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GRENADA

ACT NO. 6 OF 2012



I assent,

24th January, 2012.

CARLYLE ARNOLD GLEAN

Governor-General.

AN ACT to make provision with respect to the Proceeds of Crime and other related matters.

[27th January, 2012].

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives and by the authority of the same as follows—

PART I

PRELIMINARY

1. This Act may be cited as the

Short title.

PROCEEDS OF CRIME ACT, 2012.

2.—(1) In this Act unless the context otherwise requires, ^{Interpretation.}

“chargeable asset” means any of the following—

- (a) any land in Grenada;
- (b) any relevant securities;
- (c) any motor vehicle;
- (d) any vessel;
- (e) any aircraft;
- (f) any other type of asset which the Minister may prescribe for the purposes of this Act;

“charging order” means an order made under section 22, imposing on such realisable property as may be specified in the order, a charge for securing the payment of money to the revenue of the State;

“confiscation order” means an order made by a court under section 6, 7 or 9 (including such an order made by virtue of section 12);

“court” means the High Court or the Magistrate’s Court;

“criminal conduct” means:

- (a) drug trafficking, or
- (b) any relevant offence;

“defendant” means a person against whom proceedings have been instituted for an offence to which this Act applies, whether or not he has been convicted; and, for the purposes of a confiscation order, includes a person against whom pro-

ceedings have been instituted for an offence under the Drug Abuse (Prevention and Control) Act, 1992;

“drug trafficking offence” means an offence—

- (a) defined under section 18 of the Drug Abuse (Prevention and Control) Act, 1992 (importation, exportation, production and or supply of a trafficable quantity of a controlled drug, possession with intent to supply, or handling of controlled drugs and cultivation of cannabis);
- (b) under section 32 of the Drug Abuse (Prevention and Control) Act, 1992 (assisting in or inducing outside Grenada, commission of an offence punishable under a corresponding law); or
- (c) under section 34, 35, 36 or 37 of this Act, (money laundering) which relates to the proceeds of drug trafficking;

or an offence under the Criminal Code Cap. 1 Vol.1 of the 1994 Continuous Revised Laws of Grenada, constituting an attempt, incitement, conspiracy etc. deriving from such an offence;

“drug trafficking” means doing or being concerned in, whether in Grenada or elsewhere, any act constituting—

- (a) a drug trafficking offence;

- (b) an offence punishable under a corresponding law, and includes entering into or being otherwise concerned in, whether in Grenada or elsewhere, a drug trafficking arrangement;

“drug trafficking arrangement” means an arrangement whereby—

- (a) the retention or control by or on behalf of another person, of that person’s proceeds of drug trafficking is facilitated; or
- (b) the proceeds of drug trafficking by another person, are used to secure funds that are placed at that other person’s disposal, or are used for that other person’s benefit, to acquire property by way of investment;

“FATF” means the Financial Action Task Force on money laundering;

“financial institution” means a public or private institution that collects funds from the public or other institutions, and invests the funds in financial assets, or engages in risk transfers, and includes :

- (a) a bank licensed under the Banking Act 2005;
- (b) an institution regulated under the Grenada Authority for the Regulation of Financial Institutions Act 2008; or

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- (c) a person licensed under the Securities Act 2001;

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

“law enforcement officer” includes a customs officer, a police officer, director, deputy director and officers of the Unit, who may arrest without warrant, any person whom he reasonably believes has committed an offence under this Act;

“material”, includes any book, document or other record in any form whatsoever, and any container or article relating thereto;

“Minister”, means Minister for Finance;

“money laundering”, means doing any act:

- (a) which constitutes an offence under section 34, 35, 36 and 37; or
- (b) which would constitute such an offence if done in Grenada,

and for these purposes, having possession of any property, shall be taken to be doing an act in relation to it;

“politically exposed person” means a person who formerly or currently is or has been entrusted with a prominent public function in the executive, legislative, administrative or judicial branch of government, or an immediate family member or close associate of such person;

“premises”, includes any place and, in particular, includes

- (a) any vehicle, vessel, aircraft, or structure within the territorial waters of Grenada; and
- (b) any tent or other movable structure;

“proceeds of criminal conduct”, in relation to any person who has benefitted from criminal conduct, means the benefit from that criminal conduct;

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

“Registrar” means the Registrar of the High Court;

“relevant offence” means—

- (a) any indictable offence, or offence triable both summarily or on indictment in Grenada, from which a person has benefitted, as defined in sections 6(9) and (10) of this Act, other than a drug trafficking offence;
- (b) any act or omission which, had it occurred in Grenada, would have constituted an offence as defined in subsection (a);
- (c) any offence falling within the “designated category of offences”, outlined under the FATF Recommendations and contained in the Schedule; and

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- (d) an offence under the Terrorism Act;

“relevant securities” means any of the following—

- (a) securities of the government or of any public authority;
- (b) stock of anybody incorporated in Grenada;
- (c) stock of anybody incorporated outside Grenada or of any country or territory outside Grenada, being stock registered in a register kept at any place within Grenada;
- (d) options in relation to stock described in sub-paragraphs (ii) or (iii);
- (e) units of any trust in respect of which a register of the unit holders is kept at any place in Grenada;

“restraint order” means an order made by the High Court under section 21;

“Anti-Money Laundering and Combating Terrorism Financing Commission”, means the Anti-Money Laundering and Combating Terrorism Financing Commission established under section 63 of this Act;

“Unit” means the Financial Intelligence Unit established under the Financial Intelligence Unit Act;

(2) Where in this Act provision is made—

- (a) for a report or a disclosure to be made to an enforcement officer or the Anti-

Money Laundering and Combating Terrorism Financing Commission, the requirement shall be considered to be complied with, if it is made to or by the Unit; or

- (b) conferring power on an enforcement officer, that power may be exercised by or on the authority of the Unit;

(3) The expressions listed in the left-hand column below, fall to be construed in accordance with the provisions of this Act, listed in the right-hand column in relation to those expressions—

Expressions	Relevant provision
Benefitted from an offence	Section 6(6)
Dealing with property	Section 21(11)
Gift caught by this Act	Section 4(1)
Making a gift	Section 4(3)
Value of gift	Section 3(8)
Value of property	Section 3(5)

(4) Nothing in this Act confers any power on any court in connection with offences committed before the coming into force of this Act, or proceedings against a person for an offence instituted before the coming into force of this Act.

(5) References in this Act to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offence, include a reference to property obtained, or to a pecuniary advantage derived, both in that connection and in some other connection.

(6) For the purposes of this Act—

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

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- (b) references to property held by a person, include a reference to property vested in his trustee in bankruptcy or liquidator;
 - (c) references to an interest held by a person beneficially in property, include a reference to an interest which would be held by him beneficially if the property were not so vested;
 - (d) references to an offence to which this Act applies, are references to all indictable offences, other than drug trafficking offences, save for the purposes of the making of a confiscation order;
 - (e) property is transferred by one person to another, if the first person transfers or grants to the other, an interest in the property;
 - (f) proceedings for an offence are instituted—
 - (i) when a summons or warrant is issued in respect of the offence;
 - (ii) when a person is charged with the offence after being taken into custody without a warrant;
 - (iii) when an indictment is preferred,

and where the application of this 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;

- (g) proceedings for an offence, are subject to subsection (7) as concluded—
 - (i) when the defendant is acquitted on all counts or, as the case may be, every charge against him is dismissed;
 - (ii) if convicted on one or more counts, but the court decides not to make a confiscation order against him, when the court makes that decision;
 - (iii) if sentenced without the court having considered whether or not to proceed under section 6 in his case, when he is sentenced; or
 - (iv) if a confiscation order is made against the defendant in those proceedings, when the order is satisfied.
- (h) an application under section 16, 17 or 18, subject to subsection (7), is concluded:
 - (i) if the court decides not to make or, as the case may be, not to vary an order against the defendant on that application, when it makes that decision;
 - (ii) if an order against the defendant is made or varied on that application, when the order is satisfied; or
 - (iii) if the application is withdrawn, when the prosecutor notifies the with-

drawal of the application to the court to which it was made.

- (i) a confiscation order is satisfied when no amount is due under it; and
- (j) 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.

(7) A proceeding or an application referred to in subsections

(5) (g) and (h) respectively, shall not be treated as concluded, until there is no further possibility of an appeal in respect of the proceeding or application.

(8) For the purpose of section 27, a confiscation order shall be treated as satisfied when the defendant in respect of whom it was made, has served a term of imprisonment in default of payment of the amount due under the order.

3.—(1) Subject to subsection (2), “property” and “realisable property”, for the purposes of this Act, means— Realisable property and its value

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

(2) Property is not realisable property if an order—

- (a) under the Drug Abuse (Prevention and Control) Act, 1992, is in force in respect of the property;

- (b) under the Terrorism Act; or
 - (c) made pursuant to any other enactment,
- is in force in respect of the property.

(3) For the purposes of this Act, the amount that may be realised at the time a confiscation order is made is—

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

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

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

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

(5) Subject to the provisions of section 5, the value of property (other than cash), in relation to any person holding the property is—

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

(6) References in this Act to the value at any time, (referred to in subsection (7) as "the material time"), of any property obtained by a person as a result of or in connection with the commission of an offence, are references—

- (a) to the value of the property to him when he obtained it, adjusted to take account of subsequent changes in the value of money; or
- (b) to, where subsection (7) applies, the value mentioned in that subsection,

whichever is the greater.

(7) If at the material time the person holds—

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

the value referred to in subsection (6) (b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b), so far as it represents the property which he obtained, but disregarding any charging order.

(8) Subject to section 4(3), references in this Act to the value at any time (referred to in subsection (9) as “the material time”), of a gift caught by this Act, are references—

- (a) to the value of the gift to the recipient when he received it, adjusted to take account of subsequent changes in the value of money; or
- (b) to, where subsection (9) applies, the value mentioned in that subsection,

whichever is the greater.

(9) Subject to section 4(3), if at the material time the person holds—

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

the value referred to in subsection (8), is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b), so far as it represents the property which he received, but disregarding any charging order.

4.—(1) In relation to a drug trafficking offence, a gift ^{Gifts caught} (including a gift made before the commencement of this Act), ^{by this Act.} is caught by this Act if—

- (a) it was made by the defendant at any time since the beginning of the period of six years, ending—
 - (i) when the proceedings for the drug trafficking offence were instituted against him; or
 - (ii) where no such proceedings have been instituted, when an application for restraint or charging order is made under section 21 or 22; or
- (b) it was made by the defendant at any time, and was a gift of property,
 - (i) received by the defendant in connection with drug trafficking carried on by him or another person; or
 - (ii) which in whole or in part directly or indirectly represented in the defendant's hands, property received by him in that connection.

(2) In relation to a relevant offence, a gift (including a gift made before the commencement of this Act), is caught by this Act if—

- (a) it was made by the defendant at any time since the commission of the relevant of-

fence, or, if more than one, the earliest of the offences to which the proceedings relate, (including any offence which the court takes into consideration in determining his sentence); and

- (b) the court considers it appropriate in all the circumstances to take the gift into account.

(3) For the purpose of this Act—

- (a) the circumstances in which the defendant is to be treated as making a gift, include those where he transfers property to another person, directly or indirectly, for a consideration, the value of which is significantly less than the value of the consideration provided by the defendant; and
- (b) in those circumstances, section 3 shall apply, as if the defendant had made a gift of such share in the property, as bears to the whole property, the same proportion as the difference between the value referred to in paragraph (a), bears to the value of the consideration provided by the defendant.

(4) A gift, including a gift made before the coming into force of this Act, is caught by this Act if—

- (a) it was made by the defendant at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings relate; and

- (b) the court considers it appropriate in all the circumstances, to take the gift into account.

(5) The reference in subsection (4) to an offence to which the proceedings relate include, where the proceedings have resulted in the conviction of the defendant, a reference to an offence which the court takes into consideration when determining his sentence.

(6) For the purposes of this Act

- (a) the circumstances in which the defendant is to be treated as making a gift, include those where he transfers property to another person, directly or indirectly, for a consideration, the value of which is significantly less than the value of the consideration provided by the defendant; and
- (b) in the circumstances mentioned in paragraph (a), the provisions of subsections (4) and (5) and section 3 shall apply, as if the defendant has made a gift of such share in the property as bears to the whole property, the same proportion as the difference between the values referred to in paragraph (a), bears to the value of the consideration provided by the defendant.

5. This Act applies to property wherever situated.

Application.

PART II**MAKING OF CONFISCATION ORDERS**

Confiscation
orders.

6.—(1) For the purposes of this section and sections 7 to 13, a confiscation order may be made by a Magistrate in a Magistrate’s Court or a Judge of the High Court.

(2) Where a confiscation order is made pursuant to subsection (1) by a Magistrate, it shall relate in monetary terms to a sum not exceeding one hundred thousand dollars.

(3) Where, on the evidence before a Magistrate, the Magistrate concludes that a confiscation order to be made by him will or is likely to exceed the sum allowable under subsection (2), he shall, notwithstanding anything to the contrary contained in any enactment—

- (a) sentence the defendant, if the defendant is not already sentenced; and
- (b) commit the defendant to a judge of the High Court for a confiscation order to be made in respect of the defendant.

(4) subject to subsection (3), where a defendant is convicted of an offence in any proceedings before a court, the court shall—

- (a) if the prosecutor has given written notice to the court, that he considers that it would be appropriate for the court to proceed under this section; or

- (b) if the court considers, even in the absence of the notice referred to in paragraph (a), that it would be appropriate for the court to proceed under this section,

act in the manner provided by this section, before sentencing or otherwise dealing with the person in respect of that offence or any other relevant criminal conduct.

(5) The court shall first determine whether the offender has benefitted from any relevant criminal conduct.

(6) Subject to subsection (7), if the court determines that the offender has benefitted from any relevant criminal conduct, it shall—

- (a) determine, in accordance with subsection (11), the amount to be recovered in his case by virtue of this section;
- (b) exclude, in the determination, any property that is subject to a cash forfeiture order, or a forfeiture order under the Drug Abuse (Prevention and Control) Act, 1992 or any other enactment; and
- (c) make an order under this section, ordering the offender to pay the amount determined under paragraph (a).

(7) If, in a case falling within subsection (6), the court is satisfied that a victim of any relevant criminal conduct has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with that conduct—

- (a) the court may make an order under this section;

- (b) subsection (11) shall not apply for determining the amount to be recovered in that case by virtue of this section; and
- (c) where the court makes an order in exercise of the power conferred by paragraph (a), the sum required to be paid under the order shall be of such amount, not exceeding the amount which (but for paragraph (b)), would apply by virtue of subsection (11), as the court thinks fit.

(8) Subject to section 9(6), the reference in this Act to “relevant criminal conduct”, in relation to a person convicted of an offence in any proceedings before a court, means, that offence taken together with any other offences which are offences—

- (a) of which he is convicted in the same proceedings, or in other proceedings under the Drug Abuse (Prevention and Control) Act, 1992; or
- (b) which the court will be taking into consideration in determining his sentence for the offence in question.

(9) For the purposes of this Act, a person benefits from an offence if he obtains property as a result of, or in connection with its commission, and his benefit is the value of the property so obtained.

(10) Where a person derives a pecuniary or other quantifiable advantage as a result of, or in connection with the commission of an offence, he is to be treated, for the purposes

of this Act, as if he had obtained, as a result of or in connection with the commission of the offence, a sum of money equal to the value of the pecuniary or other quantifiable advantage.

(11) Subject to subsection (7), the sum which an offender is required to pay by virtue of an order made by a court under this section, shall be equal to—

- (a) the benefit in respect of which it is made; or
- (b) the amount appearing to the court to be the amount that might be realised at the time the order is made,

whichever is the less.

(12) In determining any question arising under this Act as to whether a person has benefitted from any offence, or the amount to be recovered in the person's case, proof shall be established on a balance of probabilities.

7.—(1) Where a defendant appears before the High Court to be sentenced for one or more drug trafficking offences, the court shall proceed under this section—

Powers of court in making a confiscation order.

- (a) on the application of the prosecutor; or
- (b) of its own motion, where it considers it appropriate to do so.

(2) The court shall first determine whether the defendant has benefitted from drug trafficking.

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

(4) If the court determines that he has so benefitted, it shall, before sentencing or otherwise dealing with him in respect of the offence, or (as the case may be), any of the offences concerned, make a confiscation order and determine, in accordance with section 6, the amount to be recovered in his case under the order.

(5) Where a court makes a confiscation order under section 6 against a defendant in any proceedings, it shall, in respect of any offence of which the defendant is convicted in those proceedings, take account of the order before—

- (a) imposing any fine on him;
- (b) making any other order involving any payment by him; and
- (c) making a forfeiture order under the Drug Abuse (Prevention and Control) Act 1992,

but subject to that, shall leave the confiscation order out of account in determining the appropriate sentence or other manner of dealing with him.

(6) No enactment restricting the power of a court dealing with an offender in a particular way, from dealing with him also in any other way, shall by reason only of the making of a confiscation order, restrict the court from dealing

with an offender in any way it considers appropriate, in respect of an offence to which this Act applies.

(7) Where—

- (a) a court makes both a confiscation order and an order for the payment of compensation under the Criminal Code; and
- (b) it appears to the court that he will not have sufficient means to satisfy both the orders in full,

it shall direct, that as much of the compensation as will not, in its opinion, be recoverable because of the insufficiency of his means, be paid out of any sums recovered under the confiscation order.

8.—(1) Where a court is acting under section 6, but considers that it requires further information before determining—

Postponed determinations.

- (a) whether the defendant has benefitted from any relevant criminal conduct; or
- (b) the amount to be recovered in the defendant's case,

it may, for the purpose of enabling that information to be obtained, postpone making that determination for such period as it may specify.

(2) More than one postponement may be made under subsection (1) in relation to the same case.

(3) Unless it is satisfied that there are exceptional circumstances, the court shall not specify a period under subsection (1), which by itself or, where there have been one or more previous postponements under subsection (1) or (4), when taken together with the earlier specified period or periods, exceeds eighteen months beginning with the date of conviction.

(4) Where the defendant appeals against his conviction, the court may, on that account—

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

(5) A postponement or extension under subsection (1) or (4) may be made—

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

(6) Unless the court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (4), shall not exceed the period ending three months after the date on which the appeal is determined or otherwise disposed of.

(7) Where the court exercises its power under subsection (1) or (4), it may nevertheless proceed to sentence, or otherwise deal with, the defendant, in respect of the offence or any of the offences concerned.

(8) Where the court proceeds under subsection (7)–

- (a) section 6(6) shall have effect; and
- (b) section 7(5) shall have effect, as if after the word “determining”, there were inserted the words, “relation to any offence in respect of which he has not been sentenced or otherwise dealt with”.

(9) In sentencing, or otherwise dealing with the defendant, in respect of the offence, or any of the offences, concerned at any time during the specified period, the court shall not–

- (a) impose any fine on him; or
- (b) make any such order as is mentioned in section 7(5)(b) or (c).

(10) Where the court has sentenced the defendant under subsection (7) during the specified period, it may, after the end of that period, vary the sentence by imposing a fine, or making any such order as is mentioned in section 7(5)(b) or (c).

(11) In this section, a reference to–

“the date of conviction” means the date on which the defendant was convicted of the offence concerned or, if convicted for two or more offences, the date of the latest of those offences.

Confiscation
relating to a
course of
criminal
conduct.

9.—(1) For the purposes of this Act—

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

(2) In this section, “qualifying offence”, in relation to proceedings before a court, means any offence in relation to which the following conditions are satisfied—

- (a) it is an offence to which this Act applies;
- (b) it is an offence which was committed after the coming into force of this Act; and
- (c) that court is satisfied that it is an offence from which the defendant has benefitted.

(3) This section applies in a case where an offender is convicted in any proceedings before a court of a qualifying offence if—

- (a) the prosecutor gives written notice for the purposes of section 6(4)(a);
- (b) the notice given by the prosecutor under section 6(4)(a), contains a declaration that it is the prosecutor's opinion that the case is

one in which it is appropriate for the provisions of this section to be applied; and

- (c) the defendant—
 - (i) is convicted in those proceedings of at least two qualifying offences (including the offence in question); or
 - (ii) has been convicted of a qualifying offence on at least one previous occasion during the relevant period.

(4) When proceeding under section 6 in pursuance of the notice referred to in subsection (3) (a), the court shall, subject to subsection (6), determine, if it thinks fit so to do, that the assumptions specified in subsection (5) are to be made for the purpose—

- (a) of determining whether the defendant has benefitted from a relevant criminal conduct; and
- (b) if he has benefitted, of assessing the value of the defendant's benefit from such conduct.

(5) The assumptions referred to in subsection (4) are—

- (a) that any property appearing to the court—
 - (i) to be held by the defendant at the date of conviction, or at any time in the period between that date and the determination in question; or

- (ii) to have been transferred to him at any time since the beginning of the relevant period,

was received by him, at the earliest time when he appears to the court to have held it, as a result of or in connection with the commission of offences to which this Act applies;

- (b) that any expenditure of his since the beginning of the relevant period, was met out of payments received by him as a result of, or in connection with, the commission of offences to which this Act applies;
- (c) that, for the purpose of valuing any benefit which he had, or which he is assumed to have had, at any time he received the benefit free of any other interests in it.

(6) Where the court has determined that the assumptions specified in subsection (5) are to be made in any case, it shall not, in that case, make any such assumption in relation to any particular property or expenditure if—

- (a) that assumption, so far as it relates to that property or expenditure, is shown to be incorrect in the defendant's case;
- (b) that assumption, so far as it so relates, is shown to be correct in relation to an offence the defendant benefits from, which has been the subject of a previous confiscation order; or

- (c) the court is satisfied that there would, (for any other reason), be a serious risk of injustice in the defendant's case if the assumption were to be made in relation to that property or expenditure.

(7) Where the assumptions specified in subsection (5) are made in any case, the offences from which, in accordance with those assumptions the defendant is assumed to have benefitted from, shall be treated as if they were comprised, for the purposes of this Act, in the conduct which is to be treated, in that case, as relevant criminal conduct in relation to the defendant.

(8) For the purposes of assessing the value of the proceeds derived by the defendant from criminal conduct, in a case where a confiscation order has previously been made against him, the court shall leave out of account, any such proceeds that are shown to the court to have been taken into account in determining the amount to be recovered under the previous order.

(9) For the purposes of this section—

- (a) “the date of conviction” means,
 - (i) in a case falling within paragraph (b), the date on which the defendant is convicted of the offence in question; or
 - (ii) where the defendant is convicted of that offence and one or more other offences in the proceedings in question, and those convictions are not all on the same date, the date of the latest of those convictions; and

- (b) “the relevant period” means the period of six years ending, when the proceedings in question were instituted against the defendant.

Statements, etc.
relevant to
making con-
fiscation orders.

10.—(1) Subsection (2) applies in a case where a person has been convicted of an offence if—

- (a) the prosecutor has given written notice to the court for the purposes of section 6(4)(a); or
- (b) the court is proceeding in pursuance of section 6(4)(b), and requires a statement under this section from the prosecutor.

(2) Where this subsection applies, the prosecutor shall, within such period as the court may direct, tender to the court a statement as to any matters relevant—

- (a) to determining whether the defendant has benefitted from any relevant criminal conduct; or
- (b) to an assessment of the value of the defendant’s benefit from that conduct,

and, where such a statement is tendered in a case in which a declaration has been made for the purposes of section 9(3)(b), that statement shall also set out all such information available to the prosecutor, as may be relevant for the purposes of section 9(5) and (6)(b) and (c).

(3) Where a statement is tendered to the court under this section—

- (a) the prosecutor may, at any time, tender to the court, a further statement as to the matters mentioned in subsection (2); and

- (b) the court may, at any time, require the prosecutor to tender any further statement within such period as it may direct.

(4) Where—

- (a) a statement has been tendered to a court by the prosecutor under this section; and
- (b) the defendant accepts to any extent any allegation in the statement,

the court may, for the purpose of determining whether the defendant has benefitted from any relevant criminal conduct or of assessing the value of the defendant's benefit from such conduct, treat his acceptance as conclusive of the matters to which it relates.

(5) Where—

- (a) a statement is tendered by the prosecutor under this section; and
- (b) the court is satisfied that a copy of that statement has been served on the defendant,

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

(6) If the defendant fails in any respect to comply with a requirement under subsection (5), he may be treated, for the

purposes of this section, as accepting every allegation in the statement, apart from—

- (a) any allegation in respect of which he has complied with the requirement; and
- (b) any allegation that he has benefitted from an offence, or that any property was obtained by him as a result of, or in connection with, the commission of an offence.

(7) Where—

- (a) the defendant tenders to the court a statement as to any matters relevant, to determine the amount that might be realised at the time the confiscation order is made; and
- (b) the prosecutor accepts, to any extent, any allegation in the statement,

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

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

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

(9) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made, (whether by an acceptance under this section or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned, and shall do so, if satisfied that the amount that might be realized at the time the confiscation order is made, is less than the amount the court assesses to be the value of the defendant's benefit from any relevant criminal conduct.

(10) Where the court has given a direction under this section, it may, at any time, vary the direction by giving a further direction.

11.—(1) This section applies in a case where a person has been convicted of an offence if—

Provision of
information
by defend-
ant.

- (a) the prosecutor has given a written notice to the court for the purposes of section 6(4)(a); or
- (b) the court is proceeding in pursuance of section 6(4)(b) or is considering whether to so proceed.

(2) For the purpose of obtaining information to assist it in carrying out its functions under this Act, the court may, at any time, order the defendant to give it such information as may be specified in the order.

(3) An order made under subsection (2) may require all, or any specified part of the required information, to be given to the court, in such manner, and within such period, as may be specified in the order.

(4) If the defendant fails, without reasonable excuse acceptable to the court, to comply with an order made under this section, the court may draw such inference from that failure as it considers appropriate.

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

- (a) in giving to the court information required by an order made under this section; or
- (b) in any other statement tendered to the court for the purposes of this Act, the court may treat that acceptance as conclusive of the matters to which it relates.

(6) For the purposes of this section, an allegation may be accepted—

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

Powers to be exercised where defendant has died or absconded.

12.—(1) Subsection (2) applies where a person has been convicted of an offence.

(2) If the prosecutor asks a court to proceed under this section, the court may make a confiscation order against the defendant, if satisfied that the defendant has died or absconded.

(3) Subsection (4) applies where proceedings for an offence have been instituted against a person, but have not been concluded.

(4) If the prosecutor asks a court to proceed under this section, the court may make a confiscation order against the defendant, if satisfied that the defendant has absconded.

(5) The power conferred by subsection (4), may not be exercised at any time before the end of the period of two years beginning with the date which is, in the opinion of the court, the date on which the defendant absconded.

(6) In any proceedings on an application under this section—

- (a) sections 9 (4) and 10 (4), (5), (6) and (7) shall not apply;
- (b) the court shall not make a confiscation order against a person who has absconded, unless it is satisfied that the prosecutor has taken reasonable steps to contact the person; and
- (c) a person appearing to the court to be likely to be affected by the making of a confiscation order by the court, shall be entitled to appear before the court and make representations.

13.—(1) Where the court has made a confiscation order by virtue of section 12, it shall, in respect to the offence or any of the offences concerned—

Effect of conviction where the court has acted under section 12.

- (a) take account of the order, before—
 - (i) imposing any fine on the person;
 - (ii) making any order involving any payment by the person; or

-
- (iii) making any order under the Drug Abuse (Prevention and Control) Act, 1992; and
 - (b) subject to paragraph (a), leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

(2) Where the court has made a confiscation order by virtue of section 12, and the defendant subsequently appears before the court to be sentenced in respect of the offence concerned, section 6 shall not apply, so far as the defendant's appearance is in respect of that offence.

Variation of order made against absconder.

14.—(1) Where a confiscation order is made by virtue of section 12(2) and the defendant ceases to be an absconder, he may apply to the court for a variation of the amount to be recovered under the order.

(2) If, on such an application, the court is satisfied that the value of the defendant's proceeds of drug trafficking in the period by reference to which the determination in question was made, or the value of his benefit from relevant offences, or the amount that might have been realized at the time the order was made, was less than the amount ordered to be paid under the confiscation order, the court—

- (a) may, if it considers it just in all the circumstances, reduce the amount to be recovered under the confiscation order; and
- (b) if it does so, shall reduce the term of imprisonment in default in accordance with section 31(1).

(3) Where the court reduces the amount to be recovered under a confiscation order, it may, on the application of a person who held property which was realisable property, order compensation to be paid to him, if satisfied that he has suffered loss as a result of the making of the confiscation order and if, having regard to all the circumstances of the case, it considers it appropriate to do so.

(4) No application shall be entertained by the court, if it is made after the end of six years beginning on the day on which the confiscation order was made.

15.—(1) Where a confiscation order is made by virtue of section 12(2), and the defendant is subsequently tried for the offence or offences in question and acquitted on all counts, the court shall cancel the confiscation order.

Discharge of order where absconder acquitted etc.

(2) Where a confiscation order is made by virtue of section 12(2), against a person who ceases to be an absconder, and subsection (1) of this section does not apply, the court may, on the application of the defendant, cancel the confiscation order if satisfied that—

- (a) there has been undue delay in continuing the proceedings in respect of which the power under section 12(2) of this Act was exercised; or
- (b) the prosecutor does not intend to proceed with the prosecution.

(3) Where the court cancels a confiscation order under this section it may, on the application of a person who held property which was realisable property, order compensation

to be paid to him, if satisfied that he has suffered loss as a result of the making of the confiscation order and if, having regard to all the circumstances of the case, it considers it appropriate to do so.

(4) Where the court cancels a confiscation order under this section, it may make such consequential or incidental order as it thinks fit.

PART III

REVIEW AND REVISION OF CERTAIN QUESTIONS AND DETERMINATIONS

Review of cases
where proceeds
of crime not
assessed.

16.—(1) This section applies in a case where—

- (a) a person has been convicted of an offence in any proceedings before a court;
- (b) the prosecutor did not give written notice for the purposes of section 6(4)(a); and
- (c) a determination was made for the purposes of section 6(4)(b) not to proceed under that section, or no determination was made for those purposes.

(2) If the prosecutor has evidence which, at the date of conviction or, if later, when any determination not to proceed under section 6 was made, was not available to him and therefore was not considered by the court, but which he believes would have led the court to determine, (if the written

notice under section 6(4)(a) had been given and the evidence had been considered by the court), that the defendant had benefitted from a relevant criminal conduct, the prosecutor may apply to the court for it to consider the evidence.

(3) If, having considered the evidence, the court is satisfied that it is appropriate to do so, it shall proceed under section 6 as if it were doing so before sentencing or otherwise dealing with the defendant in respect of a relevant criminal conduct, and section 8 shall apply accordingly.

(4) In considering whether it is appropriate to proceed under section 6 in accordance with subsection (3), the court shall have regard to all the circumstances of the case.

(5) Where, having decided in pursuance of subsection (3) to proceed under section 6, the court determines that the defendant did benefit from a relevant criminal conduct—

- (a) section 6(6) shall not apply, and subsection (8) thereof shall not apply for determining the amount to be recovered in that case;
- (b) the court may make a confiscation order;
and
- (c) if the court makes an order in exercise of the power conferred under paragraph (b), the sum required to be paid by the order shall be such amount, not exceeding the amount which (but for paragraph (a)), would apply by virtue of section 6(11), as the court thinks fit.

(6) In considering the circumstances of any case under subsections (5)(b) and (c), the court shall have regard, in particular, to—

- (a) any fine imposed on the defendant in respect of any relevant criminal conduct; and
- (b) any order made in connection with any relevant criminal conduct under the Criminal Code.

(7) In making any determination under or for the purposes of this section, the court may take into account, to the extent that they represent in what respects the defendant has benefitted from any relevant criminal conduct, any payments or other rewards which were not received by him until after the time when he was sentenced or otherwise dealt with in the case in question.

(8) Where an application under this section contains such declaration as is mentioned in section 9(3)(b), the section shall, subject to subsection (9), apply in the case of any determination on the application, as if it were a determination in a case in which the requirements of sections 9(3)(a) and (b) had been satisfied.

(9) For the purposes of any determination to which section 9 applies by virtue of subsection (8), none of the assumptions specified in subsection 9 (5) shall be made in relation to any property, unless it is property held by or transferred to the defendant, before the time when he was sentenced or otherwise dealt with in the case in question.

(10) Sections 10 and 11 shall apply, where the prosecutor makes an application under this section, as they apply in a case where the prosecutor has given written notice to the court for the purposes of section 6(4)(a), but as if the reference in section 11(1)(a) to a declaration made for the purposes of section 9(3)(b), were a reference to a declaration for the purposes of subsection 8.

(11) No application shall be entertained by the court under this section, if it is made after the end of the period of six years beginning with the date of conviction.

(12) For the purposes of this section, “the date of conviction” means—

- (a) in a case not falling within paragraph (b), the date on which the defendant was convicted of the offence in question; or
- (b) where the defendant was convicted of the offence in question and one or more other offences in the same proceedings, and those convictions were not all on the same date, the date of the latest of those convictions.

17.—(1) This section applies where in any case there has been a determination under section 6(5), (referred to in this section and section 18(6) as “the current determination”), that the defendant in that case had not benefitted from any relevant criminal conduct.

Revision of
assessment
of proceeds
of crime.

(2) If the prosecutor has evidence which was not considered by the court which made the original deter-

mination, but which the prosecutor believes would have led the court, if the evidence had been considered, to determine that the defendant had benefitted from a relevant criminal conduct, the prosecutor may apply to the court for it to consider that evidence.

(3) If, having considered the evidence, the court is satisfied that if that evidence had been available to it, it would have determined that the defendant had benefitted from a relevant criminal conduct, that court—

- (a) shall proceed, as if it were proceeding under section 6, to make a fresh determination of whether the defendant has benefitted from any relevant criminal conduct, and then make such determination as is mentioned in section 6(11)(a); and
- (b) may, after making the determinations referred to in paragraph (a), make an order, subject to subsection (5), requiring the payment of such sums as it thinks fit.

(4) An order made under subsection (3)(b) shall be deemed for all purposes to be a confiscation order.

(5) The court shall not, in exercise of the power conferred by subsection (3)(b), make an order for the payment of a sum which is more than the amount determined in pursuance of subsection 3(a).

(6) In making a determination under or for the purposes of subsection (3), the court may take into account, to the extent that they represent, in what respects the defendant has benefitted from any relevant criminal conduct, any payments or other rewards which were not received by him until after the making of the original determination.

(7) Where, in a case in which section 9 does not otherwise apply, an application under this section contains such declaration as is mentioned in subsection 9(3)(b), section 9 shall, subject to subsection (8), apply in the case of any determination on the application, as if it were a determination in a case in which the requirements of sections 8(1)(a) and (b) had been satisfied.

(8) Where, for the purposes of a determination under subsection (3), section 9 applies, none of the assumptions specified in section 9(5) shall be made in relation to any property, unless it is property held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.

(9) No application shall be entertained by the court under this section, if it is made after the end of the period of six years beginning with the date of conviction.

(10) Section 8 shall apply where the court is acting under this section as it applies, where the court is acting under section 6.

(11) Sections 10 and 11 shall apply, where the prosecutor makes an application under this section, as they apply in a case where the prosecutor has given written notice to the court for the purposes of section 6(4)(a), but as if—

- (a) the reference in section 10(2) to a declaration made for the purposes of section 9(3)(b) included a reference to a declaration for the purposes of subsection (7); and

-
- (b) any reference in section 10(9) to the time the confiscation order is made were a reference to the time the order is made on that application.

(12) In this section, the term “the date of conviction” has the same meaning as in section 16(12).

Revision of
assessment of
amount to be
recovered.

18.—(1) This section applies where, in the case of a person convicted of an offence, there has been a determination under this Act, (referred to in this section as “the current determination”), of any sum required to be paid in his case under any confiscation order.

(2) Where the prosecutor is of the opinion, that the value of any benefit to the defendant from any relevant criminal conduct, was greater than the value at which that benefit was assessed by the court on the current determination, the prosecutor may apply to the court for the evidence on which the prosecutor has formed his opinion to be considered by the court.

(3) If, having considered the evidence, the court is satisfied that the value of the benefit from any relevant criminal conduct is greater than the value so assessed by the court, (whether because its real value was higher at the time of the current determination than was thought, or because the value of the benefit in question has subsequently increased), the court—

- (a) shall, subject to subsection (4), make a fresh determination, as if it were proceeding under section 6, of—
- (i) the amount by which the defendant has benefitted from the relevant criminal conduct; and

-
- (ii) the amount appearing to be the amount that might be realised at the time of the fresh determination; and
 - (b) may, subject to subsection (5), increase, to such extent as it thinks just in all the circumstances of the case, the amount to be recovered by virtue of section 6, and to vary accordingly any confiscation order made by reference to the current determination.

(4) Where the court is under a duty to make a fresh determination for the purposes of subsection (3)(a) in any case to which section 9 applies, it shall not, in determining any amounts for those purposes, make any of the assumptions specified in section 9(5) in relation to any property, unless it is property held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.

(5) The court shall not, in exercise of the power conferred by subsection (3)(b), vary any order so as to require the payment of any sum which is more than the lesser of the two amounts determined, in pursuance of subsection 3(a).

(6) In making any determination under or for the purposes of subsection (3), the court may take into account, to the extent that they represent, in what respect the defendant has benefitted from any relevant criminal conduct, any payments or other rewards which were not received by him until after the making of the original determination.

(7) No application shall be entertained by a court under this section, if it is made after the end of the period of six years beginning with the date of conviction.

(8) Section 8 shall apply where the court is acting under this section, as it applies where the court is acting under section 6.

(9) Sections 10 and 11 shall apply where the prosecutor makes an application under this section, as they apply in a case where the prosecutor has given written notice to the court for the purposes of section 6(4)(a), but as if any reference in section 10(9) to the time the confiscation order is made, were a reference to the time of the determination to be made on that application.

(10) In this section, the term “the date of conviction” has the same meaning as in section 16(12).

PART IV

ENFORCEMENT, ETC., OF CONFISCATION ORDERS

Interest on sums
unpaid under a
confiscation
order.

19.—(1) If any sum required to be paid by a person under a confiscation order, whether forthwith or within a specified period, is not paid, that person is liable to pay interest on the sum for the period for which it remains unpaid.

(2) The amount of the interest referred to in subsection (1), shall be treated as part of the amount to be recovered from the person liable to pay interest under the confiscation order.

(3) The court may, on the application of the prosecutor, increase the term of imprisonment fixed, in respect of the confiscation order, if the effect of subsection (1) is to increase the maximum period applicable in relation to the order under section 31(1).

(4) The rate of interest under this section, shall be that applicable to a civil judgment debt under the Civil Procedure Rules.

Cases in which restraint and charging orders may be made.

20.—(1) The powers conferred on the High Court by sections 21(1) and 22(1) are exercisable where—

- (a) proceedings have been instituted against any person for an offence to which this Act applies;
- (b) the proceedings have not been concluded or, if they have, an application that has not been concluded has been made under section 16, 17 or 18, in respect of the defendant in those proceedings; and
- (c) the court is satisfied that there is reasonable cause to believe:
 - (i) in a case where there is an application under section 18, that the court will be satisfied as mentioned in section 18 (3); or
 - (ii) in any other case, that the proceedings may result or have resulted in, or that the application is made by reference to, a conviction of the defendant for an offence which he may be, or has been, shown to have benefitted.

(2) The High Court shall not exercise the powers conferred by virtue of subsection (1), if it is satisfied that—

- (a) there has been undue delay in continuing the proceedings or application in question; or
- (b) the person who appears to the court to be the person who has or will have the conduct of the prosecution or, who made that application does not intend to proceed with it.

(3) The powers conferred on the High Court by sections 21(1) and 22(1) are also exercisable, where the Court is satisfied that—

- (a) a person is to be charged with an offence to which this Act applies, or an application of a kind mentioned in subsection (1)(b) is to be made; and
- (b) the making or variation of a confiscation order may result from proceedings for that offence or, from the application.

(4) For the purposes of sections 21 and 22, at any time when these powers are exercisable before proceedings have been instituted, references in this Act—

- (a) to the defendant shall be construed as references to the person referred to in subsection (3)(a); and
- (b) to realisable property, shall be construed as if, immediately before that time, pro-

ceedings had been instituted against the person referred to in subsection (3)(a), for an offence to which this Act applies.

(5) Where the High Court has made an order under section 21(1) or 22(1) by virtue of subsection (3), it shall discharge the order if—

- (a) proceedings in respect of the offence are not instituted or, no application is made, within such time as the court considers reasonable; or
- (b) the court is satisfied that the case has become a case in which, in pursuance of subsection (2), it would be unable to exercise the powers conferred by virtue of subsection (1).

21.—(1) The High Court may make a restraint order Restraint orders. prohibiting a person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) Without prejudice to the generality of subsection (1), the court may, in making a restraint order, include such provision as it thinks fit for living and legal expenses.

(3) A restraint order may apply—

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

(4) A restraint order—

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

(5) A restraint order—

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged on the conclusion of the proceedings or application in question.

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

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

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

subject to such conditions and exceptions 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 subsection, to give possession of the property to the receiver.

(8) Where the High Court has made a restraint order, an enforcement officer may, for the purpose of preventing any realisable property being removed from Grenada, seize the property.

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

(10) This section shall not have effect in relation to property that is subject to a charge under section 22.

(11) For the purposes of this section, dealing with any property held by a person includes—

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

22.—(1) The High Court may make a charging order on realisable property for securing the payment to the Crown— Charging orders.

- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
- (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

(2) A charging order—

- (a) may be made only on an application by a prosecutor;
- (b) may be made on an ex parte application to a judge in Chambers;
- (c) shall provide for notice to be given to persons affected by the order; and
- (d) may be made subject to such conditions as the court thinks fit, including the time when the charge is to become effective.

(3) Subject to subsection (4), a charge may be imposed by a charging order only on an interest in realisable property—

- (a) being an interest held beneficially by the defendant, or by a person to whom the defendant has directly or indirectly made a gift caught by this Act:
 - (i) in any chargeable asset; or
 - (ii) under any trust; or
- (b) held by a person as trustee of a trust, if the interest is in a chargeable asset or is an interest under another trust, and a charge may, by virtue of paragraph (a), be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

(4) In any case where a charge is imposed by a charging order on an interest in relevant securities, the Court may provide for the charge to extend to any interest or dividend payable in respect of the asset.

(5) In relation to a charging order, the court—

- (a) may at any time make an order discharging or varying it; and
- (b) shall make an order discharging it on:
 - (i) the conclusion of the proceedings or application in question; or
 - (ii) the payment into court of the amount, payment of which is secured by the charge,

whichever occurs first.

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

(7) Notice of any charging order, shall be deposited in the High Court Registry for recording and registration in accordance with the Civil Procedure Rules.

(8) Subject to any provision made under section 23 or by rules of court, a charge imposed by a charging order, shall have the like effect and be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, the trustees, by writing, under their hand.

Realisation of
property.

23.—(1) Where the exercise of the power of a court relates to a confiscation order made by a Magistrate, pursuant to proceedings instituted for an offence to which this Act applies, the powers conferred by this section and sections 24 to 29, may as far as relevant, be exercised by the Magistrate, and the references in this section and sections 24 to 26 to “High Court” and “Court” shall be construed as if they were references to “Magistrate’s court”.

(2) Where—

- (a) a confiscation order is made in proceedings instituted for an offence to which this Act applies, or an order is made or varied on an application under section 16, 17 or 18;
- (b) the proceedings in question have not, or the application has not, been concluded; and
- (c) the order or variation is not subject to appeal,

the High Court may, on an application by a prosecutor, exercise the powers conferred by subsections (3) to (7).

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

(4) The Court may empower a receiver appointed under subsection (3), under section 21, or in pursuance of a charging order—

- (a) to enforce any charge imposed under section 22 on realisable property, or on interest or dividends payable in respect of

the property; and

- (b) in relation to any realisable property other than property subject to a charge under section 22, to take possession of the property subject to conditions or exceptions as may be specified by the Court.

(5) The Court may—

- (a) order any person having possession of realisable property, to give possession of it to a receiver;
- (b) empower a receiver to realise any realisable property as the Court may direct; and
- (c) order any person holding an interest in realisable property to make payment to the receiver in respect of any beneficial interest held by the defendant or, the recipient of a gift caught by this Act as the Court may direct, and the Court may, on payment being made, by order, transfer, grant or extinguish any interest in the property.

(6) Subsection (5) does not apply to property which is subject to a charge under section 22.

(7) The Court shall not, in respect of any property, exercise the powers conferred by subsections (4)(a) and (5)(b) and (c), unless a reasonable opportunity has been given for persons holding an interest in the property to make representations to the Court.

Application of

24.—(1) Subject to subsection (2)—

proceeds of
realisation and
the other sums.

- (a) the proceeds of enforcement of any charge imposed under section 22,
- (b) the proceeds of the realisation, other than by the enforcement of a charge, of any property under section 21 or 23; and
- (c) any other sums, being property held by the defendant,

which are in the hands of a receiver appointed under this Act or in pursuance of a charging order, shall, after such payments, as the High Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

(2) If any sums remain in the hands of the receiver after the amount payable under the confiscation order has been fully paid, the receiver shall distribute the sums among those persons who held property which has been realised under this Act, and in such proportions as the High Court may direct, after giving a reasonable opportunity for such persons to make representations to the Court.

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

(4) If the money was paid to the Registrar by a receiver appointed under this Act, or in pursuance of a charging order, the Registrar shall next pay the receiver's remuneration and expenses.

(5) After making—

-
- (a) any payment required by subsection (4);
and
 - (b) in a case to which subsection (5) applies,
any payment required by that subsection,

the Registrar shall reimburse any amount paid under section 30(2).

(6) The Registrar shall finally pay any compensation directed to be paid, out of any sums recovered under the confiscation order under section 7(7).

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

(8) Where under subsection (3) a sum falls to be applied in payment both of compensation and of other outgoings—

- (a) the person entitled to the compensation, is liable to pay to the revenue of Grenada, such an amount as bears to the remuneration or expenses, the same proportion as the amount payable in accordance with the direction under section 7(7), bears to the total amount payable under the confiscation order;
- (b) the Registrar shall deduct from the amount falling to be applied in payment of the compensation, an amount equal to the amount of any liability arising by virtue of paragraph (a);
- (c) notwithstanding the deduction under

paragraph (b), the person entitled to the compensation, shall be treated as having received the whole amount which falls to be applied in payment of it; and

- (d) the amount deducted, shall be treated as if it were a fine imposed by the court.

(9) The receipt, payment, reimbursement or deduction by the Registrar of any sums or expenses under this section shall, in relation to the Magistrate's Court, be construed to refer to the Magistrate, or to such other person of his staff as may be appointed in that regard to assist the Magistrate.

Exercise of powers by High Court or receiver.

25.—(1) This section applies to the powers conferred on the High Court by sections 21 to 24, or on a receiver appointed under this Act, or in pursuance of a charging order.

(2) Subject to the provisions of this section, the powers referred to in subsection (1), shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case, the value for the time being of realisable property held by any person, by the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act, the powers shall be exercised with a view to realising no more than the value for the time being, of the gift.

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

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

(6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any gift, which conflict with the obligation to satisfy the confiscation order.

Variation of
confiscation
orders.

26.—(1) If, on an application made in respect of a confiscation order by—

- (a) the defendant; or
- (b) a receiver appointed under section 21 or 23, or in pursuance of a charging order,

the court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order, the court shall issue a certificate to that effect, giving its reasons.

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

- (a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated, the court shall take into account the extent to which any property held by him may be distributed among creditors; and
- (b) the court may disregard any inadequacy in the realisable property, which appears to the court to be attributable wholly or partly to anything done by the defendant, for the

purpose of preserving any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act, from any risk of realisation under this Act.

(3) Where a certificate has been issued under subsection (1), the person who applied for it, may apply to the court for the amount to be recovered under the order, to be reduced.

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

- (a) substitute for the amount to be recovered under the order, such lesser amount as the Court thinks just in all the circumstances of the case; and
- (b) substitute for the term of imprisonment fixed under any enactment in respect of the amount to be recovered under the order, a shorter term determined in accordance with those sections in respect of the lesser amount.

(5) A Magistrate's Court shall, on an application under subsection (3), substitute for the amount to be recovered under the order, such lesser amount as the court thinks just in all the circumstances of the case.

(6) Rules of court may make provision–

- (a) for the giving of notice of any application under this section; and

-
- (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this section, to be given an opportunity to make representations to the court.

Bankruptcy of
defendant, etc.

27. —(1) Where an order for bankruptcy is made against a person who holds realisable property—

- (a) any property for the time being subject to a restraint order made before the order for bankruptcy; and
- (b) any proceeds of property realised by virtue of section 21(7) or 23(5)(b) or (c) for the time being in the hands of a receiver appointed under section 21 or 23,

is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act Cap. 27.

(2) Where an order for bankruptcy is made against a person, the powers conferred on the High Court by sections 21 to 24 or on a receiver so appointed, shall not be exercised in relation—

- (a) to property comprised in the property of the bankrupt for the purposes of the Bankruptcy Act Cap. 27; and
- (b) to property which is to be applied for the benefit of creditors of the bankrupt, under the Bankruptcy Act Cap. 27.

(3) Subject to subsection (2), nothing in the Bankruptcy Act Cap. 27 shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the High Court by sections 21 to 24, or on a receiver so appointed.

(4) Subsection (2) does not affect the enforcement of a charging order—

- (a) made before the order for bankruptcy was made; or
- (b) on property which was subject to a restraint order when the order for bankruptcy was made.

(5) Where, in the case of a debtor—

- (a) the receiver or interim receiver in bankruptcy is appointed under section 10 of the Bankruptcy Act Cap. 27; and
- (b) any property of the debtor is subject to a restraint order,

the powers conferred on the receiver by virtue of the Bankruptcy Act Cap. 27 do not apply to property subject to the restraint order.

(6) Where an order for bankruptcy is made against a person who has directly or indirectly made a gift caught by this Act, the provisions of the Bankruptcy Act Cap. 27, shall not apply—

-
- (a) in respect of the making of the gift at any time when proceedings for an offence to which this Act applies, have been instituted against him and have not been concluded; or
 - (b) when property of the person to whom the gift was made, is subject to a restraint order or charging order.

28.—(1) Where realisable property is held by a company, ^{Winding up} and an order for the winding up of the company has been ^{of company} made, or a resolution has been passed by the company for the ^{holding} voluntary winding up, the functions of the liquidator (or any ^{realisable} provisional liquidator), shall not be exercisable in relation— ^{property.}

- (a) to property subject to a restraint order made before the relevant time; and
- (b) to any proceeds of property realised by virtue of section 21(7) or 23(5)(b) or (c) for the time being in the hands of a receiver, appointed under section 21 or 23.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by sections 21 to 23 or on a receiver so appointed, shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable, so as to—

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

- (b) prevent the payment out of any property, of expenses, (including the remuneration of the liquidator or any provisional liquidator), properly incurred in the winding up in respect of the property, but there shall be payable out of such property, any expenses, (including the remuneration of the liquidator), properly incurred in the winding up in respect of the property.

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

(4) Nothing in the Companies Act or the International Companies Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers referred to in subsection (2).

(5) For the purposes of this section—

“company” means any company which may be wound up under the Companies Act 1994, or the International Companies Act 1990, (Cap.152);

“liquidator” includes any person appointed to the office of liquidator, (whether provisionally or otherwise), under the Companies Act 1994, or the International Companies Act 1990, (Cap. 152);

“relevant time” means—

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

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

29.—(1) Where a receiver appointed under this Act, or in pursuance of a charging order takes any action—

Supplementary provisions relating to receivers.

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

he shall not be liable to any person in respect of any loss or damage resulting from his action, except 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, shall be paid out of the Forfeiture Fund.

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

Compensation.

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

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

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

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

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

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

(4) The amount of compensation to be paid under this section shall be such as the court—

- (a) has jurisdiction to award; and

-
- (b) considers just in all the circumstances of the case.

31.—(1) Where the court orders the defendant to pay an amount under a confiscation order, it shall, in addition, direct him to be imprisoned in default of payment of any amount under the confiscation order as follows—

- (a) if the amount does not exceed \$20,000, for a term of 2 years;
- (b) if the amount exceeds \$20,000 but does not exceed \$50,000, for a term of 5 years;
- (c) if the amount exceeds \$50,000 but does not exceed \$100,000, for a term of 7 years;
- (d) if the amount exceeds \$100,000, for a term of 10 years.

(2) Where—

- (a) a warrant to commit the defendant to prison is issued, for a default in payment of an amount ordered to be paid under a confiscation order in respect of an offence or offences; and
- (b) at the time the warrant is issued, the defendant is liable to serve any term of imprisonment in respect of the offence or offences,

the term of imprisonment to be served in default of payment of the amount, shall not begin to run until after the term mentioned in paragraph (b).

(3) Where a defendant serves a term of imprisonment in default of paying any amount due under a confiscation order, his serving that term does not expunge the debt or prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.

PART V

MONEY LAUNDERING AND OTHER OFFENCES

Issuing of
Guidelines.

32.—(1) The Anti-Money Laundering and Combating Terrorism Financing Commission may, after consultation with the Joint Anti-Money Laundering and Terrorist Financing Advisory Committee, issue the guidelines for the purposes of—

- (a) giving practical guidance on issues relating generally to money laundering and the financing of terrorism;
- (b) providing guidance regarding adherence to the requirements of this Act, and any other enactment relating to money laundering and the financing of terrorism;
- (c) preventing, detecting and dealing with money laundering and terrorist financing activities;
- (d) implementing, consistent with the provisions of this Act and any other enactment relating to money laundering and terrorist financing, internationally established standards for the prevention and detection of money laundering and terrorist financing activities; and

- (e) providing such other things as are necessary, relevant or incidental to the matters outlined in paragraphs (a) to (d).

(2) The Guidelines issued pursuant to subsection (1) shall apply to—

- (a) entities that are regulated by the Anti-Money Laundering and Combating Terrorism Financing Commission;
- (b) entities not regulated by the Anti-Money Laundering and Combating Terrorism Financing Commission but are identified by the Caribbean Financial Action Task Force and the Financial Action Task Force, as forming a link in the fight against money laundering and the financing of terrorism;
- (c) entities, (whether public or private), not falling under paragraph (b), that are not regulated by the Anti-Money Laundering and Combating Terrorism Financing Commission but which the Anti-Money Laundering and Combating Terrorism Financing Commission designates, by a Notice published in the *Gazette*, as vulnerable to activities of money laundering and terrorist financing; and
- (d) professionals, who may be engaged in preparing or carrying out transactions for their clients concerning—
 - (i) the buying and selling of real estate;

- (ii) managing client monies, securities or other assets;
- (iii) the management of bank, savings or securities accounts;
- (iv) the organisation of contributions for the creation, operation or management of companies;
- (v) the creation, operation or management of legal persons or arrangements;
- (vi) the buying and selling of business entities; and
- (vii) any other activity relating or incidental to any of the matters outlined in sub-paragraphs (i) to (vi).

(3) The Guidelines issued pursuant to subsection (1) shall—

- (a) be published in the *Gazette*; and
- (b) be subject to a negative resolution of the House of Representatives.

(4) Where a person fails to comply with or contravenes a provision of the Guidelines, he commits an offence, and is liable on summary conviction, to a fine not exceeding \$25,000 or to a term of imprisonment not exceeding two years, or both.

(5) Where a body corporate commits an offence under subsection (4), every director, partner or other senior officer of the body corporate shall, subject to subsection (6), be proceeded against, as if the director, partner or other senior officer committed the offence, and is liable on conviction to the penalty prescribed in subsection (4).

(6) A director, partner or other senior officer of a body corporate does not commit an offence under subsection (5), if the director, partner or other senior officer can show, that he neither knew nor connived in the commission of the offence.

(7) Notwithstanding subsection (4), the Guidelines may, in specific cases of non-compliance with or contravention of the provisions of the Guidelines, create offences and impose penalties to be enforced by the Anti-Money Laundering and Combating Terrorism Financing Commission as administrative penalties, but no penalty imposed shall exceed \$20,000.

(8) An administrative penalty collected by the Anti-Money Laundering and Combating Terrorism Financing Commission by virtue of subsection (7), shall be paid into the Confiscated Assets Fund, to be retained for use by the Anti-Money Laundering and Combating Terrorism Financing Commission.

(9) A reference in this section and section 33 to “money laundering”, includes drug money laundering within the meaning of the Drug Abuse (Prevention and Control) Act, 1992.

Joint Anti-
Money Laund-
ering and
Terrorist
Financing
Advisory
Committee.

33.—(1) There is established a committee to be known as the Joint Anti-Money Laundering and Terrorist Financing Advisory Committee, (“the Committee”), which shall consist of members drawn from the private sector with knowledge and experience in anti-money laundering and countering the financing of terrorism issues.

(2) Subject to subsection (4), the Committee shall comprise not less than seven and not more than fourteen members, who shall be appointed by the Minister, on the advice of the Attorney General and the Executive Director of the Anti-Money Laundering and Combating Terrorism Financing Commission.

(3) The members of the Committee shall be appointed for such period and on such terms and conditions as the Minister may determine, but the appointments shall be staggered in such a way as to ensure, that the terms of office of all the members do not expire at the same time.

(4) The Executive Director of the Anti-Money Laundering and Combating Terrorism Financing Commission shall serve as a member and Chairman of the Committee.

(5) The Committee shall have the responsibility of making recommendations to the Anti-Money Laundering and Combating Terrorism Financing Commission, on initiatives for the prevention and detection of money laundering and terrorist financing activities, in order to—

- (a) ensure the stability of the financial sector of the State;

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- (b) assist the Anti-Money Laundering and Combating Terrorism Financing Commission in formulating an appropriate approach in developing the Guidelines under section 32;
 - (c) keep entities, whether or not regulated by the Anti-Money Laundering and Combating Terrorism Financing Commission, but considered essential to the State's fight against money laundering, and terrorist financing activities, compliant with anti-money laundering and countering the financing of terrorism measures established locally, regionally and internationally; and
 - (d) keep the State attuned to developments on international cooperation, as they relate, or are incidental to, anti-money laundering and terrorist financing activities.

(6) The Committee may, on its own motion, provide such other advice as it considers essential to the State's efforts to effectively combat money laundering and terrorist financing activities.

(7) The Committee may make its own rules of procedure.

34.—(1) Subject to subsections (2) and (3), a person commits an offence if he enters into or is otherwise concerned in an arrangement which he knows, or suspects, facilitates, whether by concealment, removal from Grenada, transfer to nominees or other means, the acquisition, retention, use or

Assisting another to retain the benefit of criminal conduct.

control of proceeds of criminal conduct by or of himself, or by or on behalf of another person—

- (a) the retention or control by or on behalf of another person, of that other person's proceeds of criminal conduct, is facilitated, whether by concealment, removal from the State, transfer to nominees or otherwise; or
- (b) the proceeds of criminal conduct of that other person mentioned in paragraph (a) are used:
 - (i) to ensure that funds are placed at that other person's disposal; or
 - (ii) for that other person's benefit, to acquire property by way of investment,

knowing or suspecting that other person is a person who is, or has been engaged in criminal conduct, or has benefitted from criminal conduct.

(2) Where a person discloses to an enforcement officer or the Unit a suspicion or belief that any funds, investments or other property are derived from or used in connection with criminal conduct, or discloses to an enforcement officer or the Unit, any matter on which such a suspicion or belief is based—

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise, and shall not give rise to any civil liability; and

- (b) if he does any act in contravention of subsection (1), and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if:
 - (i) the disclosure is made before he does the act concerned, being an act done with the consent of an enforcement officer in aid of a law enforcement function; and
 - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it; and
 - (iii) he had good reason for his failure to make the disclosure before he did the act concerned.

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

- (a) that he did not know or suspect that the arrangement related to any person's proceeds of criminal conduct;
- (b) that he did not know or suspect, that by the arrangement, the acquisition, retention, use or control by or on behalf of the other person mentioned in subsection (1)(b), of any property, was facilitated as mentioned in that subsection; or;

- (c) that he intended to disclose to an enforcement officer or the Unit such a suspicion, belief or matter as is mentioned in subsection (2) in relation to the arrangement, but there is reasonable excuse for his failure to make disclosure in accordance with subsection (2)(b).

(4) In the case of a person who was in employment at the relevant time, subsections (2) and (3) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person, in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to an enforcement officer or the Unit.

(5) Where information is disclosed to or received by the Unit under this section, the Unit may disclose the information—

- (a) to any law enforcement agency in Grenada;
- (b) to any law enforcement agency in any other country, in order:
 - (i) to report the possible commission of an offence;
 - (ii) to initiate a criminal investigation respecting the matter disclosed;
 - (iii) to assist with any criminal investigations or criminal proceedings respecting the matter disclosed; or
 - (iv) to generally give effect to the purposes of this Act.

(6) Before making a disclosure under subsection (5), the Unit shall, in exercising that discretion, consider the interests of third parties.

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

- (a) on summary conviction, to imprisonment for a term of five years or to a fine of \$500,000, or both; or
- (b) on conviction on indictment, to imprisonment for a term of fourteen years or an unlimited fine, or both.

(8) No member of the Unit or other person concerned in law enforcement commits an offence under this section, in respect of anything done by him in the due discharge of the enforcement, or intended enforcement, of any provision of this Act, or of any other enactment relating to criminal conduct or the proceeds of criminal conduct.

(9) In this section, references to any person's proceeds of criminal conduct include, a reference to any property which in whole or in part, directly or indirectly represents in his hands, his proceeds of criminal conduct.

35.—(1) A person commits an offence if—

- (a) he acquires, transfers or uses any property or has possession of it which, in whole or in part, directly or indirectly represents his proceeds of criminal conduct; or

Acquisition,
possession
or use of
proceeds of
criminal
conduct.

- (b) knowing or suspecting that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he acquires, transfers or uses that property or has possession of it.

(2) It is a defence to a charge of committing an offence under this section, save under subsection (1) (a), that the person charged, acquired, transferred or used the property or had possession of it for adequate consideration.

(3) For the purposes of subsection (2)–

- (a) a person does not acquire property for adequate consideration, if the value of the consideration is significantly less than the value of the property; and
- (b) a person does not use or have possession of property for adequate consideration, if the value of the consideration is significantly less than the value of his use or possession of the property.

(4) The provision for any person of services or goods which are of assistance to him in criminal conduct, shall not be treated as consideration for the purposes of subsection (2).

(5) Where a person discloses to an enforcement officer or the Unit a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, or discloses to an enforcement officer or the Unit any matter on which such a suspicion or belief is based–

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise, and shall not give rise to any civil liability; and
- (b) if he does any act in relation to that property in contravention of subsection (1)(b), he does not commit an offence under this section if—
 - (i) the disclosure is made before he does the act concerned, being an act done with the consent of an enforcement officer in aid of a law enforcement function; or
 - (ii) the disclosure is made after he does the act, but on his initiative, and as soon as it is reasonable for him to make it; and
 - (iii) he had good reason for his failure to make the disclosure before he did the act concerned.

(6) Where information is disclosed to or received by the Unit under this section, the Unit may disclose the information—

- (a) to any law enforcement agency in Grenada;
- (b) to any law enforcement agency in any other country, in order:
 - (i) to report the possible commission of an offence;

- (ii) to initiate a criminal investigation respecting the matter disclosed;
- (iii) to assist with any criminal investigations or criminal proceedings respecting the matter disclosed; or
- (iv) to generally give effect to the purposes of this Act.

(7) Before making a disclosure under subsection (6), the Unit shall, in exercising that discretion, consider the interests of third parties.

(8) In proceedings against a person for an offence under this section, save under subsection (1)(b), it is a defence to prove that he intended to disclose to an enforcement officer or the Unit, such a suspicion, belief or matter as is mentioned in subsection (5), but there is reasonable excuse for his failure to make the disclosure in accordance with subsection 1(b).

(9) In the case of a person who was in employment at the relevant time, subsections (5) and (8) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures, as they have effect in relation to disclosures, and intended disclosures, to an enforcement officer or the Unit.

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

- (a) on summary conviction, to imprisonment of five years or to a fine of \$500,000, or both; or

- (b) on conviction on indictment, to imprisonment for a term of fourteen years or to an unlimited fine, or both.

(11) No enforcement officer or other person concerned in law enforcement commits an offence under this section, in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act, or of any other enactment relating to criminal conduct or the proceeds of such conduct.

(12) For the purposes of this section, having possession of any property, shall be taken to be doing an act in relation to it.

36.—(1) A person commits an offence if he—

- (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, the proceeds of criminal conduct; or
- (b) converts or transfers that property or removes that property from Grenada.

Concealing
or trans-
ferring
proceeds of
criminal
conduct.

(2) A person commits an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he

- (a) conceals or disguises that property; or
- (b) converts or transfers that property or removes it from Grenada.

(3) In subsections (1) and (2), the references to concealing or disguising any property include references to

concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(4) If a person does any act in relation to property which belongs to another person in contravention of subsection (2), he does not commit an offence under that subsection if he discloses that act and—

- (a) the disclosure is made before he does the act concerned, being an act done with the consent of an enforcement officer in aid of a law enforcement function; or
- (b) the disclosure is made after he does the act, but on his initiative and as soon as it is reasonable for him to make it; and
- (c) he had a good reason for his failure to make the disclosure before he did the act concerned.

(5) No member of the Unit or other person concerned in law enforcement commits an offence under this section in respect of anything done by him in the due discharge of the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to criminal conduct or the proceeds of such conduct.

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

- (a) on summary conviction, to imprisonment for a term of five years or to a fine of \$500,000, or both; or

-
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to an unlimited fine, or both.

37. A person commits an offence if he attempts, conspires Attempting, conspiring and inciting. or incites another to commit an offence under sections 34(1), 35(1), 36(1) and 37.

38.—(1) A person commits an offence if—

Mandatory reporting of suspicious transactions.

- (a) he knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering;
- (b) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to his attention in the course of his trade, profession, business or employment; and
- (c) he does not disclose the information or other matter to the Unit as soon as is reasonably practicable and in any event within 7 days of the date, the transaction was termed to be suspicious after it comes to his attention.

(2) A person does not commit an offence under subsection (1), if—

- (a) he has a reasonable excuse for not disclosing the information or matter;

- (b) he is an attorney-at-law and the information or other matter came to his attention in privileged circumstances; or
- (c) he does not know or suspect and has no reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.

(3) In deciding whether a person has committed an offence under subsection (1), the court shall consider whether the person complied with the provisions of any Guidelines issued under section 32, and any Regulations made pursuant to section 64 at the time of the commission of the offence.

(4) Where a person discloses to the Unit—

- (a) his suspicion or belief that another person is engaged in money laundering; or
- (b) any information or other matter on which that suspicion or belief is based,

that disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

(5) Without prejudice to subsection (2) or (3), in the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under this section, that he disclosed the information or matter in question to the appropriate person, in accordance with the procedure established by his employer for the making of such disclosures.

(6) A disclosure to which subsection (5) applies, shall not be treated as a breach of any restriction imposed by statute or otherwise.

(7) Where a disclosure made in compliance with subsection (1) relates to a specific transaction in respect of which investigative action has been taken or is contemplated, the Unit shall notify the person who made the disclosure or the institution he represents, that such action has been taken or is contemplated, and direct that all future transactions by or relating to the person to whom the disclosure relates, shall be treated in such manner as the Unit thinks fit.

(8) For the purposes of subsection (2)(b), information or other matter comes to an attorney-at-law in privileged circumstances, if it is communicated or given to him—

- (a) by a client of his or a representative of a client of his in connection with the giving of legal advice to the client;
- (b) by a person, or by a representative of a person seeking legal advice from an attorney-at-law; or
- (c) by any person:
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(9) No information or other matter shall be treated as coming to an attorney-at-law in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

(10) A person who commits an offence under subsection (1) is liable—

- (a) on summary conviction, to a fine of \$500,000 or imprisonment for a term of three years, or both; or
- (b) on conviction on indictment, to an unlimited fine or imprisonment for a term not exceeding ten years, or both.

(11) A person who fails to comply with a direction given pursuant to subsection (7) commits an offence, and is liable, on summary conviction, to a fine of twenty thousand dollars or imprisonment for a term of three years, or both.

Tipping-off.

39.—(1) A person commits an offence if—

- (a) he knows or suspects that an enforcement officer or a member of the Unit or other person is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money laundering or any action in relation to or arising from money laundering; and
- (b) he discloses to any other person information or any other matter, which is likely to prejudice that investigation, or proposed investigation.

(2) A person commits an offence if—

- (a) he knows or suspects that a disclosure (“the disclosure”), is being or has been made to the Unit under sections 34, 35 or 38; and

- (b) he discloses to any other person information or any other matter, which is likely to prejudice any investigation which might be conducted following the disclosure.

(3) A person commits an offence if—

- (a) he knows or suspects that a disclosure (“the disclosure”), of a kind mentioned in section 34 (2), 35 (5) or 38 (4), has been made; and
- (b) he discloses to any person information or any other matter, which is likely to prejudice any investigation which might be conducted following the disclosure.

(4) Nothing in subsections (1) to (3) makes it an offence for an attorney-at-law to disclose any information or other matter—

- (a) to a client, or to a representative of a client of his in connection with the giving, by the attorney-at-law, of legal advice to the client;
- (b) by a person, or by a representative of a person seeking legal advice from an attorney-at-law; or
- (c) to any person—
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(5) Subsection (4) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(6) In proceedings against a person for an offence under subsection (1), (2) or (3), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.

(7) In this section, “money laundering” means doing any act which constitutes an offence under section 34, 35, 36 or 38 or, in the case of an act done otherwise than in Grenada, would constitute such an offence if done in Grenada.

(8) For the purposes of subsection (7), having possession of any property shall be taken to be doing an act in relation to it.

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

- (a) on summary conviction, to imprisonment for a term of three years or to a fine of \$500,000, or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years or to an unlimited fine, or both.

(10) No enforcement officer or the Unit or other person, shall be convicted of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to an offence to which this Act applies.

PART VI**CONFISCATED ASSETS FUND**

40.—(1) There shall be established a fund to be known as Confiscated Assets Fund. the Confiscated Assets Fund (“the Fund”).

(2) There shall be paid into the Fund—

- (a) proceeds of criminal conduct recovered under a confiscation order;
- (b) cash forfeited under Part VI;
- (c) money forfeited under the Drug Abuse (Prevention and Control) Act, 1992;
- (d) money paid to the Government of Grenada by a foreign jurisdiction in respect of confiscated assets, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise.

(3) The Minister may, after consulting the Cabinet and the Anti-Money Laundering and Combating Terrorism Financing Commission, authorize payments to be made out of the Fund—

- (a) for the purposes related to—
 - (i) law enforcement, including in particular the investigation and prosecution of suspected cases under this Act;
 - (ii) treatment and rehabilitation of community;

-
- (iii) public education and community projects in relation to matters under this Act;
 - (iv) demand reduction activities;
 - (v) research to include surveys of the drug problem in Grenada; and
 - (vi) funding of Special Drug Courts;
- (b) to satisfy an obligation of the Government of Grenada to a foreign jurisdiction in respect of confiscated assets, whether under a treaty or arrangement providing for mutual assistance in criminal matters or otherwise;
 - (c) to meet the expenses of the Anti-Money Laundering and Combating Terrorism Financing Commission;
 - (d) to meet the remuneration and expenses of a receiver appointed under this Act;
 - (e) to pay compensation or costs awarded under this Act;
 - (f) to cover costs associated with administration of the Fund.

Administration
of the Fund.

41.—(1) The moneys paid into the Fund shall be invested in accordance with the laws of Grenada, and the income earned from such investments shall be paid into the Fund.

(2) The financial year of the Fund shall end on 31st December in each year.

(3) The Accountant General shall cause proper accounts, and proper records in relation to the accounts of the Fund to be kept, and shall cause to be prepared in respect of each financial year, a statement of the accounts of the Fund in such form as the Minister may direct.

(4) Within six months after the end of each financial year, the Minister shall send the Director of Audit a copy of the statement of accounts for that financial year.

(5) The Director of Audit shall examine every statement of accounts received by him under this section, and shall make a report in writing, on the statement to the Minister.

(6) The Minister shall lay on the table in the House of Representatives within three months of receipt, a copy of the report of the Director of Audit.

PART VII

ENFORCEMENT OF EXTERNAL ORDERS

42.—(1) The Attorney General may, by Order—

- (a) direct, in relation to a country or territory outside Grenada designated by the Order (referred to in this section and section 43 as a “designated country”) that, subject to such modifications as may be specified, this Act shall apply to external confiscation orders, and to proceedings which have been or are to be instituted in the designated country, and may result in an external confiscation order being made there;

Enforcement
of external
confiscation
orders and
proceedings.

- (b) make—
 - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order;
 - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 43;
 - (iii) such incidental, consequential and transitional provision,

as appears to the Attorney General to be expedient; and

- (c) without prejudice to the generality of this subsection, direct, that in such circumstances as may be specified, proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order, shall be treated as reducing the amount payable under the Order to such extent as may be specified.

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

(3) The power to make an order under this section, includes the power to modify, (whether by additions, alterations, omissions or otherwise) this Act, in such a way, as to confer power on a person to exercise a discretion.

(4) An Order made under this section is subject to the negative resolution procedure.

(5) In this section and section 43, “external confiscation order” means, an order made by a court in a designated country for the purpose of—

- (a) recovering property obtained as a result of, or in connection with conduct, corresponding to an offence to which this Act applies;
- (b) recovering the value of property so obtained; or
- (c) depriving a person of a pecuniary advantage so obtained.

43.—(1) On an application made to the High Court by the Attorney General on behalf of the Government of a designated country, the High Court may register an external confiscation order made there if—

Registration
of external
confiscation
orders.

- (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 so 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 Grenada would not be contrary to the interests of justice.

(2) The High Court shall not register an external confiscation order made in a designated country, where the

Attorney General has issued a certificate to the effect that the application to register the order is contrary to the public interest of Grenada.

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

(4) For the purposes of subsection (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.

Evidence of
corresponding
law.

44.—(1) A document purporting to be issued by or on behalf of the Government of a country or territory, and purporting to state the terms of a corresponding law in force in that country or territory, shall be admitted in evidence, in proceedings under this Act, on its production by the prosecution without further proof, and such document shall be conclusive evidence that—

- (a) it is issued by or on behalf of the Government of that country or territory;
- (b) the terms of such law are as stated in the document;
- (c) any facts stated in the document to constitute an offence under such law do constitute such offence.

(2) “Corresponding law”–

- (a) in relation to proceedings relating to drug trafficking, has the meaning given in the Drug Abuse (Prevention and Control) Act 1992 and;
- (b) in any other case, means a law which corresponds with a provision of Grenada law which creates a relevant offence.

PART VIII

PROCEDURE

45.—(1) Where a defendant is charged with a drug ^{Jurisdiction.} trafficking or relevant offence which may be tried summarily or on indictment–

- (a) the power of the Director of Public Prosecutions to issue a certificate requiring an offence to be tried on indictment may be exercised, where the Director of Public Prosecutions intends to make an application for a confiscation order if the defendant is convicted; and
- (b) the power of a magistrate’s court to commit the defendant to the High Court for sentencing shall be exercised, where the magistrate’s court is of the opinion that the defendant is one against whom the High Court may consider making a confiscation order.

Costs.

46.—(1) Where—

- (a) a person brings, or appears at, court proceedings under this Act and endeavours—
 - (i) to prevent a confiscation order or a restraint order or a charging order from being made against property of his; or
 - (ii) to have property of his excluded from such an order; and
- (b) that person is successful in that endeavour; and
- (c) the court is satisfied that he was not in any way involved in criminal conduct,

then the court may, by order, declare that he is entitled to be paid all reasonable costs incurred by him in connection with those proceedings, or such part of those costs as the court determines.

(2) The costs referred to in subsection (1), are not limited to costs of a kind that are normally recoverable by a successful party in civil proceedings.

(3) Costs payable by virtue of a declaration made by the court under subsection (1) shall be paid out of the Fund.

Civil standard of proof.

47. Any question of fact to be decided by a court in proceedings under this Act, except any question of fact that is for the prosecution to prove in any proceedings for an offence under this Act, shall be decided on the balance of probabilities.

PART IX**MISCELLANEOUS PROVISIONS**

48.—(1) Where a court orders the defendant to pay any sum under this Act, the Criminal Code, or the Criminal Procedure Code, shall have effect as if that sum were a fine imposed on him by the court. Enforcement of fines and confiscation orders.

(2) Where—

- (a) the court has directed that in default of payment of a sum ordered to be paid under this Act in respect of an offence, the defendant shall serve a term of imprisonment; and
- (b) at the time the direction is made, the defendant is liable to serve a term of imprisonment in respect of the offence,

the term of imprisonment to be served in default of payment of the sum, shall not begin to run until after the term mentioned in paragraph (b).

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

- (a) consecutive terms of imprisonment and terms of imprisonment which are wholly or partly concurrent, shall be treated as a single term; and
- (b) there shall be disregarded any sentence, suspended under any enactment, which has not taken effect at the time the defendant has defaulted as specified in the direction.

(4) Subject to section 2(8), where the defendant serves a term of imprisonment in default of paying any sum due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.

Forfeiture of
property.

49.—(1) Subject to subsection (3), where a person is convicted of an offence under section 34, 35, 36, 37 or 38, the court—

- (a) may, in passing sentence, order forfeiture to the State of any real property or any ship, vessel, boat, aircraft, vehicle or other means of conveyance of any description shown to the satisfaction of the court to relate to the offence; and
- (b) shall, in passing sentence, order forfeiture to the State of any article, money or valuable consideration shown to the satisfaction of the court to relate to the offence.

(2) Subject to subsection (3), where, in a trial for an offence under this Act, it is shown to the satisfaction of the court, that any property is or represents proceeds of criminal conduct or has been, is being or is reasonably likely to be, used in connection with the retention, control, acquisition, possession, use, concealment, disguising, conversion, transfer or moving of proceeds of criminal conduct, the court may, whether or not the defendant is convicted of the offence, order forfeiture to the State of any such property.

(3) The court shall not order anything to be forfeited under this section, unless an opportunity has been given to the person claiming to be the owner or other person interested in

it, to show cause within twenty-one days from the date of conviction, why the order should not be made.

(4) Forfeiture under subsection (1) shall extend—

- (a) to any property which there is reason to believe has been obtained from the proceeds of anything relating to the offence for which a person is convicted, or to a conspiracy to commit any such offence; or
- (b) to anything into which any such property has been converted.

50.—(1) Where in relation to an investigation into criminal conduct—

Prejudicing
an investigation.

- (a) a production order has been made, or has been applied for and has not been refused;
- (b) a warrant under section 56 has been issued; or
- (c) a monitoring order has been made;

a person commits an offence if,

- (i) he makes a disclosure which is likely to prejudice the investigation; or
- (ii) he falsifies, conceals, mutilates, destroys or otherwise disposes of, or causes or permits the falsification, concealment, mutilation, destruction or disposal of documents, which are relevant to the investigation.

(2) A person does not commit an offence under

subsection (1) (a) if—

- (a) he does not know or suspect that the disclosure is likely to prejudice the investigation;
- (b) the disclosure is made in the exercise of a function under this Act or any other enactment relating to criminal conduct, or benefit from criminal conduct, or in compliance with a requirement imposed under or by virtue of this Act; or
- (c) he is an attorney-at-law and the disclosure is made:
 - (i) to, or to a representative of, a client of his, in connection with the giving, by the attorney-at-law, of legal advice to the client; or
 - (ii) to any person in contemplation of, or in connection with, legal proceedings and for the purpose of those proceedings.

(3) A person does not commit an offence under subsection (1) (b) if—

- (a) he does not know or suspect that the documents are relevant to the investigation; or
- (b) he does not intend to conceal any facts disclosed by the documents from an enforcement officer, or the Unit carrying out the investigation.

(4) A person who commits an offence under subsection

(1) is liable—

- (a) on summary conviction, to a fine of \$100,000 or imprisonment for two years, or both; or
- (b) on conviction on indictment to a fine of \$500,000 or imprisonment for a term of five years, or both.

51.—(1) An enforcement officer may arrest, without a warrant, any person who has committed, or whom the enforcement officer reasonably suspects to have committed, an offence to which this Act applies.

Powers of arrest.

(2) An officer of the Customs Department may, in any case relating to the commission of an offence under this Act, exercise all or any of the powers in relation to investigations into an offence which is arrestable, without warrant conferred on an enforcement officer by the Criminal Code.

52.—(1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any enactment, no enforcement officer shall disclose any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under the Act.

Enforcement officers duty of confidentiality.

(2) Any person who contravenes this section commits an offence, and shall be liable, on summary conviction, to imprisonment for one year or a fine of \$20,000, or both.

Orders to make materials available.

53.—(1) For the purpose of an investigation into—

- (a) drug trafficking;
- (b) a relevant offence;
- (c) whether any person has benefitted from criminal conduct; or
- (d) the whereabouts of any proceeds of criminal conduct,

an enforcement officer may apply to the court for a production order under subsection (2), in relation to a particular material or material of a particular description.

(2) If, on an application under subsection (1), the court is satisfied that the conditions in subsection (4) are fulfilled, it may make a production order that the person who appears to the court to be in possession of the material to which the application relates shall—

- (a) produce it to an enforcement officer for him to take away; or
- (b) give an enforcement officer access to it,

within such period as the order may specify.

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

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

-
- (a) there are reasonable grounds for suspecting that a specified person is involved, in or may be related to, an act of money laundering, or has benefitted from any criminal conduct;
 - (b) there are reasonable grounds for suspecting that the material to which the application relates—
 - (i) is likely to be of substantial value, (whether by itself or together with other material), to the investigation for the purposes of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege; and
 - (c) there are reasonable grounds for believing that it is in the public interest, having regard—
 - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) to the circumstances under which the person in possession of the material holds it,

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

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

(6) An application under subsection (1) or (5) may be made ex parte to a judge or magistrate in chambers.

(7) Provision may be made by rules of court as to—

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

(8) Where the material to which an application under this section relates, consists of information contained in or accessible by means of a computer—

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

(9) A production order under subsection (2)—

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

(10) Where material is produced pursuant to an order under this section—

-
- (a) an enforcement officer or the Unit may photograph or make copies of the material; and
 - (b) the material may—
 - (i) be retained for as long as it is necessary for the purposes of completing an investigation; and
 - (ii) where it is required for legal proceedings, be retained until those proceedings are concluded.

(11) Where, in relation to an investigation into an offence to which this Act applies, an order under subsection (2) has been made or has been applied for and has not been refused, or a warrant under section 56 has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation, commits an offence.

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

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

(13) A person who commits an offence under subsection (11) is liable, on summary conviction, to imprisonment for a term not exceeding six months, or to a

fine not exceeding twenty thousand dollars.

(14) Where the investigation into whether a person has benefitted from criminal conduct or the whereabouts of the proceeds of criminal conduct relates to a relevant offence which was not committed in Grenada, an application under subsection (1) shall not be made, unless the provisions of the Mutual Assistance in Criminal Matters Act, (Grenadian evidence for use overseas), have been complied with.

Failure to
comply with
production
order.

54.—(1) Where a person is required by a production order to produce any material to an enforcement officer or give an enforcement officer access to any material, the person is guilty of an offence under this section, if he—

- (a) contravenes the order without reasonable excuse; or
- (b) in purported compliance with the order, produces or makes available any material known to the person to be false or misleading in a material particular, without—
 - (i) indicating to the enforcement officer to whom the material is produced or made available, that the material is false or misleading and the respect in which the material is false or misleading; and
 - (ii) providing correct information to the enforcement officer if the person is in possession of, or can reasonably acquire, the correct information.

(2) A person who commits an offence under this section is liable, on summary conviction, to imprisonment for two

years or a fine of \$100,000, or both.

55.—(1) An enforcement officer may apply to the High Court for an order (“monitoring order”), directing a financial institution to give to an enforcement officer information obtained by the institution, about transactions conducted through an account held by a particular person with the institution. ^{Monitoring orders.}

(2) An application for a monitoring order shall be made ex parte to a judge in Chambers and shall be supported by an affidavit.

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

(4) A monitoring order shall not be made, unless the court is satisfied that there are reasonable grounds for suspecting that the person in respect of whom the information is sought—

- (a) has committed, or is about to commit, a drug trafficking offence or a relevant offence;
- (b) was involved in the commission, or is about to be involved in the commission, of such an offence; or
- (c) has benefitted directly or indirectly, or is about to benefit directly or indirectly, from the commission of such an offence.

(5) A monitoring order shall specify—

-
- (a) the name or names in which the account is believed to be held;
 - (b) the nature of the information which the institution is required to give; and
 - (c) the manner in which the information is to be given.

(6) A person who knowingly—

- (a) contravenes a monitoring order; or
- (b) provides false or misleading information in purported compliance with the order,

commits an offence, and is liable, on summary conviction, to imprisonment for two years or a fine of \$100,000, or both.

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

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

(8) The provision of information to an enforcement officer by virtue of a monitoring order, shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise, and shall not give rise to any criminal, civil or administrative liability.

56.—(1) For the purpose of an investigation into—

Authority for search.

-
- (a) drug trafficking;
 - (b) a relevant offence;
 - (c) whether any person has benefitted from criminal conduct; or
 - (d) the whereabouts of any proceeds of criminal conduct,

an enforcement officer may apply to the court for a warrant under this section in relation to specified premises.

(2) On an application made under subsection (1), the court may issue a warrant authorising an enforcement officer to enter and search the premises if the court is satisfied that—

- (a) a production order made under section 53 in relation to material on the premises, has not been complied with;
- (b) the conditions in subsection (3) are fulfilled; or
- (c) the conditions in subsection (4) are fulfilled.

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

- (a) there are reasonable grounds for suspecting that a specified person has carried on drug trafficking, a relevant offence or has benefitted from criminal conduct;
- (b) the conditions in section 53(4)(b) and (c) are fulfilled in relation to any material on the premises; and
- (c) it would not be appropriate to make an order under that section in relation to the

material because—

- (i) it is not practicable to communicate with any person entitled to produce the material;
- (ii) it is not practicable to communicate with any person entitled to grant access to the material, or entitled to grant entry to the premises on which the material is situated; or
- (iii) the investigation for the purposes of which the application is made, might be seriously prejudiced, unless an enforcement officer could secure immediate access to the material.

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

- (a) that there are reasonable grounds for suspecting that a specified person has committed a drug trafficking offence, or a relevant offence or has benefitted from a criminal conduct;
- (b) that there are reasonable grounds for suspecting that there is, on the premises, any such material relating—
 - (i) to the specified person;
 - (ii) to drug trafficking;

- (iii) to a relevant offence;
- (iv) to the question whether that person has benefitted from criminal conduct; or
- (v) to any question as to the extent or whereabouts of any proceeds of criminal conduct,

is likely to be of substantial value, (whether by itself or together with other material) to the investigation for the purposes of which the application is made, but that the material cannot at the time of the application be particularised; and

- (c) that—
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation for the purposes of which the application is made, might be seriously prejudiced, unless an enforcement officer arriving at the premises could secure immediate entry to them.

(5) Where an enforcement officer has entered premises

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

(6) Where any material is seized pursuant to subsection (5)–

- (a) an enforcement officer or the Unit may photograph or make copies of the material; and
- (b) the material may–
 - (i) be retained for as long as it is necessary for the purposes of completing an investigation; and
 - (ii) where it is required for legal proceedings, be retained until those proceedings are concluded.

(7) A person who hinders or obstructs an enforcement officer in the execution of a warrant issued under this section is guilty of an offence, and liable, on summary conviction, to imprisonment for two years or a fine of \$100,000, or both.

(8) Where the investigation into whether a person has benefitted from criminal conduct or the whereabouts of the proceeds of criminal conduct relates to a relevant offence which was not committed in Grenada, an application under subsection (1) shall not be made, unless the provisions of the Mutual Assistance in Criminal Matters Act, 1993 (Grenadian evidence for use overseas), have been complied with.

57.—(1) Subject to subsection (4), the High Court may, on

Disclosure
of information
by
government
departments.

an application by an enforcement officer, order any material mentioned in subsection (3) which is in the possession of a Government Department, to be produced to the court within such period as the court may specify.

(2) The power to make an order under subsection (1) is exercisable if—

- (a) the powers conferred on the court to make a restraint order or a charging order are exercisable by virtue of section 20(1); or
- (b) those powers are exercisable by virtue of section 20(3), and the court has made a restraint or charging order which has not been discharged,

but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b), section 20(4), shall apply for the purposes of this section, as it applies for the purposes of sections 21 and 22.

(3) The material referred to in subsection (1) is any material which—

- (a) has been submitted to an officer of a Government Department by the defendant, or by a person who has at any time held property which was realisable property;
- (b) has been made by an officer of a Government Department in relation to the defendant or such a person; or

- (c) is correspondence which passed between an officer of a Government Department and the defendant or such a person,

and an order under that subsection may require the production of all such material, or of a particular description of such material, in the possession of the body concerned.

(4) An order under subsection (1) shall not require the production of any material, unless it appears to the court, that the material is likely to contain information that would facilitate the exercise of powers conferred on the court by section 21, 22 or 23, or on a receiver appointed under section 21 or 23 or in pursuance of a charging order.

(5) The court may, by order, authorize the disclosure to such a receiver of any material produced under subsection (1) or any part of such material; but the court shall not make an order under this subsection, unless a reasonable opportunity has been given for an officer of the Government Department to make representations to the court.

(6) Material disclosed in pursuance of an order under subsection (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Act, of the receiver or the court.

(7) The court may, by order, authorize the disclosure to an enforcement officer of any material produced under subsection (1) or any part of such material; but the court shall not make an order under this subsection unless—

- (a) a reasonable opportunity has been given for an officer of the Government Department to make representations to the court; and

- (b) it appears to the court, that the material is likely to be of substantial value in exercising functions relating to criminal conduct.

(8) Material disclosed in pursuance of an order under subsection (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to criminal conduct.

(9) Material may be produced or disclosed in pursuance of this section, notwithstanding any obligations as to secrecy or other restrictions upon the disclosure of information imposed by statute or otherwise.

(10) An order under subsection (1) and, in the case of material in the possession of a Government Department, a production order, may require any officer of the Government Department, (whether named in the order or not), who may for the time being, be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the department.

Seizure and
detention of
cash.

58.—(1) For the purposes of—

- (a) this section and sections 59 and 60, “cash” includes coins, notes in any currency, cheques and any other monetary or type of bearer negotiable instrument;
- (b) this section, “exported”, in relation to cash, includes its being brought to any place in Grenada for the purpose of being exported.

(2) A law enforcement officer may seize and detain any cash which is found in Grenada, or is being imported into or exported from Grenada if its amount is not less than ten thousand dollars, and he has reasonable grounds for suspecting the cash—

- (a) is intended by any person for use in criminal conduct; or
- (b) directly or indirectly represents any person's proceeds of criminal conduct.

(3) Cash being imported into or exported from Grenada shall be seized and detained, regardless whether it is declared or not, if the Comptroller of Customs or a representative of the Comptroller at the port of entry or exit, suspecting that the cash:

- (a) is intended by any person for use in criminal conduct; or
- (b) directly or indirectly represents any person's proceeds of criminal conduct.

(4) Cash seized by virtue of subsection (2) or (3), shall not be detained for more than seventy-two hours, unless its continued detention is authorized by order of a Magistrate upon an application made by a law enforcement officer or the Comptroller of Customs.

(5) A Magistrate shall not make an order under subsection (4), unless he is satisfied—

- (a) that there are reasonable grounds for the suspicion mentioned in subsection (2) or, subsection (3); and

- (b) that continued detention of the cash is justified, while its origin or derivation is further investigated, or consideration is given to the institution, (whether in Grenada or elsewhere), of criminal proceedings against any person for an offence with which the cash is connected; or
- (c) that proceedings against any person for an offence with which the cash is connected have been started but have not been concluded.

(6) Where an order is made under subsection (4), the Magistrate—

- (a) shall provide for notice to be given to persons affected by it, and the notice shall be in such form as the Magistrate shall determine, unless otherwise provided in rules of Court;
- (b) shall authorize the continued detention of the cash to which the order relates for a period, not exceeding three months, beginning with the date of the order, as may be specified in the order; and
- (c) may thereafter, if satisfied as to the matters mentioned in that subsection, from time to time by order, authorize the further detention of the cash, but so that:
 - (i) no period of detention specified in such an order shall exceed three months beginning with the date of the order; and

- (ii) the total period of detention shall not exceed two years from the date of the order.

(7) At any time while cash is detained by virtue of this section—

- (a) the Magistrate may direct its release if satisfied, on an application made
 - (i) by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer any, such grounds as are mentioned in subsection (5), to warrant its continued detention; or
 - (ii) by any other person, that the continued detention of the cash is not for that or any other reason justified; and
- (b) the Commissioner of Police, Director of the Unit or the Comptroller of Customs may, subject to subsections (8) and (9), release the cash, if satisfied that its continued detention is no longer justified.

(8) The Commissioner of Police, Director of the Unit, or the Comptroller of Customs, shall not release cash pursuant to subsection (7) (b), unless he first notifies, in writing—

- (a) the Magistrate under whose order the cash is being detained; or
- (b) another Magistrate in the absence of the one under whose order the cash is being detained.

(9) Where on an application under subsection (7) for the release of cash that is being detained the Magistrate finds, that only a part of the cash, if it relates to liquid currency, is intended for use by a person in criminal conduct, or directly or indirectly represents any person's proceeds of criminal conduct, the Magistrate may order the release of that part of the cash as does not relate to the intended criminal conduct, or directly or indirectly represent the proceeds of criminal conduct.

(10) Subsection (9) does not apply to cash that is in the form of bearer negotiable or other monetary instrument.

(11) If at any time when any cash is being detained by virtue of this section—

- (a) an application for its forfeiture is made under section 59, or
- (b) proceedings are instituted (whether in Grenada or elsewhere), against any person for an offence with which the cash is connected,

the cash shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.

59.—(1) A Magistrate may order the forfeiture to the State of the whole or any part of cash which has been seized pursuant to section 58 if he is satisfied, on an application made by an enforcement officer or the Comptroller of Customs, that the cash—

Forfeiture of cash.

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- (a) is intended by any person for use in criminal conduct; or
 - (b) directly or indirectly represents any person's proceeds of criminal conduct.

(2) The standard of proof in proceedings on an application under subsection (1) shall be on a balance of probability.

(3) An order may be made under subsection (1), irrespective of whether proceedings are brought against a person for an offence with which the cash in question is connected.

(4) Where an application for the forfeiture of any cash is made under subsection (1), the cash is to be detained (and may not be released) under any power conferred by this section or section 58, until any proceedings in pursuance of the application, including any proceedings on appeal, are concluded.

(5) Any party to proceedings under this section who is aggrieved by an order of the Magistrate may, within thirty days from the date on which the order is made, appeal to the Court of Appeal, which may make such order as it thinks appropriate.

Interest and
seizure
supplementary.

60.—(1) Cash seized pursuant to section 58 and detained for more than seventy-two hours shall, unless required as evidence of an offence, be held in an interest-bearing account, and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.

(2) An order under section 63(2) shall provide for notice to be given to persons affected by the order.

(3) Without prejudice to the generality of any existing power to make rules, provision may be made by rules of court—

- (a) with respect to applicants to any court under this Part;
- (b) for the giving of notice of such applications to persons affected;
- (c) for the joinder of persons as parties; and
- (d) generally, with respect to the procedure under this Part before any court.

61. No action shall be brought against any enforcement officer or the Unit for anything done, in good faith, in exercise of the powers conferred on him by this Act. Immunity from suit.

62. The Minister may, by Order, amend section 22 by adding to or removing from the kinds of asset referred to in that section, any assets of a kind which, in the opinion of the Minister, ought to be so added or removed. Power of amendment.

63.—(1) There shall be established a Commission, to be known as the Anti-Money Laundering and Combating Terrorism Financing Commission, for the purpose of— Anti-Money Laundering and Combating Terrorism Financing Commission.

- (a) advising the Minister in relation to the detection and prevention of money laundering in Grenada;

- (b) issuing, from time to time guidance, as to compliance with this Act and regulations made under this Act;
- (c) advising the Minister as to the participation of Grenada in the international effort against money laundering,
- (d) examining any financial institution that is regulated under any other enactment;
- (e) regulating anti-money laundering activities,

and the Anti-Money Laundering and Combating Terrorism Financing Commission shall meet as often as may be necessary to carry out its duties.

(2) The staff of the Commission shall consist of an Executive Director appointed by the Public Service Commission and such other staff as shall be necessary for the efficient operation of the Commission.

(3) The members of the Anti-Money Laundering and Combating Terrorism Financing Commission shall be—

- (a) the Attorney General;
- (b) the Permanent Secretary Ministry of Finance;
- (c) the Director of Public Prosecutions;
- (d) the Permanent Secretary of the Ministry responsible for the Police;
- (e) the Commissioner of Police;

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- (f) the Chairman of the Grenada Authority for the Regulation of Financial Institutions;
 - (g) the Comptroller of Customs;
 - (h) the National Security Advisor;
 - (i) such other persons as the Minister may from time to time appoint;
 - (j) the chairman to be appointed by the Minister from any of the above persons.

64.—(1) The Minister may make regulations for the ^{Regulations.} effective carrying out of the provisions of this Act.

(2) Without prejudice to subsection (1), the Minister may, for the purposes of ensuring compliance with established standards of regulation and cooperation in relation to anti-money laundering activities, and with the advice of the Anti-Money Laundering and Combating Terrorism Financing Commission, make regulations specifically—

- (a) providing for the identification procedures and processes to be established and administered in relation to business entities that are regulated by the Anti-Money Laundering and Combating Terrorism Financing Commission;
- (b) providing for the maintenance, format, retention and retrieval of records;

- (c) requiring the maintenance of a register of inquiries and the adoption of due diligence measures;
- (d) requiring the establishment of procedures for the recognition and reporting of suspicious transactions;
- (e) requiring the establishment of training programmes, including refresher training programmes, to educate persons on the provisions of this Act, any other enactment and any regional and international initiatives relating to money laundering and terrorist financing; and
- (f) providing for anything relating to or incidental to the matters specified in paragraphs (a) to (e).
- (g) setting time frames where required, pursuant to the provisions of this Act.

(3) Regulations made under subsection (2) shall—

- (a) apply to any entity to which section 32 may be applicable, but without prejudice to any obligations and liabilities that may apply to the entity, pursuant to any Guidelines made and applicable to or in relation to that entity; and

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- (b) provide for the offences and penalties to be applicable to any contravention or non-compliance with the provisions of the Regulations.

(4) Any penalty prescribed under sub-regulation (3) (b), shall not exceed a fine of thirty thousand dollars.

65. The following Acts are repealed—

Repeal.

- (a) The Proceeds of Crime Act, No. 27 of 1992;
- (b) The Proceeds of Crime Act, No. 3 of 2003;
and
- (c) The Money Laundering (Prevention) Act, No. 18 of 1999.

SCHEDULE

[Section 2]

DESIGNATED CATEGORY OF OFFENCES

1. Participation in an organised criminal group and racketeering
2. Terrorism, including terrorist financing
3. Trafficking in human beings and migrant smuggling
4. Sexual exploitation, including sexual exploitation of children
5. Illicit trafficking in narcotic drugs and psychotropic substances
6. Illicit arms trafficking
7. Illicit trafficking in stolen and other goods

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8. Corruption and bribery
 9. Fraud
 10. Counterfeiting currency
 11. Counterfeiting and piracy of products
 12. Environmental crime
 13. Murder, grievous bodily injury
 14. Kidnapping, illegal restraint and hostage-taking
 15. Robbery or theft
 16. Smuggling
 17. Extortion
 18. Forgery
 19. Piracy
 20. Insider trading and market manipulation
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Passed by the House of Representatives on the 16th day of December, 2011.

RAPHAEL DONALD
Acting Clerk to the House of Representatives.

Passed by the Senate on the 5th day of January, 2012.

RAPHAEL DONALD
Acting Clerk to the Senate.

GRENADA