



MONTSERRAT

## CHAPTER 4.06

# CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT and Subsidiary Legislation

**Revised Edition**

showing the law as at 1 January 2013

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

This edition contains a consolidation of the following laws—

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| Act 9 of 1991 .. in force 6 September 1991 (S.R.O. 22/1991)   |               |
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| Amended by Act 6 of 2004 .. in force 1 January 2005 (S.R.O. 71/2005)  |               |
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| <br><b>CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT<br/>(ENFORCEMENT OF OVERSEAS FORFEITURE ORDERS) ORDER – Section 9</b>      | <br><b>27</b> |
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| <br><b>CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT 1990<br/>(ENFORCEMENT OF OVERSEAS FORFEITURE ORDERS) ORDER 1991 (U.K.)</b> | <br><b>45</b> |
| S.I. 1991 No. 1463  |               |





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## CHAPTER 4.06

### CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT

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## CHAPTER 4.06

### CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT

*(Acts 9 of 1991, 8 of 1992, 13 of 1999, 6 of 2004, 1 of 2010, 9 of 2011 and 18 of 2012, S.R.O.s. 31/1998 and 60/2009)*

AN ACT TO ENABLE MONTSERRAT TO CO-OPERATE WITH OTHER COUNTRIES IN CRIMINAL PROCEEDINGS AND INVESTIGATIONS; TO ENABLE MONTSERRAT TO JOIN WITH OTHER COUNTRIES IN IMPLEMENTING THE VIENNA CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES; AND TO PROVIDE FOR THE SEIZURE, DETENTION AND FORFEITURE OF DRUG TRAFFICKING MONEY IMPORTED OR EXPORTED IN CASH.

#### **Commencement**

*[6 September 1991]*

#### **Short title**

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

### PART 1

#### CRIMINAL PROCEEDINGS AND INVESTIGATIONS

##### *Mutual Service of Process*

#### **Service of overseas process in Montserrat**

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

- (a) a summons or other process requiring a person to appear as defendant or attend as a witness in criminal proceedings in that country or territory; or
- (b) a document issued by a court exercising criminal jurisdiction in that country or territory and recording a decision of the court made in the exercise of the jurisdiction, together with a request for it to be served on a person in Montserrat.

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

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

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

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

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

### **Service of Montserrat process overseas**

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

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

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

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

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



### Appointment of prosecuting authority

4. The Governor may by Order appoint a prosecuting authority for the purposes of section 5. (*Inserted by Act 18 of 2012*)

### *Mutual Provision of Evidence*

### Overseas evidence for use in Montserrat

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

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

(b) that proceedings in respect of the offence have been instituted or that the offence is being investigated,

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

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

(3) The prosecuting authority may issue a letter of request if—

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

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

*(Substituted by Act 18 of 2012)*

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

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

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

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

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

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

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

### **Montserrat evidence for use overseas**

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

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

a request for assistance in obtaining evidence in Montserrat in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in that country or territory.

**(2)** If the Governor is satisfied—

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

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

**(3)** Where it appears to the Governor that the request relates to a fiscal offence in respect of which proceedings have not yet been instituted he shall not exercise his powers under subsection (2) unless—

- (a) the request is from a country or territory which is a member of the Commonwealth or is made pursuant to a treaty to which Montserrat is a party; or
- (b) he is satisfied that the conduct constituting the offence would constitute an offence of the same or a similar nature if it had occurred in Montserrat.

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

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

(6) Schedule 1 to this Act shall have effect with respect to the proceedings before the Magistrate’s Court in pursuance of a notice under subsection (2).

### **Transfer of Montserrat prisoner to give evidence or assist investigation overseas**

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

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

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

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

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

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

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

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

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

- (a) of a Police Officer of Montserrat where that person is for the time being in Montserrat; or
- (b) if he is outside Montserrat, of a Police Officer of Montserrat from where the prisoner is to be taken under the warrant.

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

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

### **Transfer of overseas prisoner to give evidence or assist in investigation in Montserrat**

8. (1) This section has effect where—

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

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

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

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

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

(5) Section 6(4) to (6) shall have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.

(6) A person shall not be subject to the Immigration Act in respect of his entry into or presence in Montserrat in pursuance of a warrant under this section but if the warrant ceases to have effect while he is still in Montserrat—

- (a) he shall be treated for the purpose of that Act as if he has then illegally entered Montserrat; and
- (b) the provisions of that Act shall have effect for the removal of such person and no liability shall attach to any carrier by which he was brought to Montserrat.

(7) This section applies to a person detained in custody in a country or territory outside Montserrat in consequence of having been transferred there—

- (a) from Montserrat under the Repatriation of Prisoners Act 1984 (UK) as modified and extended to Montserrat by the Overseas Territories Order (S.I. 1986 No. 2226); or
- (b) under any similar provision or arrangement from any other country or territory,

as it applies to a person detained as mentioned in subsection (1).

#### *Additional Co-operation Powers*

### **Search, etc. for material relevant to overseas investigation**

9. (1) The provisions of the Criminal Procedure Code Act (powers of entry, search and seizure) shall have effect as if references to serious arrestable offences included any conduct which is an offence under the law of a country or territory outside Montserrat and would constitute a serious arrestable offence if it had occurred in Montserrat.

(2) In this section, “**serious arrestable offence**” means an indictable offence. (*Inserted by Act 18 of 2012*)

(3) If, on an application made by a Police Officer, a Magistrate is satisfied—

- (a) that criminal proceedings have been instituted against a person in a country or territory outside Montserrat or that a person has been arrested in the course of a criminal investigation carried on there;
- (b) that the conduct constituting the offence which is the subject of the proceedings or investigation would constitute an arrestable offence within the meaning of the Penal Code if it had occurred in Montserrat; and

- (c) that there are reasonable grounds for suspecting that there is on premises in Montserrat evidence relating to the offence other than items subject to legal privilege within the meaning of that Code,

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

(4) The power to search conferred by subsection (3) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence as is there mentioned.

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

- (a) from a court or tribunal exercising criminal jurisdiction in the overseas country or territory in question or a prosecuting authority in that country or territory; or
- (b) from any other authority in that country or territory which appears to him to have the function of making requests for the purposes of this section,

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

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

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

(8) The Governor may by order direct that any powers which by virtue of this section are exercisable by a police officer shall also be exercisable by, or by any person acting under the direction of, the Comptroller of Customs and Excise and the Governor may by order direct that any of those powers shall also be exercisable by a person of any other description specified in the order.

(9) An order under subsection (8) shall be made by Statutory Rules and Orders subject to annulment by a Secretary of State on a resolution made by the Legislative Assembly.

*(Amended by Acts 6 of 2004 and 9 of 2011)*

## Enforcement of overseas forfeiture orders

**10. (1)** The Governor acting on the advice of Cabinet may by order provide for the enforcement in Montserrat of any order which—

(a) is made by a court in a country or territory outside Montserrat designated for the purposes of this section by the order; and

(b) is for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which an offence to which this section applies has been committed or which was used in connection with the commission of such an offence.

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

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

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

**(5)** No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the Assembly.

*(Amended by Acts 9 of 2011 and 18 of 2012)*

## *Supplementary*

### Rules of court

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

**(2)** Rules made for the purposes of Schedule 1 to this Act may, in particular, make provision with respect to the persons entitled to appear or take part in the proceedings to which that Schedule applies and for excluding the public from any such proceedings.

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

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

## PART 2

## THE VIENNA CONVENTION

*Substances Useful for Manufacture of Controlled Drugs***Manufacture and supply of scheduled substances**

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

- (a) to manufacture a scheduled substance; or
- (b) to supply such a substance to another person,

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

(2) A person guilty of an offence under subsection (1) is liable—

- (a) on summary conviction, to imprisonment for a term of six months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term of fourteen years or a fine or both.

(3) In this section “**a controlled drug**” has the same meaning as in the Drugs (Prevention of Misuse) Act and “**unlawful production of a controlled drug**” means the production of such a drug which is unlawful by virtue of section 7(1)(a) of that Act.

(4) In this section and elsewhere in this Part of this Act “**a scheduled substance**” means a substance for the time being specified in Schedule 2 to this Act.

(5) The Governor acting on the advice of Cabinet may by order amend that Schedule (whether by addition, deletion or transfer from one Table to the other) but—

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

*(Amended by Act 9 of 2011)*



### Regulations about scheduled substances

**13. (1)** The Governor acting on the advice of Cabinet may by regulation make provision—

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

*(Amended by Act 9 of 2011)*

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

- (a) the notification of the proposed exportation of substances specified in Table 1 in Schedule 2 to this Act to such countries as may be specified in the regulations; and
- (b) the production, in such circumstances as may be so specified, of evidence that the required notification has been given,

and for the purposes of the Customs laws, any such substance shall be deemed to be exported contrary to a restriction for the time being in force with respect to it under this Act if it is exported without a warrant for the exportation thereof.

**(3)** Regulations under this section may make different provision in relation to the substances specified in Table I and Table II in Schedule 2 to this Act respectively and in relation to different cases or circumstances.

**(4)** The power to make regulations under this section shall be exercisable by Statutory Rules and Orders subject to annulment in pursuance of a resolution of the Legislative Assembly. *(Amended by Act 9 of 2011)*

**(5)** Any person who fails to comply with any requirement imposed by the regulations or, in purported compliance with any such requirement, furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular is guilty of an offence and liable—

- (a) on summary conviction, to imprisonment for a term of six months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term of two years or a fine or both.

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

*Offences at Sea***Offence on Montserrat ships**

14. Anything which would constitute a drug trafficking offence if done on land in any part of Montserrat shall constitute that offence if done on a Montserrat ship.

**Ships used for illicit traffic**

15. (1) This section applies to a Montserrat ship, a ship registered in an Overseas Territory of the United Kingdom, a ship registered in a state which is a party to the Vienna Convention (a Convention State) and a ship not registered in any country or territory. *(Amended by Act 9 of 2011)*

(2) A person is guilty of an offence if on a ship to which this section applies, where, he—

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

knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to section 5(1) of the Drugs (Prevention of Misuse) Act or the law of any state or an Overseas Territory of the United Kingdom other than Montserrat. *(Amended by Act 9 of 2011)*

(3) A certificate purporting to be issued by or on behalf of the government of any state or a Overseas Territory of the United Kingdom other than Montserrat to the effect that the importation or export of a controlled drug is prohibited by the law of the state or an Overseas Territory of the United Kingdom other than Montserrat shall be evidence of the matters stated. *(Amended by Act 9 of 2011)*

(4) A person guilty of an offence under this section is liable—

- (a) in a case where the controlled drug is a Class A drug—
  - (i) on summary conviction, to imprisonment for a term of six months or a fine not exceeding the statutory maximum or both;
  - (ii) on conviction, on indictment, to imprisonment for life or a fine or both;
- (b) in a case where the controlled drug is a Class B drug—
  - (i) on summary conviction, to imprisonment for a term of six months or a fine not exceeding the statutory maximum or both;
  - (ii) on conviction on indictment, to imprisonment for a term of fourteen years or a fine or both;
- (c) in a case where the controlled drug is a Class C drug—

- (i) on summary conviction, to imprisonment for a term of three months or a fine not exceeding the statutory maximum or both;
- (ii) on conviction on indictment, to imprisonment for a term of five years or a fine or both.

(5) In this section “**a controlled drug**” and the references to controlled drugs of a specified Class have the same meaning as in the said Act and an offence under this section shall be included in the offences to which section 30 of that Act (defences) applies.

### **Enforcement powers**

**16. (1)** The powers conferred on an enforcement officer by Schedule 3 to this Act shall be exercisable in relation to any ship to which section 14 or 15 applies for the purpose of detecting and the taking of appropriate action in respect of the offences mentioned in those sections.

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

- (a) requested the assistance of the United Kingdom or Montserrat for the purpose mentioned in subsection (1); or
- (b) authorised the United Kingdom or Montserrat to act for that purpose.

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

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

(5) The powers conferred by that Schedule shall not be exercised in that territorial sea of any state or any Overseas Territory of the United Kingdom other than Montserrat without the authority of the Governor and he shall not give his authority unless that state or the Overseas Territory of the United Kingdom has consented to the exercise of those powers.

*(Amended by Acts 8 of 1992, 13 of 1999 and 9 of 2011)*

### **Enforcement powers of Convention State in Territorial Sea**

**17. (1)** Subject to this section, a Convention State may, under an agreement made or which may be made by or on behalf of Montserrat, exercise in relation to a ship in the territorial sea of Montserrat, powers corresponding to those conferred on enforcement officers by Schedule 3.

- (2) The Convention State may exercise those powers in relation to—
- (a) any ship, when so authorised by an enforcement officer of Montserrat who is embarked on an enforcement vessel of the Convention State;
  - (b) any ship suspected of engaging in drug trafficking outside the landward limits of the territorial sea which is pursued into the territorial sea of Montserrat by an enforcement vessel of the Convention State;
  - (c) any ship other than a Montserrat ship suspected of engaging in drug trafficking.
- (3) The Convention State shall before exercising those powers—
- (a) give advance notice of its proposed action in relation to the ship to an enforcement officer of Montserrat; or
  - (b) where it was not practical to do so at the time, notify such officer of any action taken in relation to the ship at the earliest opportunity after its occurrence.

(4) The Convention State shall not exercise those powers unless an enforcement vessel of Montserrat is not immediately available to exercise enforcement powers in relation to the ship.

(5) In this section—

**“enforcement vessel of the Convention State”** means a warship or other ship of that state, authorised by the state to be on its service other than its commercial service, clearly identifiable as being on such service and having on board law enforcement officials of that state; it includes any boat or aircraft carried on such a ship;

**“enforcement vessel of Montserrat”** means a vessel operated by the Police service or the Customs Department.

*(Inserted by Act 13 of 1999 and amended by Act 9 of 2011)*

### **Jurisdiction and prosecutions**

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

(2) No such proceedings shall be instituted except by or with the consent of the Director of Public Prosecutions. *(Substituted by Act 18 of 2012)*

(3) Without prejudice to subsection (2) no proceedings for an offence under section 15 alleged to have been committed outside the landward limits of the territorial sea of Montserrat on a ship registered in a Convention state shall be instituted except in pursuance of the exercise with the authority of the Governor of the powers conferred by Schedule 3 to this Act.

*Supplementary*

**Extradition**

**19.** The offences to which an Order in Council under the Extradition Act 1989 of United Kingdom can apply shall include drug trafficking offences.

**Interpretation of Part 2**

**20. (1)** In this Part of this Act—

“**Convention State**” has the meaning given in section 15(1);

“**Montserrat ship**” means a ship registered in Montserrat;

“**scheduled substance**” has the meaning given in section 12(4);

“**ship**” includes any vessel used in navigation;

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

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

*(Amended by Act 18 of 2012)*

PART 3

GENERAL

**Expenses and receipts**

**21.** Any expenses incurred by the Governor under this Act shall be defrayed out of money provided by the Legislative Assembly. (Amended by Act 9 of 2011)

**SCHEDULE 1***(Section 6(6))***MONTSERRAT EVIDENCE FOR USE OVERSEAS: PROCEEDINGS OF COURT****Securing attendance of witnesses**

1. The court shall have the like powers for securing the attendance of a witness for the purpose of the proceedings as it has for the purpose of other proceedings before the court.

**Power to administer oaths**

2. The court may in the proceedings take evidence on oath.

**Privilege of witnesses**

3. (1) A person shall not be compelled to give in the proceedings any evidence which he could not be compelled to give—

(a) in criminal proceedings in Montserrat; or

(b) subject to subparagraph (2) below, in criminal proceedings in the country or territory from which the request for the evidence has come.

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

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

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

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

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

### Transmission of evidence

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

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

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

### Supplementary

5. For the avoidance of doubt it is hereby declared that the Banker's Books (Evidence) Act applies to the proceedings as it applies to other proceedings before the court.

### Cost

6. No orders for costs shall be made in the proceedings.

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## SCHEDULE 2

(Section 12(4))

(Substituted by S.R.O. 60/2009)

### LIST OF PRECURSORS AND CHEMICALS FREQUENTLY USED IN THE ILLICIT MANUFACTURE OF CONTROLLED DRUGS

English, French and Spanish names as used in the respective versions of Tables I and II of the Vienna Convention are given, as well as Harmonized System (HS) codes and Chemical Abstracts Service (CAS) registry numbers, to facilitate rapid identification of all scheduled substances. Chemical Abstracts Index names are given in parentheses.

TABLE I

|  |  |
|--|--|
| <b>Acetic anhydride</b><br>Anhydride acétique<br>Anhídrido acético   | <b>(acetic oxide)</b><br>HS code: 2915.24 CAS number: 108-24-7   |
| <b>N-Acetylanthranilic acid</b><br>Acide N-acétylanthranilique<br>Acido N-acetilantranflico                              | <b>(benzoic acid, 2-(acetylamino)-)</b><br>HS code: 2924.23 CAS number: 89-52-1  |
| <b>Ephedrine</b><br>Ephédrine<br>Efedrina  | <b>([R-(R*,S*)]-[1-(methylamino)ethyl]-benzenemethanol)</b><br>HS code: 2939.41 CAS number: 299-42-3                                 |
| <b>Ergometrine</b><br>Ergométrine<br>Ergometrina   | <b>(ergoline-8-carboxamide,9,10-didehydro-N-(2-hydroxy-1-methylethyl)-6-methyl-,[8B(S)])</b><br>HS code: 2939.61 CAS number: 60-79-7 |
| <b>Ergotamine</b><br>Ergotamine<br>Ergotamina  | <b>(ergotaman-3',6',18'-trione,12'-hydroxy-2'-methyl-5'- (phenylmethyl)-,(5□))</b><br>HS code: 2939.62 CAS number: 113-15-5          |
| <b>Isosafrole</b><br>Isosafrole<br>Isosafrol   | <b>(1,3-benzodioxole,5-(1-propenyl)-)</b><br>HS code: 2932.91 CAS number: 120-58-1   |
| <b>Lysergic acid</b><br>Acide lysergique<br>Acido lisérgico  | <b>((8B)-9,10-didehydro-6-methylergoline-8-carboxylic acid)</b><br>HS code: 2939.63 CAS number: 82-58-6                              |
| <b>3,4-Methylenedioxyphenyl-2-propanone</b><br>Méthylènedioxyphényl-3,4 propanone-2<br>3,4-Metilendioxifenil-2-propanona | <b>(2-propanone,1-[3,4(methylenedioxy)phenyl]-)</b><br>HS code: 2932.92 CAS number: 4676-39-5  |
| <b>Norephedrine</b><br>Norephédrine<br>Norefedrina   | <b>(R*,S*)-œ-(1-aminoethyl)benzenemethanol</b><br>HS code: 2939.49 CAS number: 14838-15-4  |
| <b>1-Phenyl-2-propanone</b><br>Phényl-1 propanone-2<br>1-Fenil-2-propanona   | <b>(1-phenyl-2-propanone)</b><br>HS code: 2914.31 CAS number: 103-79-7   |
| <b>Piperonal</b><br>Pipéronal<br>Piperonal   | <b>(1,3-benzodioxole-5-carboxaldehyde)</b><br>HS code: 2932.93 CAS number: 120-57-0  |
| <b>Potassium permanganate</b><br>Permanganate de potassium<br>Permanganato potásico                                      | <b>(permanganic acid (HMnO4), potassium salt)</b><br>HS code: 2841.61 CAS number: 7722-64-7  |
| <b>Pseudoephedrine</b><br>Pseudoéphédrine<br>Seudoefedrina   | <b>([S-(R*,R*)]-[1-(methylamino)ethyl]-benzenemethanol)</b><br>HS code: 2939.42 CAS number: 90-82-4                                  |
| <b>Safrole</b>   | <b>(1,3-benzodioxole,5-(2-propenyl)-)</b>  |



Safrole  
Safrol

HS code: 2932.94 CAS number: 94-59-7

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

**TABLE II**

|  |   |
|--|---|
| <b>Acetone</b><br>Acétone<br>Acetona   | <b>(2-propanone)</b><br>HS code: 2914.11 CAS number: 67-64-1          |
| <b>Anthranilic acid</b><br>Acide anthranilique<br>Acido antranílico              | <b>(2-aminobenzoic acid)</b><br>HS code: 2922.43 CAS number: 118-92-3 |
| <b>Ethyl ether</b><br>Ether éthylique<br>Eter etílico                            | <b>(1,1'-oxybis[ethane])</b><br>HS code: 2909.11 CAS number: 60-29-7  |
| <b>Hydrochloric acid<sup>1</sup></b><br>Acide chlorhydrique<br>Acido clorhídrico | <b>(hydrochloric acid)</b><br>HS code: 2806.10 CAS number: 7647-01-0  |
| <b>Methyl ethyl ketone</b><br>Méthyléthylcétone<br>Metiletilcetona               | <b>(2-butanone)</b><br>HS code: 2914.12 CAS number: 78-93-3           |
| <b>Phenylacetic acid</b><br>Acide phénylacétique<br>Acido fenilacético           | <b>(benzeneacetic acid)</b><br>HS code: 2916.34 CAS number: 103-82-2  |
| <b>Piperidine</b><br>Pipéridine<br>Piperidina                                    | <b>(piperidine)</b><br>HS code: 2933.32 CAS number: 110-89-4          |
| <b>Sulphuric acid<sup>1</sup></b><br>Acide sulfurique<br>Acido sulfúrico         | <b>(sulfuric acid)</b><br>HS code: 2807.00 CAS number: 7664-93-9      |
| <b>Toluene</b><br>Toluène<br>Tolueno   | <b>(benzene, methyl-)</b><br>HS code: 2902.30 CAS number: 108-88-3    |

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

<sup>1</sup> The salts of hydrochloric acid and sulphuric acid are specifically excluded from Table II.”

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### SCHEDULE 3

(Section 16)

#### ENFORCEMENT POWERS IN RESPECT OF SHIPS

##### Preliminary

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

- (a) a police officer;
- (b) an officer of the Customs and Excise Department;
- (c) a captain of the Royal Navy or any person acting under the command of such captain; and
- (d) any other person of a description specified in an order made for the purposes of this schedule by the Governor.

*(Amended by Act 8 of 1992)*

(2) The power to make an order under subparagraph (1)(d) shall be exercisable by Order subject to annulment by a Secretary of State in pursuance of a resolution of the Legislative Assembly. *(Amended by Act 9 of 2011)*

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

##### Power to stop, board, divert and detain

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

(2) Where an enforcement officer is exercising his powers with the authority of the Governor given under section 16(2) of this Act the officer may require the ship to be taken to a port in the Convention state in question or, if that state has so requested, in any other country or territory willing to receive it.

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

(4) If an enforcement officer detains a vessel he shall serve on the master a notice in writing stating that it is to be detained until the notice is withdrawn by the service on him of a further notice in writing signed by an enforcement officer.

**Power to search and obtain information**

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

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

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

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

**Powers in respect of suspected offence**

(4) If an enforcement officer has reasonable grounds to suspect that an offence mentioned in section 14 or 15 of this Act has been committed on a ship to which that section applies he may—

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

**Assistants**

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

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

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

**Use of reasonable force**

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

**Evidence of authority**

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

**Protection of officers**

8. An enforcement officer shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under this Schedule if

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the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

## Offences

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

(2) The term “**enforcement officer**” or “**officer**” shall for the limited purposes of paragraph 9(1) only be understood to include an officer or an enforcement vessel of a Convention State acting in furtherance of an agreement made under section 17(1) of the Act.

(3) A person guilty of an offence under this paragraph is liable on summary conviction to a fine of \$5,000.

*(Amended by Act 13 of 1999)*

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

*(S.R.O.s 40/1992 and 85/1995)*

**Commencement**

*[2 June 1992]*

**Short title**

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

**Interpretation**

2. (1) In this Order—

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

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

“**appropriate authority of a designated country**” means—

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

“**designated country**” means a country or territory designated under paragraph 4;

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

- (a) an offence under section 6(2), 6(3), 7(2), or 7(3) of the Drugs (Prevention of Misuse) Act;
- (b) an offence in any other Act in connection with a prohibition or restriction on importation or exportation having effect by virtue of the Drugs (Prevention of Misuse) Act;
- (c) an offence under section 17 of the Drugs (Prevention of Misuse) Act;
- (d) conspiracy to commit any of the offences in paragraphs (a) to (c);
- (e) an offence of attempting to commit any of those offences;
- (f) an offence under section 12 or 15 of the Criminal Justice (International Co-operation) Act;
- (g) an offence under section 20 of the Drugs (Prevention of Misuse) Act of attempting to commit an offence;
- (h) aiding, abetting, counselling or procuring the commission of any of those offences;
- (i) an offence of inciting another to commit any of those offences;

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“**police officer**” includes any officer of the Customs and Excise Department;

“**Principal Order**” means the Criminal Justice (International Co-operation) Act (Enforcement of Overseas Forfeiture) Order; (*Inserted by S.R.O. 85/1995*)

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

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

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

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

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

- (a) under the law of the designated country concerned one of the steps specified in relation to that country in the right-hand column of Schedule 1 has been taken there in respect of an alleged drug trafficking offence; or
- (b) where no steps have been specified in relation thereto as mentioned in subparagraph (a), the defendant has been notified in writing in accordance with the laws of the designated country that the competent authorities of that country have begun proceedings against him in respect of an offence; or
- (c) an application has been made to a court in a designated country for an external forfeiture order,

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

(*Amended by S.R.O. 85/1995*)

(6) Proceedings are concluded—

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

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

### **External forfeiture orders**

3. (1) An order made by a court in a designated country for the forfeiture and destruction or forfeiture and other disposal, of anything in respect of which a drug trafficking offence has been committed or which was used or intended for use in

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connection with the commission of such an offence is referred to in this Order as an “**external forfeiture order**”.

*(Amended by S.R.O. 85/1995)*

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

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

### **Designation of countries and territories**

4. The Country specified in Schedule 2 is hereby designated for the purpose of section 10 of the Act.

### **Restraint orders**

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

(2) A restraint order may be made where—

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

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

- (a) it appears to the High Court that proceedings are to be instituted against the defendant in a designated country; and
- (b) it appears to the court that there are reasonable grounds for believing that an external forfeiture order may be made in them.

(4) Where the court has made an order under paragraph (1) by virtue of paragraph (3), the court shall discharge the order if the proposed proceedings are not instituted within such time as the court considers reasonable.

(5) A restraint order—

- (a) may be made only on an application by or on behalf of the government of a designated country or, in a case where an external forfeiture order has been registered under paragraph 10, by the Attorney General or a person authorised in that behalf by the Comptroller of Customs and Excise;

- (b) may be made on an *ex parte* application to a judge in chambers; and
- (c) notwithstanding anything in the Rules of the Supreme Court may provide for service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct.

(6) A restraint order—

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged when the proceedings in relation to which the order was made are concluded.

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

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

- (a) to take possession of any property specified in the restraint order; and
- (b) in accordance with the court's directions, to manage or otherwise deal with any property in respect of which he is appointed,

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

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

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

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

### **Application for restraint orders**

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

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

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



**Disposal of forfeited property**

7. (1) Where an external forfeiture order has been registered in the High Court under paragraph 10, the High Court may, on the application of the Attorney General or a person authorised in that behalf by the Comptroller of Customs and Excise, order the forfeiture of the property specified in the external forfeiture order.

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

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

**Exercise of powers by High Court or Receiver**

8. (1) This Paragraph applies to the powers conferred on the High Court by paragraphs 5 and 7 or on a receiver appointed under paragraph 5.

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

**Receivers: supplementary provisions**

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

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

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

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

**Registration of external forfeiture orders**

10. (1) On an application made by or on behalf of the Government of a designated country, the High Court may register an external forfeiture order made there if—

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

(c) it is of the opinion that enforcing the order in Montserrat would not be contrary to the interest of Justice.

(2) In subparagraph (1) “**appeal**” includes—

(a) any proceedings by way of discharging or setting aside a judgment; and

(b) an application for a new trial or a stay of execution.

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

### **Proof of orders and judgment of court in a designated country**

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

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

(b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court in a designated country shall be deemed without further proof to be a true copy.

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

### **Evidence in relation to proceedings and orders in a designated country**

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

(a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, there;

(b) in a case to which paragraph 2(5)(b) applies, that the defendant has been notified as specified in that subparagraph;

(c) that an external forfeiture order is in force and is not subject to appeal;

(d) that property recoverable in the designated country under an external forfeiture order remains unrecovered there;

(e) that any person has been notified of any proceedings in accordance with the law of the designated country; or

(f) that an order (however described) made by a court of the designated country is for the forfeiture and destruction or the forfeiture and other disposal of anything in respect of which a drug trafficking offence has

been committed or which was used or intended for use in connection with the commission of such an offence,

shall, in any proceedings in the High Court, be admissible as evidence of the facts so stated.

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

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

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

*(Amended by S.R.O. 85/1995)*

### **Certificate of appropriate authority**

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

### **Representation of Government of a designated country**

14. A request for assistance sent to the Governor by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for the Crown Prosecution Service or the Commissioners of Customs and Excise to act on their behalf in any proceedings in the High Court under paragraph 10 or any other provision of this Order.

**SCHEDULE 1***(S.R.O. 85/1995)**(Paragraph 2(5))***INSTITUTION OF PROCEEDINGS**

| <i>Designated Country</i> | <i>Point at which proceedings are instituted</i>  |
|---------------------------|---|
| Afghanistan               |   |
| Algeria                   |   |
| Anguilla                  | (a) when a summons or warrant is issued in respect of an offence;<br>(b) when a person is charged with an offence after being taken into custody without a warrant;<br>(c) when a bill of indictment is preferred.          |
| Antigua and Barbuda       |   |
| Argentina                 | when a judge has ordered that a person be detained for the purpose of testifying in connection with the commission of an offence.   |
| Armenia                   |   |
| Australia                 | (a) when an information has been laid before a justice of the peace;<br>(b) when a person is charged with an offence after having been taken into custody without a warrant;<br>(c) when a bill of indictment is preferred. |
| Azerbaijan                |   |
| the Bahamas               | (a) when an information has been laid before a justice of the peace;<br>(b) when a person is charged with an offence after having been taken into custody without a warrant;<br>(c) when a bill of indictment is preferred. |
| Bahrain                   | when a bill of indictment is lodged in court against any person for an offence.   |
| Bangladesh                |   |
| Barbados                  | (a) when an information has been laid before a magistrate;<br>(b) when a person is charged with an offence;<br>(c) when a bill of indictment is preferred.  |
| Belarus                   |   |
| Bermuda                   | when an information is laid charging a person with an offence.  |

|                        |  |
|------------------------|--|
| Bhutan                 |  |
| Bolivia                |  |
| Bosnia and Herzegovina |  |
| Brazil                 |  |
| British Virgin Islands | (a) when a summons or warrant is issued in respect of an offence;<br>(b) when a person is charged with an offence after being taken into custody without a warrant;<br>(c) when an indictment is preferred.  |
| Brunei Darussalam      |  |
| Bulgaria               |  |
| Burkina Faso           |  |
| Burundi                |  |
| Cameroon               |  |
| Canada                 |  |
| Cape Verde             |  |
| Cayman Islands         | (a) when a charge has been signed under subsection (3) or (4) of section 13 of the Criminal Procedure Code in respect of the offence; or<br>(b) when a person is charged with the offence after being arrested without warrant under subsection (5) of that section. |
| Chad                   |  |
| Chile                  |  |
| Colombia               |  |
| China                  |  |
| Costa Rica             |  |
| Cote d'Ivoire          |  |
| Croatia                |  |
| Cyprus                 |  |
| the Czech Republic     |  |
| Denmark                |  |
| Dominica               |  |
| Dominican Republic     |  |
| Ecuador                | when a writ is issued by a judge initiating criminal proceedings.  |
| Egypt                  |  |

El Salvador

Ethiopia

England and Wales

- (a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 in respect of the offence;
- (b) when a person is charged with the offence after being taken into custody without a warrant;
- (c) when a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section.

Fiji

Finland

France

Germany

when a person is notified that he is accused of an offence and will be brought before a court.

Ghana, Gibraltar

when a person is charged with an offence, whether by the laying of an information or otherwise.

Greece

Grenada

Guatemala

Guernsey

when a person is charged with an offence.

Guinea

Guyana

when a charge has been laid against a person for an offence.

Honduras

Hong Kong

- (a) when a Magistrate issues a warrant or summons;
- (b) when a person is charged with an offence;
- (c) when an indictment is preferred.

Hungary

India

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

- (c) when a person is charged with an offence;
- (d) when any investigation or inquiry into the commission of any offence is directed by a court of law.
- Iran, Islamic Republic of
- Isle of Man
- (a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in relation to the offence is made to him;
- (b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him;
- (c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody;
- (d) where an information is preferred by the Attorney General in a case where there have been no committal proceedings, when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917.
- Italy
- (a) when a person is notified in accordance with Article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in progress;
- (b) when a proposal for the application of a preventative measure (“**misurdi prevenzione**”) is laid before a court.
- Ivory Coast
- Japan
- Jersey
- (a) when the Bailiff issues a warrant in respect of an offence for the arrest of a person who is out of the island;
- (b) when a person is arrested and charged with an offence;
- (c) when a summons in respect of an offence is served on a person at the instance of the Attorney General;
- (d) when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the Police Court (Miscellaneous Provisions) (Jersey) Law, 1949.

Jordan

Kenya

Kyrgyzstan

Latvia

Lesotho

Luxembourg

Macedonia

Madagascar

Malaysia

when a person is charged with an offence.

Mauritania

Mexico

Moldova

Monaco

Morocco

Myanmar

Nepal

Netherlands

- (a) when a pre-trial financial investigation has been initiated;
- (b) when the provisional measure has been ordered by an investigating magistrate;
- (c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted.

Nicaragua

Niger

Nigeria

Norway

Oman

Pakistan

Panama

when a person has been charged with an offence.

Paraguay

Peru

Poland

Portugal

Qatar



|                                |   |
|--------------------------------|---|
| Romania                        |   |
| Russian Federation             |   |
| St. Kitts and Nevis            |   |
| St. Lucia                      |   |
| St. Vincent and the Grenadines |   |
| Saudi Arabia                   | when an information has been laid before a judicial authority.  |
| Scotland and Northern Ireland  | when information has been laid before Justice of the Peace or a person has been charged with an offence, or a bill of indictment has been preferred, or a petition warrant has been granted.  |
| Senegal                        |   |
| Seychelles                     |   |
| Sierra Leone                   |   |
| Slovakia                       |   |
| Slovenia                       |   |
| South Africa                   | (a) when a summons is issued in respect of an offence;<br>(b) when a person is charged with an offence;<br>(c) when a bill of indictment is preferred.  |
| Spain                          | when by virtue of a judicial resolution it is decided to proceed against a person for an offence.   |
| Sri Lanka                      |   |
| Sudan                          |   |
| Suriname                       |   |
| Sweden                         | when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion. |
| Syrian Arab Republic           |   |
| Switzerland                    | when proceedings for an offence are brought before an examining magistrate.   |
| Togo                           |   |
| Trinidad and Tobago            |   |
| Tunisia                        |   |
| Turks and Caicos Islands       |   |

Uganda

Ukraine

Union of Soviet Socialist  
Republics (including the  
Byelorussian Soviet Socialist  
Republic)

United Arab Emirates

United Mexican States           when criminal proceedings are instituted by a  
judicial authority.

United States of America       when an indictment, information or complaint has  
been filed against a person in respect of an offence.

Uruguay

Uzbekistan

Venezuela

Yugoslavia  
(Serbia and Montenegro  
Federal Republic of)

Zambia

Zimbabwe                       when criminal proceedings are instituted by a  
judicial authority.

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**SCHEDULE 2**

(S.R.O. 85/1995)

**DESIGNATED COUNTRIES – DRUG TRAFFICKING OFFENCES**

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| <i>Designated Country</i> | <i>Appropriate Authority</i>                                     |
|---------------------------|--|
| Afghanistan               |  |
| Algeria                   |  |
| Anguilla                  | the Attorney General of Anguilla                                 |
| Antigua and Barbuda       |  |
| Argentina                 | the Ministry of Foreign Affairs                                  |
| Armenia                   |  |
| Australia                 | the Attorney General's Department                                |
| Azerbaijan                |  |
| the Bahamas               | the Attorney General of the Bahamas                              |
| Bahrain                   | the Ministry of Interior   |
| Bangladesh                |  |
| Barbados                  | the Attorney General   |
| Belarus                   |  |
| Bermuda                   | the Attorney General of Bermuda                                  |
| Bhutan                    |  |
| Bolivia                   |  |
| Bosnia and Herzegovina    |  |
| Brazil                    |  |
| British Virgin Islands    | the Attorney General of the British Virgin Islands               |
| Brunei Darussalam         |  |
| Bulgaria                  |  |
| Burkina Faso              |  |
| Burundi                   |  |
| Cameroon                  |  |
| Canada                    | the Minister of Justice or officials designated by that Minister |
| Cape Verde                |  |
| Cayman Islands            | the Attorney General of the Cayman Islands                       |
| Chad                      |  |
| Chile                     |  |
| China                     |  |
| Colombia                  | the Fiscalia General de la Nacion                                |
| Costa Rica                |  |
| Cote d'Ivoire             |  |
| Croatia                   |  |
| Cyprus                    |  |
| the Czech Republic        |  |

Denmark  
Dominica  
Dominican Republic

Ecuador  
Egypt  
El Salvador  
Ethiopia  
England, Wales  
Scotland  
Northern Ireland

The United Kingdom Central Authority (for Mutual  
Legal Assistance in Criminal Matters) C7  
Division, Home Office, 50 Queen Anne's Gate,  
London SW1H 9A1.

Fiji  
Finland  
France

Germany  
Ghana  
Gibraltar  
Greece  
Grenada  
Guatemala  
Guernsey

the Attorney General of Gibraltar

Her Majesty's Attorney General for the Bailiwick of  
Guernsey

Guinea  
Guyana

the Permanent Secretary, Ministry of Home Affairs

Honduras  
Hong Kong  
Hungary

the Attorney General of Hong Kong

India  
Iran, Islamic Republic of  
Isle of Man  
Italy  
Ivory Coast

the Ministry of Home Affairs

Her Majesty's Attorney General for the Isle of Man  
the Ministry of Justice

Japan  
Jersey

Her Majesty's Attorney General for the Bailiwick of  
Jersey

Jordan

Kenya  
Kyrgyzstan

Latvia  
Lesotho

|                                |  |
|--------------------------------|--|
| Luxembourg                     |  |
| Macedonia                      |  |
| Madagascar                     |  |
| Malaysia                       | the Inspector General of Police, Malaysia                            |
| Mauritania                     |  |
| Mexico                         |  |
| Moldova                        |  |
| Monaco                         |  |
| Morroco                        |  |
| Myanmar                        |  |
| Nepal                          |  |
| Netherlands                    | Afdeling Internationale Rechtshulp                                   |
| Nicaragua                      |  |
| Niger                          |  |
| Nigeria                        | the Attorney General of the Federation of the<br>Republic of Nigeria |
| Norway                         |  |
| Oman                           |  |
| Pakistan                       |  |
| Panama                         | The Ministry of Government and Justice                               |
| Paraguay                       |  |
| Peru                           |  |
| Poland                         |  |
| Portugal                       |  |
| Qatar                          |  |
| Romania                        |  |
| Russian Federation             |  |
| St. Kitts and Nevis            |  |
| St. Lucia                      |  |
| St. Vincent and the Grenadines |  |
| Saudi Arabia                   | the Ministry of the Interior   |
| Senegal                        |  |
| Seychelles                     |  |
| Sierra Leone                   |  |
| Slovakia                       |  |
| Slovenia                       |  |
| South Africa                   | The Department of Foreign Affairs                                    |
| Spain                          | the Ministerio de Justicia, Madrid                                   |
| Sri Lanka                      |  |
| Sudan                          |  |
| Suriname                       |  |

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|   |   |
|---|---|
| Sweden  | the Ministry for Foreign Affairs                        |
| Syrian Arab Republic  |   |
| Switzerland   | Office federal de la police                             |
| Togo  |   |
| Trinidad and Tobago   |   |
| Tunisia   |   |
| Turks and Caicos Islands  |   |
| Uganda  |   |
| Ukraine   |   |
| Union of Soviet Socialist<br>Republics (including the<br>Byelorussian Soviet Socialist<br>Republic) |   |
| United Arab Emirates  |   |
| United Mexican States   | the Office of the Attorney General                      |
| United States of America  | The Attorney General of the United States of<br>America |
| Uruguay   | The Ministry of Education and Culture                   |
| Uzbekistan  |   |
| Venezuela   |   |
| Yugoslavia (Serbia and<br>Montenegro), Federal<br>Republic of                                       |   |
| Zambia  |   |
| Zimbabwe  |   |

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**CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) ACT 1990  
(ENFORCEMENT OF OVERSEAS FORFEITURE ORDERS) ORDER 1991  
(U.K.)**

*S.I. 1991 No. 1463 (U.K.)*

*Made.....26th June 1991*

*Coming into force.....1st July 1991*

At the Court at Buckingham Palace, the 26th day of June 1991

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 9 of the Criminal Justice (International Co-operation) Act 1990(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

**Title, commencement and extent**

1. (1) This Order may be cited as the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 1991 and shall come into force on 1st July 1991.

(2) This Order extends to England and Wales only.

**Interpretation**

2. (1) In this Order—

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

“appropriate authority of a designated country” means—

(a) the authority specified opposite that country in Schedule 2 to this Order, or

(b) where no authority is so specified, the authority appearing to the court to be the appropriate authority for the purposes of this Order;

“constable” includes a person commissioned by the Commissioners of Customs and Excise;

“designated country” means a country or territory designated under Article 4 of this Order;

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

- (a) an offence under section 4(2) or (3) or 5(3) of the Misuse of Drugs Act 1971 (production, supply and possession for supply of controlled drugs);
- (b) an offence under section 20 of that Act (assisting in or inducing commission outside United Kingdom of an offence punishable under a corresponding law);
- (c) an offence under—
  - (i) section 50(2) or (3) of the Customs and Excise Management Act 1979 (improper importation);
  - (ii) section 68(2) of that Act (exportation); or
  - (iii) section 170 of that Act (fraudulent evasion), in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 3 of the Misuse of Drugs Act 1971;
- (d) an offence under section 24 of the Drug Trafficking Offences Act 1986;
- (e) an offence under section 12, 14 or 19 of the 1990 Act;
- (f) an offence under section 1 of the Criminal Law Act 1977 of conspiracy to commit any of the offences in paragraphs (a) to (e) above;
- (g) an offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit any of those offences;
- (h) an offence of inciting another to commit any of those offences, whether under section 19 of the Misuse of Drugs Act 1971 or at common law; and
- (i) aiding, abetting, counselling or procuring the commission of any of those offences;

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

**“the 1990 Act”** means the Criminal Justice (International Co-operation) Act 1990.

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

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

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

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

- (a) under the law of the designated country concerned one of the steps specified in relation to that country in the right-hand column of



Schedule 1 to this Order has been taken there in respect of an alleged drug trafficking offence; or

- (b) an application has been made to a court in a designated country for an external forfeiture order, and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.
- (6) Proceedings are concluded—
- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a forfeiture order being made in the proceedings;
  - (b) on the satisfaction of a forfeiture order made in the proceedings (whether by the recovery of all property liable to be recovered, or otherwise).

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

### **External forfeiture orders**

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

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

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

### **Designation of countries and territories**

4. Each of the countries and territories specified in Schedule 2 to this Order is hereby designated for the purposes of section 9 of the 1990 Act.

### **Restraint orders**

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

(2) A restraint order may be made where—

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

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

- (a) it appears to the High Court that proceedings are to be instituted against the defendant in a designated country; and
- (b) it appears to the court that there are reasonable grounds for believing that an external forfeiture order may be made in them.

(4) Where the court has made an order under paragraph (1) above by virtue of paragraph (3) above, the court shall discharge the order if the proposed proceedings are not instituted within such time as the court considers reasonable.

(5) A restraint order—

- (a) may be made only on an application by or on behalf of the government of a designated country or, in a case where an external forfeiture order has been registered under Article 10 of this Order, by a Crown Prosecutor or a person authorised in that behalf by the Commissioners of Customs and Excise,
- (b) may be made on an *ex parte* application to a judge in chambers, and
- (c) notwithstanding anything in Order 11 of the Rules of the Supreme Court may provide for service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct.

(6) A restraint order—

- (a) may be discharged or varied in relation to any property, and
- (b) shall be discharged when the proceedings in relation to which the order was made are concluded.

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

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

- (a) to take possession of any property specified in the restraint order, and
- (b) in accordance with the court's directions, to manage or otherwise deal with any property in respect of which he is appointed,

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

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

(10) Where a restraint order has been made, a constable may for the purpose of preventing any property specified in the restraint order being removed from England and Wales seize the property.

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

### **Applications for restraint orders**

6. An application under Article 5(5) of this Order shall be supported by an affidavit which shall—

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

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

### **Disposal of forfeited property**

7. (1) Where an external forfeiture order has been registered in the High Court under Article 10 of this Order, the High Court may, on the application of a Crown Prosecutor or a person authorised in that behalf by the Commissioners of Customs and Excise, order the forfeiture of the property specified in the external forfeiture order.

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

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

### **Exercise of powers by high court or receiver**

8. (1) This Article applies to the powers conferred on the High Court by Articles 5 and 7 above or on a receiver appointed under Article 5 of this Order.

(2) The powers shall be exercised with a view to recovering property which is liable to be recovered under an external forfeiture order registered in the High Court under Article 10 of this Order or, as the case may be, with a view to recovering

property which may become liable to be recovered under any external forfeiture order which may be made in the defendant's case.

### **Receivers: supplementary provisions**

**9. (1)** Where a receiver appointed under Article 5 of this Order takes any action—

- (a) in relation to property which is not liable to recovery under an external forfeiture order, being action which he would be entitled to take if it were such property,
- (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

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

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

### **Registration of external forfeiture orders**

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

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

**(2)** In paragraph (1) above “**appeal**” includes—

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

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

### **Proof of orders and judgment of court in a designated country**

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

- (a) any order made or judgment given by a court in a designated country purporting to bear the seal of that court, or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be

deemed without further proof to have been duly sealed or as the case may be, to have been signed by that person; and

- (b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court in a designated country shall be deemed without further proof to be a true copy.

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

### **Evidence in relation to proceedings and orders in a designated country**

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

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

shall, in any proceedings in the High Court, be admissible as evidence of the facts so stated.

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

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

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

**Certificate of appropriate authority**

13. Where in relation to any designated country no authority is specified in Schedule 2 to this Order, a certificate made by the Secretary of State to the effect that the authority specified therein is the appropriate authority for the purposes of this Order shall be sufficient evidence of that fact.

**Representation of government of a designated country**

14. A request for assistance sent to the Secretary of State by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for the Crown Prosecution Service or the Commissioners of Customs and Excise to act on its behalf in any proceedings in the High Court under Article 10 or any other provision of this Order.

*G. I. de Deney*  
*Clerk of the Privy Council*

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**SCHEDULE 1**

(Article 2(5))

**INSTITUTION OF PROCEEDINGS**

| <i>Designated Country</i> | <i>Point at which proceedings are instituted</i>  |
|---------------------------|---|
| Anguilla                  | (a) when a summons or warrant is issued in respect of an offence;<br>(b) when a person is charged with an offence after being taken into custody without a warrant;<br>(c) when a bill of indictment is preferred.          |
| Australia                 | (a) when an information has been laid before a justice of the peace;<br>(b) when a person is charged with an offence after having been taken into custody without a warrant;<br>(c) when a bill of indictment is preferred. |
| the Bahamas               | (a) when an information has been laid before a justice of the peace;<br>(b) when a person is charged with an offence after having been taken into custody without a warrant;<br>(c) when a bill of indictment is preferred. |
| Bahrain                   | when a bill of indictment is lodged in court against any person for an offence.   |
| Barbados                  | (a) when an information has been laid before a magistrate;<br>(b) when a person is charged with an offence;<br>(c) when a bill of indictment is preferred.  |
| Bermuda                   | when an information is laid charging a person with an offence.  |
| the Cayman Islands        | (a) when a charge has been signed under subsection (3) or (4) of section 13 of the Criminal Procedure Code in respect of the offence; or  |

- (b) when a person is charged with the offence after being arrested without a warrant under subsection (5) of that section.
- Gibraltar when a person is charged with an offence, whether by the laying of an information or otherwise.
- Guernsey when a person is charged with an offence.
- Hong Kong
- (a) when a magistrate issues a warrant or summons;
  - (b) when a person is charged with an offence;
  - (c) when an indictment is preferred.
- Isle of Man
- (a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in relation to the offence is made to him;
  - (b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him;
  - (c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody;
  - (d) where an information is preferred by the Attorney General in a case where there have been no committal proceedings, when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917.
- Italy
- (a) when a person is notified, in accordance with Article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in progress;
  - (b) when a proposal for the application of a preventative measure (“*misura di prevenzione*”) is laid before a court.
- Jersey
- (a) when the Bailiff issues a warrant in respect of an offence for the arrest of a person who is out of the island;



- (b) when a person is arrested and charged with an offence;
  - (c) when a summons in respect of an offence is served on a person at the instance of the Attorney General;
  - (d) when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the Police Court (Miscellaneous Provisions) (Jersey) Law, 1949.
- Malaysia when a person is charged with an offence.
- Montserrat
- (a) when a judge issues a summons or warrant in respect of an offence;
  - (b) when a person is charged with an offence after being taken into custody without a warrant.
- Saudi Arabia when an information has been laid before a judicial authority.
- Spain when by virtue of a judicial resolution it is decided to proceed against a person for an offence.
- Sweden when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion.
- Switzerland when proceedings for an offence are brought before an examining magistrate.
- United Mexican States when criminal proceedings are instituted by a judicial authority.
- United States of America when an indictment, information or complaint has been filed against a person in respect of an offence.
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**SCHEDULE 2***(Article 4)*

| <i>Designated Country</i> | <i>Appropriate Authority</i>                                     |
|---------------------------|--|
| Anguilla                  | the Attorney General of Anguilla                                 |
| Australia                 | the Attorney General's Department                                |
| the Bahamas               | the Attorney General of the Bahamas                              |
| Bahrain                   | the Ministry of the Interior                                     |
| Bangladesh                |  |
| Barbados                  | the Attorney General   |
| Bermuda                   | the Attorney General of Bermuda                                  |
| Bhutan                    |  |
| Bolivia                   |  |
| Canada                    | the Minister of Justice or officials designated by that Minister |
| the Cayman Islands        | the Attorney General of the Cayman Islands                       |
| Chile                     |  |
| China                     |  |
| Costa Rica                |  |
| Cyprus                    |  |
| Ecuador                   |  |
| Egypt                     |  |
| France                    |  |
| Ghana                     |  |
| Gibraltar                 | the Attorney General of Gibraltar                                |
| Grenada                   |  |
| Guatemala                 |  |
| Guernsey                  | Her Majesty's Attorney General for the Bailiwick of Guernsey     |
| Guinea                    |  |
| Hong Kong                 | the Attorney General of Hong Kong                                |
| India                     | the Ministry of Home Affairs                                     |
| Isle of Man               | Her Majesty's Attorney General for the Isle of Man               |
| Italy                     | the Ministry of Justice  |
| Jersey                    | Her Majesty's Attorney General for the Bailiwick of Jersey       |
| Jordan                    |  |
| Madagascar                |  |

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|---|--|
| Malaysia  | the Inspector General of Police, Malaysia                            |
| Montserrat  | the Attorney General of Montserrat                                   |
| Nicaragua   |  |
| Nigeria   | the Attorney General of the Federation of the<br>Republic of Nigeria |
| Oman  |  |
| Paraguay  |  |
| Qatar   |  |
| Saudi Arabia  | the Ministry of the Interior   |
| Senegal   |  |
| Spain   | the Ministerio de Justicia, Madrid                                   |
| Sweden  | the Ministry for Foreign Affairs                                     |
| Switzerland   | the Eidgenossisches Justiz und Polizeidepartement                    |
| Togo  |  |
| Tunisia   |  |
| Uganda  |  |
| Union of Soviet Socialist<br>Republics (including<br>the Byelorussian Soviet<br>Socialist Republic) |  |
| United Arab Emirates  |  |
| United Mexican States   | the Office of the Attorney General                                   |
| United States of America  | the Attorney General of the United States of America                 |
| Yugoslavia  |  |

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