,000;
 - (b) on conviction on indictment to a fine not exceeding \$250,000.

Protection of statements

144. (1) Subject to subsection (2), a statement made by a financial institution in response to a customer information order may not be used in evidence against it in criminal proceedings.

- (2)** Subsection (1) does not apply—
- (a) in the case of proceedings under Part 2;
 - (b) on a prosecution for an offence under section 143; or
 - (c) on a prosecution for some other offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless—

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

*Account monitoring orders***Application for account monitoring order**

145. (1) Application may be made to a judge for an account monitoring order under section 146 by—

- (a) a senior police officer; or
- (b) a police officer who is authorised in writing to make the particular application by a senior police officer.

- (2) An application for an account monitoring order must state that—
- (a) a person specified in the application is subject to a criminal recovery investigation or a money laundering investigation or that property specified in the application is subject to a civil forfeiture investigation and a person specified in the application appears to hold the property;
 - (b) the order is sought for the purposes of the investigation; and
 - (c) the order is sought against the financial institution specified in the application in relation to account information of the description specified.
- (3) An application for an account monitoring order may specify information relating to—
- (a) all accounts held by the person specified in the application at the financial institution so specified;
 - (b) a particular description, or particular descriptions, of accounts so held; or
 - (c) a particular account or particular accounts so held.

Account monitoring order

146.(1) On an application made under section 145, a judge may make an account monitoring order if he is satisfied that—

- (a) in the case of a confiscation investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct;
 - (b) in the case of a civil forfeiture investigation, there are reasonable grounds for suspecting that—
 - (i) the property specified in the application for the order is recoverable property or associated property; and
 - (ii) the person specified in the application holds all or some of the property;
 - (c) in the case of a money laundering investigation, there are reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.
- (2) In the case of any investigation, the a judge must not make an account monitoring order unless he is satisfied that—
- (a) there are reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and
 - (b) there are reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

(3) If on an application under section 145, the judge is satisfied that the conditions specified in this section are fulfilled, he may make an order that the financial institution specified in the application must, for the period stated in the order, which must not exceed 90 days, provide account information of the description specified in the order to a senior police officer, or to the applicant for the order, in the manner, and at or by the time or times, stated in the order.

(4) For the purposes of subsection (3), “**account information**” is information relating to an account or accounts held at the financial institution specified in the order by the person specified in the order, whether solely or jointly with one or more other persons.

(5) An order under subsection (3) may specify account information relating to—

- (a) all accounts held by the person and at the financial institution specified in the order;
- (b) a particular description, or particular descriptions, of accounts so held; or
- (c) a particular account, or particular accounts, so held.

Statements

147.(1) Subject to subsection (2), a statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings.

(2) Subsection (1) does not apply—

- (a) in the case of proceedings under Part 2;
- (b) in the case of proceedings for contempt of court; or
- (c) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless—

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

Disclosure of information

148. An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).

Procedure

149.(1) An application for a production order, a customer information order or an account monitoring order may be made *ex parte* to a judge in chambers.

(2) Rules of Court may make provision as to—

- (a) the practice and procedure in connection with proceedings relating to production orders, orders to grant entry under section 138, customer information orders and account monitoring orders; and
- (b) applications for the discharge and variation of such orders and proceedings relating to such applications.

(3) An order of a judge under this Part has effect as if it were an order of the Court.

(4) A production order, a customer information order and an account monitoring order has effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise.

PART 8

ENFORCEMENT OF PENALTIES

Order to pay has effect as fine

150. (1) Where the Court makes a confiscation order against a defendant, the order has effect as if the amount to be paid under the confiscation order was a fine imposed on the defendant.

(2) In this Part, “**fine**” includes any amount payable under a confiscation order.

Imprisonment on non-payment

151. Where the whole or any part of a fine imposed under this Act is not paid when required by the Court, the Court may in respect of the amount of the unpaid fine set out in Column 1 below, impose a term of imprisonment not exceeding the maximum period set out opposite that amount in Column 2—

Column 1	Column 2
SUM IN DEFAULT	MAXIMUM PERIOD
\$10,000 or less	12 months
More than \$10,000 but not more than \$20,000	18 months
More than \$20,000 but not more than \$75,000	2 years
More than \$75,000 but not more than \$200,000	3 years
More than \$200,000 but not more than \$500,000	4 years
More than \$500,000 but not more than \$750,000	5 years
More than \$750,000 but not more than \$1,000,000	6 years
More than \$1,000, 000 but not more than \$4,000,000	8 years
More than \$4,000,000	10 years

Custodial sentences to run consecutively

152. Where—

(a) a warrant of commitment is issued for a default in payment of a fine to be paid under this Act in respect of any offence or offences; and

- (b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence or offences;

the term of imprisonment to be served in default of payment of the fine does not begin to run until after the term mentioned in paragraph (b) has been served.

Effect of variation of confiscation order

153.(1) If, under a power granted by this Act, the Court varies a confiscation order and the effect is to reduce the maximum period of imprisonment specified in this Part—

- (a) if, as a result, the maximum period of imprisonment is less than the term of imprisonment imposed by the Court, the Court must impose a reduced term of imprisonment; or
- (b) if paragraph (a) does not apply, the Court may amend the term of imprisonment imposed.

(2) If, under a power granted by this Act, the Court varies a confiscation order and the effect is to increase the maximum period of imprisonment specified in this section, the Court may on the application of the prosecutor, amend the term of imprisonment imposed.

(3) Where the defendant serves a term of imprisonment in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.

Application of this Part on appeal

154. This Part applies in relation to confiscation orders made by the Court of Appeal, in its appellate jurisdiction, as it applies in relation to confiscation orders made by the Court and any reference in this Part to the Court shall be construed accordingly.

PART 9

SUPERVISION

Supervisory authorities

Supervision of service providers

155.(1) The Financial Services Commission is the supervisory authority for regulated service providers.

(2) The Governor in Council must prescribe a person, who may be the Financial Services Commission, as the supervisory authority for all non-financial service providers.

(3) A supervisory authority is responsible for—

- (a) monitoring compliance by those service providers for which the supervisory authority is responsible, with this Act, the Anti-money Laundering and Terrorist Financing Regulations and applicable Codes; and
- (b) taking appropriate enforcement action against service providers for which it is responsible for breaches of this Act, the Anti-money Laundering and Terrorist Financing Regulations and any applicable Code.

(4) In undertaking its functions, a supervisory authority has—

- (a) in the case of the Financial Services Commission acting as the supervisory authority for regulated service providers, the information gathering and enforcement powers provided for in the Financial Services Commission Act, 2008; and
- (b) in the case of the supervisory authority for non-financial service providers, the information gathering and enforcement powers provided for in sections 158 to 163.

(5) In determining the enforcement action to be taken against a service provider for a breach of the Anti-money Laundering and Terrorist Financing Regulations and an applicable Code, a supervisory authority must have regard for the need to ensure that enforcement action taken is effective, proportionate and dissuasive.

(6) Where a breach of the Anti-money Laundering and Terrorist Financing Regulations constitutes an offence, the taking of enforcement action by a supervisory authority does not prevent the service provider being also prosecuted for the offence.

Limitation of liability of supervisory authorities

156.(1) No person or body to whom this section applies is liable in damages for anything done or omitted in the discharge or purported discharge of any function under, or authorized by or under, this Act unless it is proved that the act or omission was in bad faith.

(2) This section applies to—

- (a) each supervisory authority;
- (b) any member of the supervisory authority concerned or any person who is, or is acting as, an officer, employee or agent of the supervisory authority or who is performing any duty or exercising any power on behalf of the supervisory authority.

Registration of service providers

157.(1) A non-financial service provider must not carry on a regulated business in or from within Montserrat unless the service provider is registered with the supervisory authority for non-financial service providers in accordance with Regulations made under section 175.

(2) A service provider who contravenes subsection (1) is guilty of an offence and is liable—

- (a) on summary conviction, to imprisonment for a term of 12 months or to a fine of \$20,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term of 5 years or to a fine of \$100,000 or to both.

Powers of supervisory authority for non-financial service providers

Compliance visits

158. The supervisory authority for non-financial service providers may, for the purposes of carrying out its functions, at any reasonable time—

- (a) enter and inspect any premises occupied or used by a non-financial service provider, whether in or outside Montserrat;

- (b) review the business and activities of the non-financial service provider and the service provider's policies, procedures, systems and controls;
- (c) examine and make copies of documents belonging to or in the possession or control of a non-financial service provider that, in the opinion of the supervisory authority, are relevant to the service provider's business or to its AML/CFT obligations; and
- (d) seek information and explanations from the officers, employees, agents and representatives of the non-financial service provider, whether verbally or in writing, and whether in preparation for, during or after a compliance visit.

Enforcement action

159. For the purposes of this Schedule, the supervisory authority for non-financial service providers is entitled to take enforcement action against a non-financial service provider if, in the opinion of the supervisory authority—

- (a) the service provider
 - (i) has contravened or is in contravention of this Act, the Anti-money Laundering and Terrorist Financing Regulations or an applicable Code;
 - (ii) has failed to comply with a directive given to it by the supervisory authority;
 - (iii) is in breach of any term or condition of its registration under section 157,
 - (iv) has provided the supervisory authority with any false, inaccurate or misleading information, whether on making application for registration or subsequent to its registration; or
 - (v) the service provider has refused or failed to co-operate with the supervisory authority on a compliance visit under section 158; or
- (b) any of the following do not satisfy the supervisory authority's fit and proper criteria—
 - (i) the service provider;
 - (ii) the services provider's anti-money laundering reporting officer or anti-money laundering compliance officer;
 - (iii) a director or officer of the service provider; or
 - (iv) a person having a share or interest in the service provider, whether equitable or legal.

Directives

160. (1) Where the supervisory authority for non-financial service providers is entitled to take enforcement action against a service provider, it may by written notice issue such directives to the service provider as it considers appropriate.

(2) Without limiting subsection (1), a directive may—

- (a) require the service provider to take, or not to take, such action or measures as the supervisory authority considers appropriate;
- (b) impose a prohibition, restriction or limitation on the business or activities of the service provider, including a prohibition that the licensee must cease

to engage in any type of business or that it must not enter into any new contracts for any class or type of business;

- (c) require that any director, key employee or person having functions in relation to the service provider be removed and replaced by another person acceptable to the supervisory authority; or
- (d) require that any individual—
 - (i) not perform a specified function or functions for,
 - (ii) not engage in specified employment by,
 - (iii) not hold a specified position in the business of,the service provider.

(3) A directive issued under this paragraph may be of unlimited duration or of a duration specified in the notice of the direction.

(4) The power to issue a directive under this section includes the power, whether on the application of the service provider or on the volition of the supervisory authority, to vary or withdraw any directive.

(5) A notice of a directive must—

- (a) specify the reasons for giving the directive; and
- (b) specify when the directive is to take effect.

(6) A service provider who, fails to comply with a directive issued under this paragraph is guilty of an offence and is liable on summary conviction, to imprisonment for a term of 12 months or to a fine of \$20,000 or to both.

Cancellation of registration

161.(1) The supervisory authority for non-financial service providers may, by written notice, cancel the registration of a service provider—

- (a) at the request of the service provider; or
- (b) if it is entitled to take enforcement action against the service provider.

(2) Subject to subsection (3), the supervisory authority for non-financial service providers must give a service provider not less than 14 days written notice of its intention to cancel the service provider's registration.

(3) If the supervisory authority for non-financial service providers is of the opinion that it is in the public interest to do so, it may cancel the registration of a service provider with immediate effect.

(4) A notice given under subsection (2) must state the grounds on which the supervisory authority intends to cancel the registration and must state—

- (a) that unless the service provider, by written notice given to the supervisory authority for non-financial service providers, shows good reason why its registration should not be cancelled, the registration will be cancelled on the date specified in the notice; or
- (b) where subsection (3) applies, that the registration is cancelled with effect from the date of the notice.

Administrative penalties

162.(1) The Regulations made under section 175 must provide for the imposition by the non-financial supervisory authority of administrative penalties on non-financial service providers who contravene a provision of the Anti-money Laundering and Terrorist Financing Regulations or an applicable Code.

(2) An administrative penalty paid to the non-financial supervisory authority under regulations made in accordance with subsection (1) must be used by the supervisory authority for the purposes of undertaking its functions.

Power to require information and production of documents

163.(1) Where reasonably required for the discharge of its functions under this Act, the Anti-money Laundering and Terrorist Financing Regulations or an applicable Code, the non-financial supervisory authority may, by notice in writing given to a person specified in subsection (2), require him—

- (a) to provide specified information or information of a specified description;
or
- (b) to produce specified documents or documents of a specified description.

(2) A notice under subsection (1)—

- (a) may be issued to—
 - (i) a non-financial service provider;
 - (ii) a person who at any time has been a non-financial service provider, but who has ceased to be a service provider; or
 - (iii) a director, senior manager or key employee of a non-financial service provider or former non-financial service provider; and
- (b) may require that the information is to be provided to, or the documents are to be produced to, such person as may be specified in the notice;
- (c) must specify the place where, and the period within which, the information or documents must be provided or produced.

(3) The supervisory authority for non-financial service providers may—

- (a) require—
 - (i) any information provided under this section to be provided in such form; and
 - (ii) any information provided or document produced under this section to be verified or authenticated in such manner as it may reasonably specify; and
- (b) take copies or extracts of any document produced under this section.

(4) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.

*Non-profit organisations***Supervisory authority for non-profit organisations**

164.(1) The Governor in Council must prescribe a person or body, that may be the Financial Services Commission, as the supervisory authority for non-profit organisations.

(2) The NPO Supervisor has such functions, duties and powers, including with respect to supervision and enforcement, the gathering of information and the disclosure of information to the Reporting Authority and law enforcement authorities in Montserrat, as are prescribed.

PART 10

DIRECTIONS CONCERNING MONEY LAUNDERING,
TERRORIST FINANCING AND PROLIFERATION*Preliminary***Interpretation for this Part**

165.(1) In this Part—

“biological weapon” means—

- (a) any biological agent or toxin of a type and in a quantity that has no justification for prophylactic, protective or other peaceful purposes; or
- (b) any weapon, equipment or means of delivery designed to use biological agents or toxins for hostile purposes or in armed conflict;

“business relationship” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;

“chemical weapon” means, subject to subsection (2)—

- (a) toxic chemicals and their precursors;
- (b) munitions and other devices designed to cause death or harm through the toxic properties of toxic chemicals released by them; and
- (c) equipment designed for use in connection with munitions and devices falling within paragraph (b).

“customer due diligence measures” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;

“designated person”, in relation to a direction, means a person in relation to whom the direction is given;

“direction” means a direction given under section 166;

“enhanced customer due diligence measures” has the meaning specified in Anti-money Laundering and Terrorist Financing Regulations, and includes assessing the risk of a designated person being involved in a relevant activity;

“general direction” means a direction given to—

- (a) all prescribed service providers; or
- (b) all prescribed service providers of the description specified in the direction;

“general exemption” means an exemption granted under section 167(3) granted to—

- (a) all prescribed service providers; or
- (b) all prescribed service providers of the description specified in the exemption;

“nuclear weapon” includes a nuclear explosive device that is not intended for use as a weapon;

“ongoing monitoring” has the meaning specified in the Anti-money Laundering and Terrorist Financing Regulations;

“prescribed service provider” means a service provider of a type specified in the Anti-money Laundering and Terrorist Financing Regulations;

“radiological weapon” means a device designed to cause destruction, damage or injury by means of the radiation produced by the decay of radioactive material;

“relevant activity” means—

- (a) money laundering;
- (b) terrorist financing; or
- (c) an activity specified in section 166(2)(c); and

“relevant service provider”, means a specified service provider to whom a direction is given.

(2) An item is not a chemical weapon if its intended use is only for one or more of the following purposes—

- (a) peaceful purposes;
- (b) purposes related to protection against toxic chemicals;
- (c) legitimate military purposes;
- (d) purposes of enforcing the law.

Directions and exemptions

Directions may be given by Financial Services Commission

166.(1) The Financial Services Commission may give a direction of a type specified in section 167 to a prescribed service provider, prescribed service providers of a specified description or all prescribed service providers, in relation to transactions or business relationships with—

- (a) the government of, or
- (b) any person or persons—
 - (i) carrying on business in, or
 - (ii) resident, incorporated, constituted or formed in,

a country in relation to which one or more of the conditions specified in subsection (2) applies.

(2) The conditions referred to in subsection (1) are that—

- (a) the FATF has advised that measures should be taken in relation to the country because of the risk that terrorist financing or money laundering is being carried on—
 - (i) in the country;
 - (ii) by the government of the country; or
 - (iii) by persons resident in the country;
 - (b) the Financial Services Commission reasonably believes that there is a risk that terrorist financing or money laundering is being carried on—
 - (i) in the country;
 - (ii) by the government of the country; or
 - (iii) by persons resident in the country;and that this poses a significant risk to the interests of Montserrat; and
 - (c) the Financial Services Commission reasonably believes that—
 - (i) the development or production of nuclear, radiological, biological or chemical weapons or their systems of delivery in the country, or
 - (ii) the doing in the country of anything that facilitates the development or production of such weapons or their systems of delivery,poses a significant risk to the interests of Montserrat.
- (3)** A direction—
- (a) must be given in the manner specified in section 168;
 - (b) must be proportionate having regard to the advice given by the FATF or, as the case may be, the risk referred to in subsection (2)(b) or (c) to the interests of Montserrat; and
 - (c) may make different provision in relation to different prescribed service providers, designated persons, circumstances or cases.
- (4)** The Financial Services Commission must take appropriate measures to monitor the compliance of prescribed service providers with the requirements of any directions given.

Types of directions that may be given

167.(1) A direction may require the relevant service provider—

- (a) to undertake enhanced customer due diligence measures,
 - (i) before entering into a transaction or business relationship with a designated person; and
 - (ii) during a business relationship with such a person;
- (b) to undertake enhanced ongoing monitoring of any business relationship with a designated person;
- (c) to provide such information and documents as may be specified in the direction relating to transactions and business relationships with designated persons; or
- (d) not to enter into or continue to participate in—

- (i) a specified transaction or business relationship with a designated person; or
 - (ii) any transaction or business relationship with a designated person.
- (2)** A direction under subsection (1)(c)—
 - (a)* must specify how the direction is to be complied with, including—
 - (i) the person to whom the information and documents are to be provided; and
 - (ii) the period within which, or intervals at which, information and documents are to be provided; and
 - (b)* is not exercisable in relation to privileged material.
- (3)** Where a direction includes requirements of a kind specified in subsection (1)(c), the Commission may, either in the direction or by separate notice in writing, exempt acts specified in the direction or notice from the requirements.
- (4)** An exemption under subsection (3) may—
 - (a)* be a general exemption or may apply to a particular prescribed service provider;
 - (b)* be subject to conditions;
 - (c)* have effect for the duration of the direction or be subject to an expiry date; and
 - (d)* be varied or revoked by the Commission at any time.

Procedures for giving directions and granting exemptions

168.(1) Where the Financial Services Commission gives a general direction or grants a general exemption, the Commission must publicise the direction or exemption in such manner as it considers appropriate.

(2) A general direction is subject to annulment by resolution of the Legislative Council.

(3) Where a general direction or a general exemption is varied or ceases to have effect, whether on revocation or otherwise, the Financial Services Commission must publicise that fact in such manner as it considers appropriate.

(4) Where the Financial Services Commission gives a direction, or grants an exemption under section 167(3), to a particular prescribed service provider, the Commission must give written notice of the direction or the exemption to that service provider.

(5) Where a direction or exemption referred to in subsection (4) is varied or ceases to have effect, whether on revocation or otherwise, the Financial Services Commission must give notice of that fact to the relevant service provider.

(6) A direction, whether a general direction or a direction to a particular prescribed service provider—

- (a)* may be varied or revoked by the Commission at any time; and
- (b)* if not previously revoked, ceases to have effect at the end of one year from the date that it was first given.

*Enforcement***Power to require information or documents**

169.(1) Where reasonably required by the Financial Services Commission for the discharge of its functions under this Part, the Commission may, by notice in writing given to a relevant service provider, require him—

- (a) to provide specified information or information of a specified description;
or
- (b) to produce specified documents or documents of a specified description.

(2) A notice issued under subsection (1)—

- (a) may require that the information is to be provided, or the documents are to be produced, to such person as may be specified in the notice; and
- (b) shall specify—
 - (i) the place where, and the period within which, the information or documents shall be provided or produced; and
 - (ii) the reasons why the Commission requires the information to be provided or the documents produced.

(3) The Commission may require—

- (a) any information provided under this section to be provided in such form, and
 - (b) any information provided or document produced under this section to be verified or authenticated in such manner,
- as it may reasonably specify.

(4) In relation to a document in electronic form, the power to require the production of the document includes a power to require the production of a copy of the document in legible form or in a form from which it can readily be produced in visible and legible form.

(5) The Commission may take copies or extracts of any document produced under this section.

(6) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.

Entry, inspection without a warrant

170.(1) Where the Commission has reasonable cause to believe that any premises are being used by a relevant service provider in connection with the service provider's business activities, an officer of the Commission may, on producing evidence of authority, at any reasonable time—

- (a) enter the premises;
- (b) inspect the premises;
- (c) observe the carrying on of business activities by the relevant person;
- (d) inspect any document found on the premises; and
- (e) require any person on the premises to provide an explanation of any document or to state where it may be found.

(2) The Commission may take copies of, or make extracts from, any document found under subsection (1).

(3) The Commission may exercise powers under this section only if the information or document sought to be obtained as a result is reasonably required in connection with the exercise by the Commission of its functions under this Part.

(4) In this section, “**premises**” means any premises other than premises used only as a dwelling.

Search warrant

171. (1) A Magistrate may issue a search warrant under this section if he is satisfied on information on oath or affirmation by an officer of the Commission that there are reasonable grounds for believing that the conditions specified in subsection (2) or (3) have been satisfied.

(2) The first set of conditions referred to in subsection (1) is—

(a) that there is on the premises specified in the warrant a document in relation to which a requirement could be imposed under section 170 and that if such a requirement were to be imposed—

(i) it would not be complied with; or

(ii) the document to which it relates would be removed, tampered with or destroyed;

(b) that a person on whom a requirement has been imposed under section 170 has failed (wholly or in part) to comply with it and that there is on the premises specified in the warrant a document that has been required to be produced; and

(c) that an officer of the Commission has been obstructed in the exercise of a power under section 170 and that there is on the premises specified in the warrant a document that could be inspected under section 170.

(3) The second set of conditions referred to in subsection (1) is—

(a) an offence under this Part has been, is being or is about to be committed by a relevant service provider; and

(b) there is on the premises specified in the warrant a document relevant to whether that offence has been, is being or is about to be committed.

(4) A warrant issued under this article shall authorise the officer of the Commission named in the warrant—

(a) to enter the premises specified in the warrant;

(b) to search the premises and take possession of anything appearing to be a document specified in the warrant or to take, in relation to any such document, any other steps which may appear to be necessary for preserving it or preventing interference with it;

(c) to take copies of, or extracts from, any document specified in the warrant;

(d) to require any person on the premises to provide an explanation of any document appearing to be of the kind specified in the warrant or to state where it may be found; and

(e) to use such force as may reasonably be necessary.

Privileged material or information

172.(1) The powers conferred by sections 169, 170 and 171 are not exercisable in relation to privileged information or privileged material.

(2) For the purposes of this section “**privileged information**” means information that, if it was material, would be privileged material.

*Offences***Offences**

173.(1) Subject to subsection (2), a service provider is guilty of an offence if the service provider—

- (a) fails to comply with a direction;
- (b) fails to comply with a notice issued under section 169; or
- (c) for the purpose of obtaining the grant of an exemption under section 167(3)—
 - (i) provides information that is false in a material respect or a document that is not what it purports to be, and
 - (ii) knows that, or is reckless as to whether, the information is false or the document is not what it purports to be.

(2) A service provider does not commit an offence under subsection (1)(a) if the service provider took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(3) A service provider that is guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term of 6 months or to a fine of \$10,000 or to both; or
- (b) on conviction on indictment, to imprisonment for a term of 3 years or to a fine of \$50,000 or to both.

PART 11**REGULATIONS, CODES AND ORDERS****Amendment of Schedules**

174. The Governor acting in his discretion may, after consultation with the Chief Minister, by order, amend the Schedules to this Act in such manner as he considers necessary or appropriate.

Regulations

175.(1) Subject to subsection (2), the Governor in Council may make regulations that the Governor in Council considers appropriate generally for giving effect to this Act and specifically in respect of anything required or permitted to be prescribed by this Act, including the matters prescribed under section 76.

(2) The Governor in Council must make regulations—

- (a) respecting the prevention of the use of the financial system for money laundering and terrorist financing;
- (b) prescribing a person as the supervisory authority for non-financial service providers;
- (c) providing for the registration of service providers and such other matters relating to service providers as this Act may require, including provisions respecting administrative penalties on service providers who contravene this Act, regulations made under it or an applicable Code;
- (d) respecting non-profit organisations, including—
 - (i) the designation of a person or body as the registration and supervisory body for non-profit organisations;
 - (ii) the functions, duties and powers of the NPO Supervisor, including with respect to supervision, the gathering of information and the disclosure of information to the Reporting Authority and law enforcement authorities in Montserrat;
 - (iii) the registration of non-profit organisations;
 - (iv) the issuance by the NPO Supervisor of a NPO Anti-money Laundering and Terrorist Financing Code setting out measures, not inconsistent with this Act, the Regulations made under this section, the Anti-terrorist Financing Order, the Terrorism (United Nations Measures) (Overseas Territories) Order 2001 or the Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002, for the prevention and detection of money laundering and terrorist financing;
 - (v) enforcement actions that may be taken by the NPO Supervisor for failure to comply with the Regulations and the NPO Anti-money Laundering and Terrorist Financing Code;
 - (vi) the maintenance of records by non-profit organisations;
 - (vii) the monitoring by the NPO Supervisor of the compliance of non-profit organisations with the Regulations and Code made under this section; and
 - (viii) the circumstances in which the NPO Supervisor may conduct, or employ an examiner to conduct, an investigation of a NPO.
- (3) The regulations may—
 - (a) make different provision in relation to different persons, circumstances or cases; and
 - (b) prescribe offences against the regulations and prescribe a term of imprisonment not exceeding two years, a fine not exceeding \$100,000 or both in respect of any one offence.
- (4) In deciding whether a person has committed an offence under the Regulations made pursuant to subsection (1), the Court must consider whether the person followed any guidance issued by the Financial Services Commission under section 176(8).
- (5) Regulations made under subsection (2)(c) may provide for—
 - (a) types or levels of registration;
 - (b) applications for registration;

- (c) the criteria for determining applications for registration;
- (d) the grant or refusal of registration; and
- (e) fees payable for registration.

Codes and guidance

176.(1) The Financial Services Commission must, after consulting with the Governor, make rules in the form of one or more Codes setting out measures, not inconsistent with this Act, the Anti-money Laundering and Terrorist Financing Regulations, the Anti-terrorist Financing Order, the Terrorism (United Nations Measures) (Overseas Territories) Order 2001 or the Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002, for the prevention and detection of money laundering and terrorist financing.

(2) A Code may—

- (a) make different provision in relation to different persons, circumstances or cases; and
- (b) include such transitional provisions as the Financial Services Commission considers necessary or expedient.

(3) Before issuing a Code, or a notice of amendment of a Code, the Financial Services Commission must—

- (a) publish a draft of the Code or proposed amendment to the Code, in such manner as the Financial Services Commission considers appropriate for bringing it to the notice of service providers and other persons who will be affected by it;
- (b) consider such written representations as it receives.

(4) A Code issued under this section—

- (a) is subsidiary legislation and has full legislative effect; and
- (b) comes into operation on such date or dates as are specified in the Code.

(5) An amendment to a Code comes into effect on the date specified in the notice which, provided that it does not take effect prior to the commencement of the Code, may be retroactive.

(6) A Code, as soon as may be after it is made, must be laid before the Legislative Council and if the Legislative Council, within 40 days next after the Code is so laid resolves that the Code be annulled, the Code is void as from the date of the resolution, but without prejudice to the validity of anything done under the Code or to the making of another Code.

(7) The Financial Services Commission may issue guidance concerning compliance with the requirements of this Act, the Anti-Money Laundering Regulations and the Codes and concerning such other matters as it considers relevant to its functions.

PART 12

MISCELLANEOUS

Review of Act

177. Every five years beginning on the day on which this section comes into force, the administration and operation of this Act must be reviewed by the Committee of the Legislative Council that is designated for that purpose by the Speaker of the Legislative Council.

Act binding on Crown

178. This Act is binding on the Crown.

Transitional provisions and savings

179. (1) The transitional provisions and savings in Schedule 4 have effect.

(2) The Governor acting in his discretion, after consultation with the Chief Minister, may make such transitional regulations, not inconsistent with Schedule 4, as the Governor considers appropriate and may make them retroactive to the date of the coming into force of this Act.

Repeals and amendments

180. (1) The Proceeds of Crime Act, No. 20 of 1999 and the Drug Trafficking Offences Act (Cap. 4.08) are repealed.

(2) The Criminal Justice (International Co-operation) Act (Cap. 4.06) is amended by repealing—

(a) sections 13, 14 and 15; and

(b) Part III.

SCHEDULE 1
POWERS OF INTERIM RECEIVER
(Section 87)

Seizure

1. Power to seize property to which the order applies.

Information

2. (1) Power to obtain information or to require a person to answer any question.
(2) A requirement imposed in the exercise of the power has effect in spite of any restriction on the disclosure of information (however imposed).
(3) An answer given by a person in pursuance of such a requirement may not be used in evidence against him in criminal proceedings, other than proceedings for an offence of perjury or any equivalent offence.

Entry, search, etc.

3. (1) Power to enter any premises in Montserrat to which the interim order applies, and to—
 - (a) carry out a search for or inspection of anything described in the order;
 - (b) make or obtain a copy, photograph or other record of anything so described; and
 - (c) to remove anything which he is required to take possession of in pursuance of the order or which may be required as evidence in the proceedings under Part 3.
- (2) The order may describe anything generally, whether by reference to a class or otherwise.

Supplementary

4. (1) An order making any provision under paragraph 2 or 3 must make provision in respect of legal professional privilege.
(2) An order making any provision under paragraph 3 may require any person—
 - (a) to give the interim receiver access to any premises which he may enter in pursuance of paragraph 3; and
 - (b) to give the interim receiver any assistance he may require for taking the steps mentioned in that paragraph.

Management

5. (1) Power to manage any property to which the order applies.
(2) Managing property includes—

- (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes;
- (b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business; and
- (c) incurring capital expenditure in respect of the property.

SCHEDULE 2
POWERS OF CIVIL FORFEITURE TRUSTEE
(Section 77)

Sale

1. Power to sell the property or any part of it or interest in it.

Expenditure

2. Power to incur expenditure for the purpose of—
 - (a) acquiring any part of the property, or any interest in it, which is not vested in him; or
 - (b) discharging any liabilities, or extinguishing any rights, to which the property is subject.

Management

3. (1) Power to manage property.
(2) Managing property includes—
 - (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes;
 - (b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business; and
 - (c) incurring capital expenditure in respect of the property.

Legal proceedings

4. Power to start, carry on or defend any legal proceedings in respect of the property.

Compromise

5. Power to make any compromise or other arrangement in connection with any claim relating to the property.

Supplementary

6. For the purposes of, or in connection with, the exercise of any of his powers—
 - (a) power, by his official name to—
 - (i) hold property;

- (ii) enter into contracts;
 - (iii) sue and be sued;
 - (iv) employ agents; and
 - (v) execute a power of attorney, deed or other instrument; and
- (b) power to do any other act which is necessary or expedient.

SCHEDULE 3
EXTERNAL REQUESTS AND ORDERS
(Section 110)

Restraint Orders

External request to be made to Attorney General

1. An external request must be made to the Attorney General.

Application for restraint order

2. (1) The Court may, on the application the Attorney General on behalf of an overseas authority, make a restraint order under paragraph 3 where it is satisfied that—

- (a) relevant property in Montserrat is identified in the external request;
- (b) proceedings for an offence have been commenced in the country from which the external request was made, and not concluded; and
- (c) there is reasonable cause to believe that the defendant named in the request has benefited from his criminal conduct.

(2) An application for a restraint order may be made on an ex parte application to the judge in chambers.

Restraint order

3. (1) Where the Court is satisfied as to the matters set out in paragraph 2, it may make an order (a restraint order) prohibiting any specified person from dealing with relevant property which is identified in the external request and specified in the order.

(2) A restraint order—

- (a) may make provision—
 - (i) for reasonable living expenses and reasonable legal expenses in connection with the proceedings seeking a restraint order or the registration of an external order; and
 - (ii) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation; and
- (b) may be made subject to such conditions as the Court considers fit.

(3) Where the Court makes a restraint order it may, on the application of the Attorney General, (whether as part of the application for the restraint order or at any time

afterwards) may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

(4) For the purposes of this section, dealing with property includes removing it from Montserrat.

Discharge and variation of restraint order

4. (1) An application to discharge or vary a restraint order or an order under paragraph 3(3) may be made to the Court by—

- (a) the Attorney General; or
- (b) any person affected by the order.

(2) On an application made under sub-paragraph (1), the Court may—

- (a) discharge the order; or
- (b) vary the order.

(3) The Court must discharge the restraint order if—

- (a) at the conclusion of the proceedings for an offence with respect to which the order was made, no external order has been made; or
- (b) within a reasonable time an external order has not been registered under paragraph 12.

Appeal

5. (1) If on an application for a restraint order the Court decides not to make one, the Attorney General may appeal to the Court of Appeal against the decision.

(2) If an application is made under paragraph 4(1), in relation to a restraint order or an order under paragraph 3(3), the Attorney General or any person affected by the order may appeal to the Court of Appeal in respect of the Court's decision on the application.

(3) On an appeal under sub-paragraph (1) or (2), the Court of Appeal may—

- (a) confirm the decision; or
- (b) make such order as it believes is appropriate.

Seizure of property subject to restraint order

6. (1) If a restraint order is in force, a police officer or a customs officer may seize any property which is specified in it to prevent its removal from Montserrat.

(2) Property seized under sub-paragraph (1) must be dealt with in accordance with the directions of the Court which made the order.

Hearsay evidence in restraint proceedings

7. (1) Evidence must not be excluded in restraint proceedings on the ground that it is hearsay (of whatever degree).

(2) For the purposes of sub-paragraph (1), restraint proceedings are proceedings—

- (a) for a restraint order;
- (b) for the discharge or variation of a restraint order;
- (c) on an appeal under paragraph 5.

(3) Nothing in this paragraph affects the admissibility of evidence which is admissible apart from this paragraph.

Appointment of receiver

8. (1) If the Court makes a restraint order, on the application of the Attorney General (whether made as part of the application for the restraint order or at any time afterwards), the Court may by order appoint a receiver in respect of any property which is specified in the restraint order.

(2) On the application of the Attorney General, the Court may, by order confer on a receiver appointed under sub-paragraph (1), any one or more of the following powers in relation to any property which is specified in the restraint order—

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to start, carry on or defend any legal proceedings in respect of the property;
- (d) power to realise so much of the property as is necessary to meet the receiver's remuneration and expenses.

(3) The Court may by order confer on the receiver power to enter any premises in Montserrat and to do any of the following—

- (a) search for or inspect anything authorised by the Court;
- (b) make or obtain a copy, photograph or other record of anything so authorised;
- (c) remove anything which the receiver is required or authorised to take possession of pursuant to an order of the Court.

(4) The Court may by order authorise the receiver to do any one or more of the following for the purpose of the exercise of his functions—

- (a) hold property;
- (b) enter into contracts;
- (c) sue and be sued;
- (d) employ agents;
- (e) execute powers of attorney, deeds or other instruments;
- (f) take such other steps the Court thinks appropriate.

(5) The Court may order any person who has possession of property which is specified in the restraint order to give possession of it to the receiver.

(6) The Court—

- (a) may order a person holding an interest in property which is specified in the restraint order to make to the receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
- (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) The Court must not—

(a) confer the power mentioned in paragraph (2)(b) or (d) in respect of property, or

(b) exercise the power conferred on it by paragraph (6) in respect of property,

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(8) The Court may order that a power conferred by an order under this paragraph is subject to such conditions and exceptions as it specifies.

Restrictions relating to restraint orders

9. (1) Where the Court makes a restraint order—

(a) no distress may be levied against any property which is specified in the order except with the leave of the Court and subject to any terms the Court may impose; and

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

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

(3) Before exercising any power conferred by sub-paragraph (3), the Court must give an opportunity to be heard to—

(a) the Attorney General; and

(b) any receiver appointed in respect of the property under this Schedule.

External Orders

Applications to give effect to external orders

10. (1) The Attorney General may apply to the Court, on behalf of an overseas authority, to give effect to an external order in Montserrat.

(2) No application to give effect to such an order may be made otherwise than under paragraph (1).

(3) An application under paragraph (1) may be made on an ex parte application to a judge in chambers.

Conditions for Court to give effect to external orders

11. (1) The Court must give effect to an external order by registering it where it is satisfied—

(a) the external order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction;

(b) the external order is in force and no appeal is outstanding in respect of it;

(c) in the case of an external order which authorises the confiscation of property other than money that is specified in the order, the specified property shall not be subject to a charge under any of the following provisions —

(i) section 11 of the repealed Drug Trafficking Offences Act; or

(ii) section 20 of the repealed Proceeds of Crime Act.

(2) In paragraph (1) “**appeal**” includes—

(a) any proceedings by way of discharging or setting aside the order; and

(b) an application for a new trial or stay of execution.

Registration of external orders

12. (1) Where the Court decides to give effect to an external order, it must—

(a) register the order in the Court;

(b) provide for notice of the registration to be given to any person affected by it; and

(c) appoint the Attorney General as the enforcement authority for the order.

(2) Only an external order registered by the Court may be implemented under this Schedule.

(3) The Court may cancel the registration of the external order, or vary the property to which it applies, on an application by the Attorney General or any person affected by it if, or to the extent that, the Court is of the opinion that any of the conditions in paragraph 11 is not satisfied.

(4) The Court must cancel the registration of the external order, on an application by the Attorney General or any person affected by it, if it appears to the Court that the order has been satisfied—

(a) in the case of an order for the recovery of a sum of money specified in it, by payment of the amount due under it;

(b) in the case of an order for the recovery of specified property, by the surrender of the property; or

(c) by any other means.

(5) Where the registration of an external order is cancelled or varied under sub-paragraph (3) or (4), the Court must provide for notice of this to be given to the Attorney General and any person affected by it.

Appeal to Court of Appeal concerning external orders

13. (1) If on an application for the Court to give effect to an external order by registering it, the Court decides not to do so, the Attorney General may appeal to the Court of Appeal against the decision.

(2) If an application is made under paragraph 12(3) or (4) in relation to the registration of an external order, the Attorney General or any person affected by the registration may appeal to the Court of Appeal in respect of the Court's decision on the application.

(3) On an appeal under sub-paragraph (1) or (2), the Court of Appeal may—

- (a) confirm or set aside the decision to register; or
- (b) direct the Court to register the external order, or so much of it as relates to property other than to which paragraph 11(1)(c) applies.

Sums in currency other than dollars

14. (1) This paragraph applies where the external order which is registered under paragraph 12 specifies a sum of money.

(2) If the sum of money which is specified is expressed in a currency other than dollars, the sum of money to be recovered is to be taken to be the dollar equivalent calculated in accordance with the rate of exchange prevailing at the end of the working day immediately preceding the day when the Court registered the external order under paragraph 12.

(3) The dollar equivalent must be calculated by the Attorney General.

(4) The notice referred to in paragraph 12(1)(b) and (5) must set out the amount in dollars which is to be paid.

Time for payment

15. (1) This paragraph applies where the external order is for the recovery of a specified sum of money.

(2) Subject to sub-paragraphs (3) to (6), the amount ordered to be paid under—

- (a) an external order that has been registered under paragraph 12, or
- (b) where paragraph 14(2) applies, the notice under paragraph 12(1)(b),

must be paid on the date on which the notice under paragraph 12(1)(b) is delivered to the person affected by it.

(3) Where there is an appeal under paragraph 13 and a sum falls to be paid when the appeal has been determined or withdrawn, the duty to pay is delayed until the day on which the appeal is determined or withdrawn.

(4) If the person affected by an external order which has been registered shows that he needs time to pay the amount ordered to be paid, the Court may make an order allowing payment to be made in a specified period, which—

- (a) must start with the day on which the notice under paragraph 12(1)(b) was delivered to the person affected by the order or the day referred to in sub-paragraph (3), as the case may be; and
- (b) must not exceed six months.

(5) If within the specified period the person affected by an external order applies to the Court for the period to be extended and the Court believes that there are exceptional circumstances, it may make an order extending the period.

(6) The extended period—

- (a) must start with the day on which the notice under paragraph 12(1)(b) was delivered to the person affected by it or the day referred to in paragraph (3), as the case may be; and
- (b) must not exceed 12 months.

(7) An order under sub-paragraph (5)—

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

(b) shall not be made after the end of the extended period.

(8) The Court must not make an order under sub-paragraph (5) or (7) unless it gives the Attorney General an opportunity to make representations.

Appointment of receivers

16. If an external order is registered, is not satisfied, and, in the case of an external order for the recovery of a specified sum of money, any period specified by order under paragraph 15 has expired, the Court, on the application of the Attorney General may appoint a receiver in respect of—

- (a) where the external order is for the recovery of a specified sum of money, realisable property; or
- (b) where the external order is for the recovery of specified property, that property.

Powers of receivers in respect of monetary external orders

17. (1) If the Court appoints a receiver under paragraph 16, it may, on the application of the Attorney General, where the external order is for the recovery of a specified sum of money by order confer on the receiver the following powers in relation to any realisable property—

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to realise the property, in such manner as the Court may specify; and
- (d) power to start, carry on or defend any legal proceedings in respect of the property.

(2) The Court may by order confer on the receiver power to enter any premises in Montserrat and to do any of the following—

- (a) search for or inspect anything authorised by the Court;
- (b) make or obtain a copy, photograph or other record, of anything so authorised; and
- (c) remove anything which the receiver is required or authorised to take possession of pursuant to an order of the Court.

(3) The Court may by order authorise the receiver to do any of the following for the purposes of the exercise of his functions—

- (a) hold property;
- (b) enter into contracts;
- (c) sue and be sued;
- (d) employ agents;
- (e) execute powers of attorney, deeds or other instruments; and
- (f) take any other steps the Court thinks appropriate.

(4) The Court may order any person who has possession of realisable property to give possession of it to the receiver.

(5) The Court—

(a) may order a person holding an interest in realisable property to make to the receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; and

(b) may (on payment being made) by order transfer, grant or extinguish any interest in the property.

(6) Paragraphs (2), (4) and (5) do not apply to property for the time being subject to a charge under any of these provisions—

(a) section 11 of the repealed Drug Trafficking Offences Act; or

(b) section 20 of the repealed Proceeds of Crime Act.

(7) The Court must not—

(a) confer the power mentioned in paragraph (2)(b) or (c) in respect of property; or

(b) exercise the power conferred on it by paragraph (5) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(8) The Court may order that a power conferred by an order under this paragraph is subject to such conditions and exceptions as it specifies.

Powers of receivers in respect of external orders for the recovery of specified property

18. (1) If the Court appoints a receiver under paragraph 17, it may act under this paragraph on the application of the Attorney General where the external order is for the recovery of property specified in the order (“the specified property”).

(2) The Court may by order confer on the receiver the following powers in relation to the specified property—

(a) power to take possession of the property;

(b) power to manage or otherwise deal with the property;

(c) power to realise the property, in such manner as the Court may specify;

(d) power to start, carry on or defend any legal proceedings in respect of the property.

(3) The Court may by order confer on the receiver power to enter any premises in Montserrat and to do any of the following—

(a) search for or inspect anything authorised by the Court;

(b) make or obtain a copy, photograph or other record of anything so authorised; and

(c) remove anything which the receiver is required or authorised to take possession of pursuant to an order of the Court.

(4) The Court may by order authorise the receiver to do any of the following for the purposes of the exercise of his functions—

(a) hold property;

(b) enter into contracts;

(c) sue and be sued;

- (d) employ agents;
- (e) execute powers of attorney, deeds or other instruments; and
- (f) take any other steps the Court thinks appropriate.

(5) The Court may order any person who has possession of the specified property to give possession of it to the receiver.

(6) The Court—

- (a) may order a person holding an interest in the specified property to make to the receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift; and
- (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) The Court must not—

- (a) confer the power mentioned in sub-paragraph (2)(b) or (c) in respect of property, or
- (b) exercise the power conferred on it by paragraph (6) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(8) The Court may order that a power conferred by an order under this paragraph is subject to such conditions and exceptions as it specifies.

Meaning of “managing or otherwise dealing with property”

19. For the purposes of paragraphs 8 and 17, managing or otherwise dealing with property includes—

- (a) selling the property or any part of it or interest in it;
- (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property; or
- (c) incurring capital expenditure in respect of the property.

Application of sums by receiver

20. (1) This paragraph applies to sums which are in the hands of a receiver appointed under paragraph 16 if they are—

- (a) the proceeds of the realisation of property under paragraph 17 or 18;
- (b) where paragraph 17 applies, sums (other than those mentioned in sub-paragraph (a)) in which the defendant holds an interest.

(2) The sums must be applied as follows—

- (a) first, they must be applied in making any payments directed by the Court; and
- (b) second, they must be applied on the defendant’s behalf towards satisfaction of the external order.

(3) If the amount payable under the external order has been fully paid and any sums remain in the receiver’s hands he must distribute them—

- (a) among such persons who held (or hold) interests in the property concerned as the Court directs; and
- (b) in such proportions as it directs.

(4) Before making a direction under sub-paragraph (3) the Court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it.

(5) For the purposes of sub-paragraphs (3) and (4) the property concerned is—

- (a) the property represented by the proceeds mentioned in sub-paragraph (1)(a);
- (b) the sums mentioned in sub-paragraph (1)(b).

(6) The receiver applies sums as mentioned in paragraph (2)(c) by paying them to the Attorney General on account of the amount payable under the order.

Sums received by Attorney General

21. (1) Where the Attorney General receives sums on account of the amount payable under a registered external order or the value of the property specified in the order, his receipt of the sums reduces the amount payable under the order, but he must apply the sums received as follows—

- (a) first, he must apply them in payment of the remuneration and expenses of a receiver appointed under paragraph 8 to the extent that they have not been met by virtue of the exercise by that receiver of a power conferred under paragraph 8(2)(d); and
- (b) second, in payment of the remuneration and expenses of the receiver appointed under paragraph 16.

(2) Any sums which remain after the Attorney General has made any payments required by the preceding provisions of this paragraph must be paid into the National Forfeiture Fund.

Satisfaction of external order

22. (1) A registered external order is satisfied when no amount is due under it.

(2) Where such an order authorises the recovery of property specified in it, no further amount is due under the order when all of the specified property has been sold.

Restrictions relating to receivers

23. (1) Where the Court makes an order under paragraph 16 appointing a receiver in respect of any realisable property or specified property—

- (a) no distress may be levied against the property except with the leave of the Court and subject to any terms the Court may impose; and
- (b) if the receiver is appointed order in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Court and subject to any terms the Court may impose.

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

(3) If the Court is satisfied that an order under paragraph 16 appointing a receiver in respect of the property has been applied for or made, the Court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(4) Before exercising any power conferred by sub-paragraph (4), the Court must give an opportunity to be heard to—

- (a) the Attorney General; and
- (b) the receiver, if the order under paragraph 16 has been made.

Protection of receiver appointed under paragraphs 8 or 16

24. If a receiver appointed under paragraphs 8 or 16—

- (a) takes action in relation to property which is not realisable property or, as the case may be, the specified property,
- (b) would be entitled to take the action if it were realisable property or, as the case may be, the specified property, and
- (c) believes on reasonable grounds that he is entitled to take the action,

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

Further applications by receivers

25. (1) A receiver appointed under paragraph 8 or 16 may apply to the Court for an order giving directions as to the exercise of his powers.

(2) The following persons may apply to the Court—

- (a) any person affected by action taken by a receiver appointed under paragraph 8 or 16; or
- (b) any person who may be affected by action such a receiver proposes to take.

(3) On an application under this paragraph the Court may make such order as it believes is appropriate.

Discharge and variation of receiver orders

26. (1) The following persons may apply to the Court to vary or discharge an order made under paragraph 8 or paragraphs 16 to 18—

- (a) the receiver;
- (b) the Attorney General; or
- (c) any person affected by the order.

(2) On an application under this paragraph, the Court—

- (a) may discharge the order; or
- (b) may vary the order.

Discharge of receivers appointed under paragraph 8

27. (1) If a receiver is appointed under paragraph 8 in respect of property which is identified in the restraint order (the first receiver), and the Court appoints a receiver under paragraph 16 (the second receiver), the Court must order the first receiver to transfer to the second receiver all property held by him by virtue of the powers conferred on him by paragraph 8.

(2) Sub-paragraph (1) does not apply to property which the first receiver holds by virtue of the exercise by him of his power under paragraph 8(2)(d).

(3) If the first receiver complies with an order under sub-paragraph (1) he is discharged—

(a) from his appointment under paragraph 8;

(b) from any obligation under this Schedule arising from his appointment.

(4) If this paragraph applies the Court may make such a consequential or incidental order as it believes is appropriate.

Appeal to Court of Appeal about receivers

28. (1) If on an application for an order under any of paragraphs 8 or 16 to 18 the Court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

(2) If the Court makes an order under any of paragraphs 8 or 16 to 18, the following persons may appeal to the Court of Appeal in respect of the Court's decision—

(a) the person who applied for the order;

(b) any person affected by the order.

(3) If on an application for an order under paragraph 25 the Court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision.

(4) If the Court makes an order under paragraph 25, the following persons may appeal to the Court of Appeal in respect of the Court's decision—

(a) the person who applied for the order;

(b) any person affected by the order;

(c) the receiver.

(5) The following persons may appeal to the Court of Appeal against a decision of the Court on an application under paragraph 26—

(a) the person who applied for the order in respect of which the application was made;

(b) any person affected by the Court's decision; and

(c) the receiver.

(6) On an appeal under this paragraph the Court of Appeal may—

(a) confirm the decision, or

(b) make such order as it believes is appropriate.

Interpretation for this Schedule

Tainted gifts

29. (1) For the purposes of applying section 18 in this Schedule, a gift is tainted if it was made by the defendant at any time after—

- (a) the date on which the offence to which the external order or external request relates was committed; or
- (b) if his criminal conduct consists of two or more such offences and they were committed on different dates, the date of the earliest.

(2) For the purposes of paragraph (1), an offence which is a continuing offence is committed on the first occasion when it is committed.

(3) A gift may be a tainted gift whether it was made before the commencement date.

Specified property

30. In this Schedule, “**specified property**” means property specified in an external order, other than an order that specifies a sum of money.

SCHEDULE 4

TRANSITIONAL PROVISIONS AND SAVINGS

(Section 179)

Interpretation

1. (1) In this Schedule, “**former legislation**” means—

- (a) the repealed Drug Trafficking Offences Act;
- (b) the repealed Proceeds of Crime Act; and
- (c) sections 13, 14 and 15 and Part III of the Criminal Justice (International Co-operation) Act (Cap. 4:06).

(2) Where an offence is committed over a period of two or more days, or at some time during a period of two or more days, for the purposes of this Schedule, it is taken to have been committed on the earliest of those days.

Confiscation

2. (1) The provisions of this Act specified in column 1 do not have effect where the offence, or any of the offences, referred to in the provision specified in column 2, was committed before the commencement date.

Column 1

Column 2

Section 7 [confiscation order]

Section 5(1)

Section 35 [defendant convicted or committed absconds]

Section 36(1)(a)

Section 36 [defendant neither convicted not acquitted absconds] Section 36(1)(a)

Section 57 [committal by Magistrate's Court] Section 57(1)(a)

(2) Sections 42 [restraint order] and 56 [enforcement abroad] do not have effect where—

- (a) the powers specified in those sections would be exercisable by virtue of section 41(1)(a) or (b) being satisfied; and
- (b) the offence referred to in section 41(1)(a) or (b), as the case may be, was committed before the commencement date.

(3) Where the Court is determining whether a defendant has a criminal lifestyle—

- (a) conduct does not form part of a course of criminal conduct where any of the offences referred to in section 11(2)(a) was committed before the commencement date; and
- (b) conduct forms part of a course of criminal conduct, notwithstanding that any of the offences of which the defendant was convicted on at least two separate occasions in the period referred to in section 11(2)(b) were committed before the commencement date.

(4) Where subparagraph (1) or (2) applies with respect to an offence or offences, the confiscation provisions in the repealed Drug Trafficking Offences Act or the repealed Proceeds of Crime Act (as appropriate for the offence concerned) have full effect, notwithstanding their repeal.

(5) For the avoidance of doubt, where Part 2 of this Act applies with respect to an offence or offences, the confiscation provisions of the former legislation do not apply with respect to that offence or those offences.

Cash seizure

3. (1) Sections 99 to 109 have no application with respect to cash seized prior to the commencement date under Part III of the Criminal Justice (International Co-operation) Act (Cap. 4.06).

(2) Where subparagraph (1) applies, Part III of the Criminal Justice (International Co-operation) Act (Cap. 4.06) continues to apply to the cash seized notwithstanding its repeal.

Money laundering

4. (1) Sections 118, 119 and 120 do not have effect where the conduct that constitutes an offence under those sections commenced prior to the commencement date and ended after the commencement date and the equivalent provisions in the former legislation continues to have effect with respect to such conduct, notwithstanding their repeal.

(2) Section 121 does not have effect where the information or other matter on which the knowledge or suspicion that another person is involved in money laundering is based, or which gives reasonable grounds for such knowledge or suspicion, came to a person before the commencement date and the equivalent provisions in the former legislation continue to apply in such circumstances.

Reporting Authority

5. The persons who were, immediately before the commencement date, appointed members of the Reporting Authority continue to be members of the Reporting Authority until the Governor acting in his discretion appoints members of the Reporting Authority in accordance with section 126(2).

Sir Howard A. Fergus
SPEAKER

Passed the Legislative Council this 22nd day of January, 2010.

Judith Jeffers
CLERK OF COUNCILS