



## LAWS AND REGULATIONS

### PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

*In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances,  
the Secretary-General has the honour to communicate the following legislative texts.*

#### JAMAICA

Communicated by the Government of Jamaica

##### NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

	<u>Contents</u>	<u>Page</u>
1996/29	The Drug Offences (Forfeiture of Proceeds) Act, 1994 (Act 16 of 1994)	2
1996/30	The Mutual Assistance (Criminal Matters) Act, 1995 (Act 5 of 1995)	56

**\*Note by the Secretariat:** This document is a direct reproduction of the texts communicated to the Secretariat by the Government of Jamaica.

**THE DRUG OFFENCES (FORFEITURE OF PROCEEDS)  
ACT, 1994**

(Act 16 of 1994)

**ARRANGEMENT OF SECTIONS**

**PART I. *Preliminary***

1. Short title.
2. Interpretation.

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

3. Application for forfeiture order and pecuniary penalty order.
4. Notice of application.
5. Amendment of application.
6. Procedure on application.
7. Forfeiture order on conviction.
8. Effect of forfeiture order.
9. Voidable transfers.
10. Protection of third parties.
11. Discharge of forfeiture order or pecuniary penalty order on appeal  
and quashing of conviction.
12. Payment instead of forfeiture order.
13. Enforcement of orders made under section 12.

***Pecuniary Penalty Orders***

14. Pecuniary penalty order on conviction.
15. Rules for determining benefit and assessing value.
16. Statements relating to benefits from commission of prescribed  
offences.
17. Amount to be recovered under pecuniary penalty order.
18. Variation of pecuniary penalty orders.
19. Judge may lift corporate veil.

**PART III. Provisions relating to Investigations and Preservation  
of Property liable to Forfeiture and Pecuniary  
Penalty Orders  
Powers of Search and Seizure**

20. Warrant to search premises for tainted property.
21. Restrictions on issue of search warrants.
22. Matters to be included in search warrant.
23. Other tainted property may be seized.
24. Record of property seized.
25. Return of property seized.
26. Retention of property seized.

***Restraint Orders***

27. Application for restraint order.
28. Restraint orders.
29. Undertakings by Crown.
30. Notice of application for restraint order.
31. Service of restraint order.
32. Registration of restraint order.
33. Contravention of restraint order.
34. Duration of restraint order.

***Review of Search Warrants***

35. Review of search warrants and restraint orders.
36. Automatic expiry of restraint orders.
37. Disposal of property seized or dealt with.

***Production Orders and other Information Gathering Powers***

38. Production and inspection orders.
39. Scope of police powers under production order, etc.
40. Evidential value of information.

- 41. Variation of production order.
- 42. Failure to comply with production order.
- 43. Search warrant to facilitate investigations.

***Monitoring Orders***

- 44. Monitoring orders.
- 45. Monitoring orders not to be disclosed.
- 46. Retention of records of financial institutions.
- 47. Register of original documents.
- 48. Communication of information to law enforcement authorities.
- 49. Interpretation.

**PART V. *General***

- 50. Appeals.
- 51. Amendment of Schedule.
- 52. Compensation.
- 53. Regulations.
- 54. Costs.
- 55. Standard of proof.
- 56. Savings.

**SCHEDULE**

No. 16—1994

I assent,

[L.S.]

H. F. COOKE,  
*Governor-General.*

27th day of June, 1994.

AN ACT to Provide for the forfeiture of the proceeds of  
drug offences and for connected matters.

[ The date notified by the Minister  
bringing the Act into operation ]

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

**PART I. *Preliminary***

1. This Act may be cited as the Drug Offences (Forfeiture Short title.  
of Proceeds) Act, 1994, and shall come into operation on a  
day to be appointed by the Minister by notice published in  
the *Gazette*.

2.—(1) In this Act—

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

Interpreta-  
tion.

**“Commissioner” means the Commissioner of Police;**

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

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

**“interest” in relation to property, means—**

- (a) a legal or equitable interest in the property; or**
- (b) a right, power or privilege in connection with property;**

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

**“prescribed offence” means an offence specified in the**

**Schedule;**

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

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

- (a) any property held by a person who has been convicted of or charged with, a prescribed offence; and**
- (b) any property held by a person to whom a person so convicted or charged has directly or indirectly made a gift caught by this Act;**

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

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

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

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

(2) For the purposes of this Act—

- (a) a reference to a benefit derived or obtained by,  
or otherwise accruing to, a person (“A”)  
includes a reference to a benefit derived or  
obtained by, or otherwise accruing to, another  
person at A’s request or direction;
- (b) property is not realizable property if—
  - (i) there is in force in respect of that  
property a forfeiture order under this  
Act or under any other enactment;
  - (ii) a forfeiture order is proposed to be  
made against that property under  
this Act or any other enactment;
- (c) property is held by a person if he has any  
interest in it.

(3) For the purposes of section 17 the amount that  
might be realized at the time a pecuniary penalty order is  
made against a person is the total of the values at that time  
of all the realizable property held by the person, less the total  
amount payable in pursuance of an obligation, where there  
is an obligation having priority at that time, together with  
the total of the values at that time of all gifts caught by this  
Act.

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

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

- (i) a fine or other order of a court, imposed or made on conviction of an offence and before the pecuniary penalty order;
    - (ii) any tax, rate, duty, cess or other impost payable under any enactment for the time being in force;
  - (b) it relates to property which is—
    - (i) property for the time being comprised in a bankrupt's estate for the purposes of section 104 of the Bankruptcy Act;
    - (ii) to be applied for the benefit of creditors of a bankrupt by virtue of a condition imposed under paragraph (d) of the proviso to section 72 (6) of the Bankruptcy Act.
- (5) Subject to subsections (6) and (7), for the purposes of this Act the value of property (other than cash) in relation to any person holding the property is—
- (a) where any other person holds an interest in the property, the market value of the first mentioned person's beneficial interest in the property, less the amount required to discharge any incumbrance on that interest (other than a charging order); and
  - (b) in any other case, the market value of the property.
- (6) References in this Act to the value at any time (hereinafter referred to as "the material time") of the transfer of any property are references to—
- (a) the value of the property to the recipient when he receives it, adjusted to take account of subsequent changes in the value of money; or
  - (b) where subsection (7) applies, the value mentioned therein,
- whichever is the greater.



- (7) Where at the material time the recipient holds—
- (a) the property which he received (not being cash);  
or
  - (b) property which, in whole or in part, directly or indirectly represents, in his hands, the property which he received,

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

(8) Subject to subsection (11), a reference to the value at the material time of a gift is a reference to—

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

whichever is the greater.

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

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

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

(10) A gift is caught by this Act if—

- (a) it was made by the person convicted or charged at any time after the commission of the offence or, if more than one, the earliest of the offences to which

the proceedings for the time being relate; and the Court considers it appropriate in all the circumstances to take the gift into account;

- (b) it was made by the person convicted or charged at any time and was a gift of property—
  - (i) received by that person in connection with the commission of the prescribed offence committed by him; or
  - (ii) which in whole or in part directly represented in that person's hands property received by him in that connection.

(11) For the purposes of this Act—

- (a) the circumstances in which a person is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the person; and
- (b) in those circumstances, the provisions of subsections (8) to (10) shall apply as if the person had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the person, that is to say—

$$\begin{array}{rcl}
 \begin{array}{l} \text{consideration} \\ \text{provided by} \\ \text{transferor} \end{array} & - & \begin{array}{l} \text{consideration} \\ \text{provided by} \\ \text{transferee} \end{array} \\
 \hline
 \begin{array}{l} \text{consideration} \\ \text{provided by} \\ \text{transferor} \end{array} & \times & \begin{array}{l} \text{value of} \\ \text{whole} \\ \text{property} \end{array}
 \end{array}$$

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

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

Applica-  
tion for  
forfeiture  
order and  
pecuniary  
penalty  
order.

(2) Where a person is convicted of a prescribed offence committed after the coming into operation of this Act, the Director of Public Prosecutions may apply to a Judge of the Supreme Court (hereinafter referred to as the Judge) for one or both of the following orders—

- (a) a forfeiture order against any property that is tainted property in relation to the prescribed offence;
- (b) a pecuniary penalty order against the person convicted in respect of the total value of any benefits derived by or accruing to the person convicted from the commission of the prescribed offence.

(3) An application under this section—

- (a) may not be made after the end of the relevant application period in relation to the conviction; and
- (b) may be made in respect of more than one prescribed offence.

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

- (a) the property or benefit to which the new application relates was identified after the previous application was determined; or

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

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

Notice of  
applica-  
tion.

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

- (a) the Director of Public Prosecutions shall—
  - (i) give no less than fourteen days written notice of the application to the person convicted and to any other person who the Director of Public Prosecutions has reason to believe may have an interest in the property; and
  - (ii) publish a copy of the notice in the *Gazette* and in a daily newspaper printed and circulated in Jamaica;
- (b) the person convicted and any other person who claims an interest in the property may appear and adduce evidence at the hearing of the application;
- (c) the Judge may, at time before the final determination of the application, direct the Director of Public Prosecutions to give notice of the application to any person who, in the opinion of the Judge, appears to have an interest in the property.

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

- (a) he shall give the person convicted not less than fourteen days written notice of the application; and

- (b) the person convicted may appear and adduce evidence at the hearing of the application.

5.—(1) The Judge hearing an application under section 3 (2) (hereafter in this section referred to as the original application) may, before final determination thereof, and on the application of the Director of Public Prosecutions, amend the original application to include any other property or benefit, as the case may be, upon being satisfied that—

Amend-  
ment of  
application.

- (a) the property or benefit was not reasonably capable of identification when the original application was made; or
- (b) necessary evidence became available only after the original application was made.

(2) Where the Director of Public Prosecutions applies to amend an original application and the amendment would have the effect of including additional property in the original application, he shall give not less than fourteen days written notice of the application to amend to any person who he has reason to believe may have an interest in the property to be included in the original application.

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

(4) Where the Director of Public Prosecutions applies to amend an application for a pecuniary penalty order against a person and the effect of the amendment would be to include an additional benefit in the application for the pecuniary penalty order, he shall give the person not less than fourteen days written notice of the application to amend.

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

Procedure  
on applica-  
tion.

in determining the application, have regard to the transcript of any proceedings against the person for the offence.

(2) Where an application referred to in subsection (1) is made to the Judge before whom the person was convicted and the Judge has not, when the application is made, passed sentence on the person for the offence, the Judge may, upon being satisfied that it is reasonable to do so in all the circumstances, defer passing sentence until the application has been determined.

Forfeiture  
order on  
conviction.

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

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

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

- (a) the rights and interests, if any, of third parties in the property;
- (b) the gravity of the offence concerned;
- (c) any hardship that may reasonably be expected to be caused to any person by the operation of the order; and
- (d) the use that is ordinarily made of the property, or the intended use of the property.

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

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

Effect of  
forfeiture  
order.

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

- (a) the property vests in the Crown in equity but not at law until the applicable registration requirements have been complied with;
- (b) the Crown is entitled to be registered as owner of the property;
- (c) the Commissioner of Lands has power on behalf of the Crown to do, or authorize the doing of, anything necessary or convenient to obtain the registration of the Crown as owner, including the execution of any instrument required to be executed by a person transferring an interest in that kind of property.

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

- (a) the property shall not, except with the leave of the Judge and in accordance with any directions of the Judge, be disposed of, or otherwise dealt with, by or on behalf of the Crown, before the relevant appeal date;
- (b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the directions of the Attorney-General.

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

(5) In this section “relevant appeal date” means—

- (a) the date on which the period allowed by the rules of court for the lodging of an appeal against a person’s conviction or for the lodging of an appeal against the making of a forfeiture order expires without an appeal having been lodged, whichever is the later; or
- (b) where the appeal against a person’s conviction or against the making of a forfeiture order is lodged, the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later.

Voidable  
transfers.

9. The Judge may—

- (a) before making a forfeiture order; and
- (b) in the case of property in respect of which a restraint order was made, where a copy of the order was served in accordance with section 31,

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

Protec-  
tion of  
third  
parties.

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

(2) If, pursuant to subsection (1), a person applies for an order the Judge shall make an order declaring the



nature, extent and value (as at the time the order is made) of the person's interest if the Judge is satisfied—

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

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

(i) for sufficient consideration; and

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

(3) Subject to subsection (4), where a forfeiture order has already been made against property, a person who claims an interest in the property may, before the end of the period of six months commencing on the day on which the forfeiture order is made or such longer period as the Judge may, having regard to all the circumstances, allow, apply under this subsection to the Judge for an order under subsection (2).

(4) A person who—

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

(b) appeared at the hearing of that application, shall not, except with the leave of the Judge, be permitted to make an application under subsection (3).

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

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

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

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

Discharge  
of for-  
feiture  
order or  
pecuniary  
penalty  
order on  
appeal  
and  
quashing of  
conviction.

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

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

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

- (a) if the interest is still vested in the Crown, direct that the property or part thereof to which the applicant's interest relates, be transferred or returned to the applicant; or

- (b) in any other case, direct that there be payable to the applicant, an amount equal to the value of the interest at the time when the order is made.

(4) In the exercise of the powers conferred by this section and section 10, the Attorney-General shall have power to do or authorize the doing of anything necessary or convenient to effect the transfer or return of property, including the execution of any instrument and the making of an application for the registration of an interest in the property.

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

Payment  
instead of  
forfeiture  
order.

- (a) cannot, on the exercise of due diligence, be located;
- (b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the forfeiture of the property;
- (c) is located outside Jamaica;
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been commingled with other property that cannot be divided without difficulty,

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

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

Enforce-  
ment of  
orders  
made under  
section 12.

*Pecuniary Penalty Orders*

Pecuniary  
penalty  
order on  
conviction.

14.—(1) Subject to this section, where the Director of Public Prosecutions applies to the Judge for a pecuniary penalty order against a person in respect of that person's conviction of a prescribed offence the Judge shall, if satisfied that the person has benefited from that offence, order him to pay to the Crown an amount equal to the value of his benefits from the offence or such lesser amount as the Judge certifies in accordance with section 17 to be the amount that might be realized at the time when the pecuniary penalty order is made.

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

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

- (a) until the period allowed by rules of court for the lodging of an appeal against conviction has expired without such an appeal having been lodged; or
- (b) where an appeal against conviction has been lodged, until the appeal lapses in accordance with the rules of court or is finally determined.

Rules for  
determining  
benefit and  
assessing  
value.

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

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

(3) Where a pecuniary penalty order has previously been made against a person, in assessing the value of any benefit by him from the commission of the prescribed

offence, the Judge shall leave out of account any of his benefits that are shown to the Judge to have been taken into account in determining the amount to be recovered under that order.

(4) If evidence is given at the hearing of the application that the value of the person's property at any time after the commission of the prescribed offence exceeded the value of the person's property before the commission of the offence, then the Judge shall, for the purposes of section 14 (2) and subject to subsection (5), treat the value of the benefits as not being less than the amount of the excess.

(5) If, after evidence of the kind referred to in subsection (4) is given, the person satisfies the Judge that the whole or part of the excess was due to causes unrelated to the commission of the prescribed offence, subsection (4) shall not apply to the excess or, as the case may be, that part.

16.—(1) Where—

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

Statements  
relating to  
benefits  
from  
commission  
of pre-  
scribed  
offences.

(i) to determining whether the person has benefited from the offence or from any other prescribed offence of which he is convicted in the same proceedings; or

(ii) to an assessment of the value of the person's benefit from any such offence as is referred to in sub-paragraph (i); and

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

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

**(2) Where—**

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

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

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

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

**(4) Where—**

- (a) the person tenders to the Judge a statement as to any matters relevant to determining the amount that might be realized at the time when the pecuniary penalty order is made; and**
- (b) the Director of Public Prosecutions accepts to any extent any allegation in such statement,**

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

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

- (a) orally before the Judge; or**

(b) in writing in accordance with rules of court.

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

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

Amount to be recovered under pecuniary penalty order.

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

18.—(1) Where—

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

Variation of pecuniary penalty orders.

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

**(2) Where—**

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

- (b) an amount is repaid or refunded to the person in respect of the tax so paid,

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

Judge may  
lift  
corporate  
veil.

19.—(1) In assessing the value of benefits derived by or accruing to a person from the commission of a prescribed offence, the Judge may treat as that person's property, any property that the Judge is satisfied is subject to the effective control of the person, whether or not he has—

- (a) any legal or equitable interest in the property; or
- (b) any right, power or privilege in connection with the property.

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

- (a) shareholding in, debentures over or directorships in, any company that has an interest (direct or indirect) in the property, and for this purpose the Judge may order the investigation and inspection of the books of a company named in the order;



- (b) any trust that has a relationship with the property;
- (c) any relationship between persons having interests in the property or in such company or trusts as is referred to in paragraph (a) or (b), and any other persons.

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

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

- (a) the order may be enforced against the property named in the order; and
- (b) a restraint order may be made in respect of that property,

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

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

- (a) give written notice of the application to the person against whom the pecuniary penalty order is made and to any other person who the Director of Public Prosecutions has reason to believe may have an interest in the property; and
- (b) the person against whom the pecuniary penalty order is made and any other person who claims an interest in the property may appear and adduce evidence at the hearing.

**PART III. *Provisions relating to investigations and  
Preservation of Property liable to For-  
feiture and Pecuniary Penalty Orders  
Powers of Search and Seizure***

Warrant to  
search pre-  
mises for  
tainted pro-  
perty.

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

(2) The warrant mentioned in subsection (1) may authorize a constable named in the warrant to enter the premises specified in the warrant, with such assistance and by such force as is necessary and reasonable to—

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

Restrictions  
on issue of  
search  
warrants.

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

Matters to  
be included  
in search  
warrant.

**22.** A warrant issued under section 20 shall include—

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

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

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

Other  
tainted  
property  
may be  
seized.

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

if the constable believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction or its use in connection with the offence specified as aforesaid or any other offence.

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

Record of  
property  
seized.

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

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

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

Return of  
property  
seized.

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

(2) The following provisions of this section shall apply in respect of the return of property referred to in subsection (1).

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

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

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

Retention  
of property  
seized.

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

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

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

(2) If, at the time when a restraint order is made against property referred to in subsection (1), the property is in the possession of the Commissioner, the Commissioner may apply to the Judge who made the restraint order for an order that he retain possession of the property.

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

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

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

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

### *Restraint Orders*

Applica-  
tion for  
restraint  
order.

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

- (a) has been convicted of a prescribed offence; or
- (b) has been charged with a prescribed offence,

the Director of Public Prosecutions may apply to the Judge for a restraint order against any realizable property held by the defendant or by a person other than the defendant.

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

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

grounds for believing that the property is tainted property in relation to the offence or is subject to the effective control of the defendant;

- (h) the grounds for believing that a forfeiture order or a pecuniary penalty order may be or is likely to be made under this Act.

28.—(1) Subject to this section, the Judge may, on the application of the Director of Public Prosecutions, make a restraint order against property if the Judge is satisfied that—

Restraint  
Orders.

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

(2) A restraint order may—

- (a) prohibit the defendant or any other person from disposing of, or otherwise dealing with, the property or such part thereof or interest therein as is specified in the order, except in such manner as may be specified in the order; and
- (b) at the request of the Director of Public Prosecutions, where the Judge is satisfied that the circumstances so require—
  - (i) direct the Commissioner or such other person as the Judge may appoint to take custody of the property or such part thereof as is specified in the order and to manage or otherwise deal with all or any part of the property in accordance with the directions of the Judge; and
  - (ii) require any person having possession of the property to give possession thereof to the Commissioner or to the person appointed under sub-paragraph (i) to take custody of the property.

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

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

(4) In determining whether there are reasonable grounds for believing that property is subject to the effective



control of the defendant the Judge may have regard to the matters referred to in section 19 (2).

(5) Where the Commissioner or other person appointed under subsection (2) (b) (i) is given a direction in relation to any property, the Commissioner or the other person may apply to the Judge for directions on any question respecting the management or preservation of the property concerned.

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

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

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

Under-  
takings by  
Crown.

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

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

Notice of  
applica-  
tion for re-  
straint  
order.

pearance, dissipation or reduction in the value of the property.

Service of  
restraint  
order.

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

Registra-  
tion of  
restraint  
order.

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

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

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

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

Contraven-  
tion of  
restraint  
order.

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

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

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

- (ii) in the case of a body corporate to a fine not exceeding two hundred thousand dollars;
- (b) on conviction on indictment in a Circuit Court—
  - (i) in the case of an individual to a fine or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment; or
  - (ii) in the case of a body corporate to such fine as the Court may impose.

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

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

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

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

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

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

- (a) it is revoked under section 35 or 37;
- (b) it ceases to be in force under section 36;

**Duration  
of restraint  
order.**

- (c) a forfeiture order or a pecuniary penalty order, as the case may be, is made in respect of property which is the subject of the order; or
- (d) the property which is the subject of the order becomes forfeited to the Crown under any other enactment.

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

#### *Review of Search Warrants*

**Review of  
search  
warrants  
and  
restraint  
orders.**

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

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

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

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

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

(5) For the purposes of subsection (4) the Judge may order that the property or any part thereof be returned to the applicant or, in the case of a restraint order, revoke the order or vary it to exclude the property or any interest there-

in or any part thereof from the application of the order, or make the order subject to such conditions as the Judge thinks fit—

- (a) if the applicant enters into a recognizance before the Judge, with or without sureties, in such amount and with such conditions, as the Judge directs, and where the Judge considers it appropriate, deposits with the Judge such sum of money or other valuable security as the Judge directs;
- (b) if the conditions referred to in subsection (6) are satisfied; or
- (c) for the purpose of—
  - (i) meeting the reasonable living expenses of the person who was in possession of the property at the time the warrant was executed or the order was made or any person who, in the opinion of the Judge, has an interest in the property and of the dependants of that person;
  - (ii) meeting the reasonable business or legal expenses of a person referred to in subparagraph (i).

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

- (a) a warrant should not have been issued pursuant to section 20 or a restraint order should not have been made, in respect of the property;
- (b) the applicant is the lawful owner of, or lawfully entitled to possession of, the property and appears innocent of any complicity in a prescribed offence or of any collusion in relation to such offence; and
- (c) the property will no longer be required for the purpose of any investigation or as evidence in any proceedings.

(7) On an application to the Judge under subsection (1) (b), the Judge may order that the applicant be permitted to examine the property subject to such terms as appear to the Judge to be necessary or desirable to ensure that the property is safeguarded and preserved for the purpose for which it may subsequently be required.

Automatic  
expiry of  
restraint  
orders.

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

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

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

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

Disposal of  
property  
seized or  
dealt with.

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

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

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

(2) The Judge may revoke any restraint order made in respect of the property or cancel any recognizance entered into pursuant to section 35.

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

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

*Production Orders and other Information Gathering Powers*

38.—(1) Where—

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

Production  
and inspection  
orders.

ment necessary for the transfer of such property; or

- (ii) identifying, locating or quantifying tainted property in relation to the offence; or
- (iii) identifying or locating a document necessary for the transfer of such tainted property; or

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

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

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

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

- (a) the person who was convicted of the offence or who is believed to have committed the offence, derived a benefit directly or indirectly from the commission of the offence; and
- (b) property specified in the affidavit is subject to the effective control of that person,

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

(4) Where an application is made for an order against a person, the Judge in Chambers may, subject to



subsections (5) and (6), make an order requiring the person to—

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

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

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

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

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

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

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

- (a) in the case of a document produced—
  - (i) inspect it;

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

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

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

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

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

Evidential value of information.

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

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

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

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

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

- (a) might tend to incriminate the person or make the person liable to a penalty; or

- (b) would be in breach of an obligation, whether imposed by law or otherwise, of the person not to disclose the existence or contents of the document.

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

Variation of production order.

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

Failure to comply with production.

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

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

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

Search  
warrant to  
facilitate  
investiga-  
tions.

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

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

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

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

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

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

- (a) a production order has been made in respect of the document and has not been complied with;
- (b) a production order in respect of the document would be unlikely to be effective because there are reasonable grounds for suspecting that such a production order would not be complied with;
- (c) the document involved cannot be identified or described with sufficient particularity to enable a production order to be made in respect thereof;
- (d) it is not practicable to communicate with any person having the power to grant entry to the premises;

- (e) entry to the premises will not be granted unless a warrant is produced; or
- (f) the relevant investigation might be seriously prejudiced unless the constable is granted immediate access to the document without notice to any person.

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

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

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

- (a) the purpose for which it is issued, including a reference to the prescribed offence that has been, or is believed to have been, committed;
- (b) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of documents authorized to be seized; and
- (d) the date, not being later than twenty-eight days after the day of issue of the warrant upon which the warrant ceases to have effect.

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

- (a) any document, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other documents)

to the investigation for the purpose of which the warrant was issued; and

- (b) anything that the constable believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence.

(7) In this section—

- (a) the expression “items subject to legal privilege” means—

- (i) communication between an attorney-at-law and his client; and

- (ii) communication made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings,

being communication which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communication;

- (b) “premises” includes any place and in particular any building, receptacle or vehicle.

#### *Monitoring Orders*

Monitoring  
orders.

44.—(1) The Director of Public Prosecutions may apply to a Judge in Chambers in accordance with subsection (3) for an order (in this section called a “monitoring order”) directing a financial institution to give information to a constable named by the Director of Public Prosecutions in the application.

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

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

(4) A monitoring order shall direct a financial institution to disclose information obtained by the institution

about transactions conducted through an account held by a particular person with the institution.

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

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

- (a) has committed, or is about to commit a prescribed offence;
- (b) was involved in the commission, or is about to be involved in the commission of, a prescribed offence; or
- (c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a prescribed offence.

(7) A monitoring order shall specify—

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

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

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

is guilty of an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred thousand dollars.

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

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

Monitoring  
orders not  
to be dis-  
closed.

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

- (a) an officer or agent of the institution, for the purpose of ensuring that the order is complied with;
- (b) an attorney-at-law, for the purpose of obtaining legal advice or representation in relation to the order.

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

- (a) disclose the existence or operation of the order except to another person referred to in that subsection for the purposes of—
  - (i) the performance of that person's duties, if the disclosure is made by the constable referred to in section 44 (1);
  - (ii) ensuring that the order is complied with or obtaining legal advice or representation in relation to the order, if the disclosure is



made by an officer or agent of the institution; or

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

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

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

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

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

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

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

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

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

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

Retention  
of records  
of financial  
institu-  
tions.

**46.—(1)** Subject to this section and section 47, a financial institution shall retain in its original form for the minimum retention period applicable to the document—

- (a) a document that relates to a financial transaction carried out by the financial institution in its capacity as such and, without limiting the generality of the foregoing, includes a document that relates to—
  - (i) the opening or closing by a person of an account with the institution;
  - (ii) the operation by a person of an account with the institution;
  - (iii) the opening or use by a person of a deposit box held by the institution;
  - (iv) the telegraphic or electronic transfer of funds by the institution on behalf of a person to another person;
  - (v) the transmission of funds between Jamaica and a foreign country or between foreign countries on behalf of a person; or
  - (vi) an application by a person for a loan from the institution, where a loan is made to the person pursuant to the application; and
- (b) a document that relates to a financial transaction carried out by the financial institution in its capacity as such that is given to the institution by or on behalf of the person, whether or not the document is signed by or on behalf of the person.

**(2)** For the purposes of this section, the expression “minimum retention period” means—

- (a) where the document relates to the opening of an account with the institution, the period of five years after the day on which the account is closed;

- (b) where the document relates to the opening by a person of a deposit box held by the institution, the period of five years after the day on which the deposit box ceases to be used by the person; and
- (c) in any other case, the period of five years after the day on which the transaction takes place.

(3) Subsection (1) does not apply to a financial transaction document that relates to a single deposit, credit, withdrawal, debit or transfer of an amount of money that does not exceed two hundred thousand dollars or such larger amount as may be prescribed for the purposes of this subsection.

(4) A financial institution required to retain documents under this section shall retain them in such manner that makes retrieval of the information contained in the documents or, as the case may be, the documents, reasonably practicable.

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

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

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

Register  
of original  
docu-  
ments.

(2) Where a financial institution is required to release the original of a document before the end of the minimum retention period applicable to the document, the institution shall retain a complete copy of the document until the period has ended or the original document is returned, whichever first occurs.

(3) A financial institution that contravenes subsection (1) or (2) is guilty of an offence and liable on summary

conviction in a Resident Magistrate's Court to a fine not exceeding two hundred thousand dollars.

Communi-  
cation of  
informa-  
tion to  
law enforce-  
ment  
authori-  
ties.

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

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

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

(2) No action, suit or proceedings shall lie against—

- (a) a financial institution; or
- (b) a person who is an officer, agent or employee of the institution acting in the execution of his duties as such,

in relation to an action taken by the institution or person pursuant to subsection (1).

Interpre-  
tation.

49. For the purposes of sections 44 to 48, "financial institution" means—

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

**PART V General**

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

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

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

(3) Where a court—

- (a) makes a pecuniary penalty order; and
- (b) makes an order under section 19 (3) declaring that particular property is available to satisfy the order,

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

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

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

**Amend-  
ment of  
Schedule.**

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

**Compensation.**

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

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

- (a) there has been some serious default in the investigation or conduct of the matter and that, but for that default, the application would not have been instituted or continued; and
- (b) the applicant has suffered substantial loss in consequence of anything done in relation to the property by or in pursuance of an order of the Judge under section 28.

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

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

**Regulations.**

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

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

**54. Where—**

**Costs.**

- (a) a person brings, or appears at, proceedings before a Judge under this Act in order to—
  - (i) prevent a forfeiture order, pecuniary penalty order, an order under section 12 or a restraint order from being made; or
  - (ii) have property of that person excluded from a forfeiture order, pecuniary penalty order or restraint order;
- (b) the person is successful in those proceedings; and
- (c) the Judge is satisfied that the person was not involved in any way in the commission of the offence in respect of which the relevant order was sought or made,

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

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

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

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

**SCHEDULE**

**(Section 2)**

***List of prescribed offences***

1. Producing, manufacturing, supplying or otherwise dealing in any dangerous drug in contravention of the Dangerous Drugs Act.
2. Transporting or storing a dangerous drug, where possession of that drug contravenes the Dangerous Drugs Act.
3. Importing or exporting a dangerous drug in contravention of the Dangerous Drugs Act.
4. Aiding, abetting, counselling or procuring the commission of any of the offences specified in paragraphs 1 to 3.
5. Conspiracy to commit any of the offences specified in paragraphs 1 to 3.

**THE MUTUAL ASSISTANCE (CRIMINAL MATTERS)  
Act, 1995  
(Act 5 of 1995)**

**ARRANGEMENT OF SECTIONS**

**PART I. *Preliminary***

1. Short title and commencement.
2. Interpretation.
3. Preservation of informal arrangements.

**PART II. *Requests by Jamaica***

4. Requests by Jamaica.
5. Restriction of use of evidence or information obtained or documents or articles produced.
6. Effect of service of document pursuant to request by Jamaica.
7. Request by Jamaica for appearance of foreign inmate as witness in Jamaica.
8. Warrant for and custody of foreign inmate.
9. Immunities and privileges re persons brought to Jamaica.
10. Status of person prosecuted after departure from relevant foreign state.
11. Release of certain persons upon request by foreign state.
12. Arrest of person who escaped from custody.
13. Request by Jamaica for making or enforcement of forfeiture orders, etc.
14. Requests by Jamaica for issue of orders in foreign state.



**PART III. *Requests by Foreign States***

15. Provision of assistance under this Part.
16. Grounds for refusal of assistance.
17. Assistance in part or subject to conditions.
18. Postponement of execution of requests.
19. Execution of requests.
20. Assistance in relation to taking of testimony and production of documents.
21. Privileges of witnesses.
22. Requests for production of judicial or official records.
23. Requests by a relevant foreign state for search and seizure.
24. Confidentiality of information or evidence, etc.
25. Requests for giving of evidence by inmate at hearing in foreign state.
26. Requests for assistance re investigations in relevant foreign state.
27. Request by foreign state for enforcement of orders.
28. Request by foreign state for warrants for search and seizure in respect of tainted property.
29. Request by foreign state for restraint order.
30. Service of documents.

**PART IV. *General***

31. Application of the provisions of this Act to foreign state
32. Regulations.
33. Rules of Court.
34. Repeals.

**SCHEDULE**

No. 5—1995

I assent,

[L.S.]

H. F. COOKE,  
*Governor-General.*

13th day of March, 1995.

AN ACT to Provide for mutual legal assistance in criminal matters between Jamaica and other States, and for connected purposes.

[ The date notified by the Minister  
bringing the Act into operation ]

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

PART I. *Preliminary*

1. This Act may be cited as the Mutual Assistance (Criminal Matters) Act, 1995, and shall come into operation on a date to be appointed by the Minister by notice published in the *Gazette*.

Short  
title and  
commence-  
ment.

Interpre-  
tation.

2. In this Act—

“Central Authority” means the Minister responsible for justice or any person designated by him for the purpose of performing such functions or duties of the Central Authority as may be specified in the instrument of designation;

“criminal investigation” means an investigation into an offence;

“criminal matter” includes a criminal matter relating to—

- (a) revenue;
- (b) the forfeiture or confiscation of property in respect of a prescribed offence;
- (c) the imposition or recovery of a pecuniary penalty in respect of a prescribed offence;
- (d) the restraining of dealings in property or the freezing of assets that may be forfeited or confiscated, or that may be needed to satisfy a pecuniary penalty imposed in respect of a prescribed offence;

“criminal proceeding” in relation to an offence, means—

- (a) a trial of a person for the offence;
- (b) any proceeding to determine whether any person should be tried for an offence; or
- (c) the preferment of a voluntary bill of indictment;

“designated Commonwealth state” means a Commonwealth state designated by the Minister in an order made under section 31 (1) for the purposes of of this Act;

**“foreign forfeiture order”** means an order made under the law of a relevant foreign state for the forfeiture or confiscation of property in respect of a prescribed offence;

**“foreign inmate”** means a person who is being held in custody pending trial or sentence for, or is under a sentence of imprisonment for, an offence against a law of a foreign state, but does not include a person who is at large after having escaped from lawful custody;

**“foreign pecuniary penalty order”** means an order made under the law of a relevant foreign state, imposing a pecuniary penalty in respect of a prescribed offence;

**“foreign state”** means—

- (a) a designated Commonwealth state; or
- (b) a treaty state;

**“inmate”** means—

- (a) any person whether convicted or not, under detention in any adult correctional centre or remand centre, as defined in the Corrections Act;
- (b) any person who, though serving a term of imprisonment in an adult correctional centre, is permitted pursuant to the Corrections Act to be temporarily absent from such centre; or
- (c) any parolee as defined in the Parole Act;

**“judicial records”** means judgements, orders and decisions of courts and other documents held by judicial authorities;

**“offence”** means an offence against the law of Jamaica or the law of a relevant foreign state;

**“official records”** means documents held by agencies or departments of government.

**“police officer”** means a member of the Jamaica Constabulary Force;

**“prescribed offence”** means—

(a) a prescribed offence as defined in the Drug Offences (Forfeiture of Proceeds) Act, 1994;

(b) an offence against the law of a relevant foreign state which involves—

(i) the production, manufacture, supply of or other dealing in dangerous drugs;

(ii) the transportation, storage, importation or export of dangerous drugs,

and aiding, abetting, counselling, procuring or conspiring as to, the commission of any such offence;

**“realizable property”** has the same meaning as in the Drug Offences (Forfeiture of Proceeds) Act, 1994;

**“record”** means any material on which data are recorded or marked and which is capable of being read or understood by a person or a computer system or other device;

**“relevant foreign state”** means a foreign state which makes a request to Jamaica or to which Jamaica makes a request;

**“relevant treaty”** means a treaty, convention or other international agreement (whether made before or

after the commencement of this Act) that is in force and to which Jamaica is a party, the purpose of which is to provide for mutual legal assistance in criminal matters;

“restraint order” means an order made pursuant to section 29 in relation to property located in Jamaica, the owner of which has been charged with or convicted of a prescribed offence;

“tainted property” means—

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

“treaty state” means a state that is a party to a relevant treaty and in respect of which an order under section 31 (2) is in force.

3. Nothing in this Act shall be construed so as to abrogate or derogate from any arrangement or practice respecting co-operation between Jamaica and a foreign state or organization, as the case may be.

Preservation of in formal arrangements.

## PART II. *Requests by Jamaica*

4.—(1) The Central Authority may request the assistance of a foreign state in respect of investigations and proceedings in relation to a criminal matter.

Requests by Jamaica.

(2) Assistance as referred to in subsection (1) is solely for the criminal law enforcement authorities.

Restriction  
of use of  
evidence or  
information  
obtained or  
documents  
or articles  
produced.

5.—(1) Where, pursuant to a request under this Act by the Central Authority for assistance, any evidence or information is obtained or any documents or other articles are produced—

- (a) the evidence or information so obtained shall not, without the prior consent of the relevant foreign state, be admitted or otherwise used for any purposes other than those stated in the request;
- (b) the documents or other articles so produced shall not, without the prior consent of the relevant foreign state, be used for any purposes other than those stated in the request.

(2) The restriction specified in subsection (1) (a) shall not apply in the case of the prosecution of a person for the offence of perjury in relation to the giving of the evidence referred to in that subsection.

Effect of  
service of  
document  
pursuant to  
request by  
Jamaica.

6. A person who—

- (a) pursuant to a request by the Central Authority under this Act, is served with a summons to appear as a witness in Jamaica; and
- (b) fails to comply with the summons,

shall not, by reason of such failure, be liable to any penalty or measure of compulsion in Jamaica notwithstanding any contrary statement in the summons.

Request by  
Jamaica for  
appearance  
of foreign  
inmate as  
witness in  
Jamaica.

7.—(1) Where a criminal proceeding has commenced in Jamaica and the Central Authority is of the opinion that a foreign inmate is capable of giving evidence relevant to the proceeding, the Central Authority may request the foreign state in which the inmate is being held to authorize the attendance of that inmate at a hearing in connection with the proceeding.

(2) Where an investigation relating to a criminal matter has commenced in Jamaica and the Central Authority is of the opinion that a foreign inmate is capable of giving assistance in relation to the investigation, the Central Authority may request the foreign state in which the foreign inmate is being held to authorize the removal of that inmate to Jamaica for the purpose of giving assistance in relation to the investigation.

(3) Where the Central Authority makes a request under subsection (1) or (2), the Central Authority may make arrangements with the appropriate authority of the relevant foreign state for the purposes of—

- (a) the removal of the person to Jamaica;
- (b) the custody of the person while in Jamaica;
- (c) the return of the person to the relevant foreign state; and
- (d) such other matters as may be relevant.

8.—(1) Where the Central Authority is satisfied that arrangements are being made with the appropriate authority of a relevant foreign state in respect of a foreign inmate for the purposes specified in paragraphs (a) to (d) of section 7 (3), the Central Authority may apply in the prescribed manner to a Resident Magistrate for the issue of a warrant under this section.

Warrant for  
and custody  
of foreign  
inmate.

(2) No warrant may be issued under this section in respect of a foreign inmate unless that inmate has consented to being removed to Jamaica for the purposes stated in the request.

(3) The effect of the warrant shall be to authorize—

- (a) the bringing of the foreign inmate to Jamaica;



- (b) the taking of the foreign inmate to, and the detention in custody of that inmate at, such place or places in Jamaica as are specified in the warrant;
- (c) the return of the foreign inmate to the relevant foreign state.

(4) Where a warrant has been issued in respect of a foreign inmate under this section, that inmate shall be deemed to be in legal custody at any time when the inmate is being taken under the warrant to or from Jamaica or being kept in custody under the warrant.

(5) A person authorized by or for the purposes of the warrant to take the foreign inmate to or from any place or to keep that inmate in custody shall have all the powers, authority, protection and privileges of a constable under any law in force in Jamaica.

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

(7) The Central Authority shall return a person brought to Jamaica pursuant to a request under section 7 to the relevant foreign state—

- (a) if the person is serving a sentence, no later than the date immediately preceding the date of expiration of the sentence; or
- (b) in any other case, no later than the date of expiration of the period in respect of which arrangements were made for him to be kept in custody in Jamaica.

Immunities  
and privi-  
leges re  
persons  
brought to  
Jamaica.

9.—(1) Subject to subsection (2), where a person is in Jamaica pursuant to a request under section 7 or to give evidence in a criminal proceeding or to give assistance in

relation to an investigation pursuant to a request (other than a request under section 7) by the Central Authority for assistance under this Act, that person shall not—

- (a) be detained, prosecuted or punished in Jamaica for any offence that is alleged to have been committed, or that was committed, before the person's departure from the relevant foreign state pursuant to the request;
- (b) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred or that occurred, before the person's departure from the relevant foreign state pursuant to the request, being a civil suit to which the person could not be subjected if the person were not in Jamaica; or
- (c) be required to give evidence in any proceeding or to assist in any investigation in Jamaica other than the proceeding or investigation to which the request relates; or
- (d) be required, in the proceeding to which the request relates (if any)—
  - (i) to answer any question; or
  - (ii) to produce any document or article,

that the person would not be required to answer or to produce in a proceeding in the relevant foreign state or in Jamaica relating to a criminal matter.

(2) Subsection (1) shall cease to apply to a person if—

- (a) during a period of ten days from the date on which the person has been notified in writing that his presence is no longer required in Jamaica or such other period as may be prescribed in relation to a relevant foreign state, the person has had the opportunity of leaving Jamaica and has remained

in Jamaica otherwise than for the purpose to which the request relates; or

- (b) the person returns voluntarily to Jamaica after having left.

Status of person prosecuted after departure from relevant foreign state.

10.—(1) Where a person has come to Jamaica pursuant to a request under section 7, then for purposes of this Act, the person shall be taken to be in Jamaica pursuant to the request for any period during which the person remains in Jamaica for the purpose of being tried for a criminal offence in Jamaica that the person is alleged to have committed after the person's departure from the relevant foreign state.

(2) Without limiting the generality of subsection (1), the person shall be kept in such custody as is specified in a warrant issued under section 8.

Release of certain persons upon request by foreign state.

#### 11. Where—

- (a) a person is being held in custody in accordance with a warrant issued under section 8; and
- (b) the relevant foreign state from which the person was brought requests in writing the release of that person from custody,

the Central Authority shall in writing direct that the person be released from custody and the person shall be released in accordance with such direction.

Arrest of person who escaped from custody.

12.—(1) A police officer may, without warrant, arrest a person if the police officer has reasonable grounds for believing that the person—

- (a) has been brought to Jamaica pursuant to a request under section 7; and
- (b) has escaped from lawful custody while in Jamaica pursuant to the request.

(2) A person who is arrested pursuant to subsection (1) shall be returned to custody.

13.—(1) The Central Authority may, in its discretion, request an appropriate authority of a foreign state to make arrangements for the enforcement of—

Requests by Jamaica for making or enforcement of forfeiture orders, etc.

- (a) an order made by a court in Jamaica under a law in force in Jamaica with regard to the forfeiture of property that is believed to be located in the foreign state;
- (b) a pecuniary penalty order or other order made by a court in Jamaica under the Drug Offences (Forfeiture of Proceeds) Act, 1994, where some or all of the property available to satisfy the order is believed to be located in the foreign state;
- (c) a restraint order made by a court in Jamaica against property that is believed to be located in the foreign state.

(2) Where a person has been convicted of a prescribed offence in Jamaica, the Central Authority may, in its discretion, request an appropriate authority of a foreign state to—

- (a) obtain, on behalf of the Central Authority, the issue of an order similar to an order referred to in subsection (1) (a) or (b), in relation to property that is believed to be located in that foreign state; and
- (b) make arrangements for the enforcement of any order so made.

14. Where a criminal proceeding has commenced in Jamaica in relation to a criminal offence, the Central Authority may, in its discretion, request an appropriate authority of a foreign state to obtain the issue, in respect of

Request by Jamaica for issue of orders in foreign state.

the offence, of a warrant, order or other instrument similar in nature to—

- (a) a search warrant for property specified in the request; or
- (b) a restraint order in respect of property.

### PART III. *Requests by Foreign States*

Provision  
of assist-  
ance under  
this Part.

15.—(1) Assistance may be provided to a foreign state, on request, in accordance with this Part.

(2) Assistance provided under this Part shall be in respect of investigations and proceedings in relation to a criminal matter and such assistance may be provided as aforesaid—

- (a) to the foreign state which makes a request for the purposes only of the criminal law enforcement authorities in that state; and
- (b) only if criminal proceedings have been instituted in that state or if there is reasonable cause to believe that an offence in respect of which such proceedings could be instituted, has been or is likely to be committed.

(3) Assistance under this Part may be provided in relation to—

- (a) the location and identification of persons and objects;
- (b) the examination and taking of testimony of witnesses;
- (c) the production of—
  - (i) documents and other records, including judicial or official records; and
  - (ii) other articles;

- (d) the making of arrangements for persons to give evidence or assist investigations;
- (e) the temporary transfer of persons in custody for the giving of testimony;
- (f) the carrying out of search and seizure;
- (g) the service of documents;
- (h) the restraining of dealings in property, or the freezing of assets that may be forfeited or that may be needed to satisfy orders which are similar to pecuniary penalty orders imposed in respect of a prescribed offence;
- (i) the tracing, seizure and forfeiture of property that may be subject to a forfeiture order in force for the time being in relation to a prescribed offence in the foreign state which makes a request;
- (j) such other matters as may be included in an agreement or arrangement in force between Jamaica and a foreign state.

(4) Requests made by a foreign state shall be made in writing to the Central Authority and shall contain such of the particulars set out in the Schedule as the Central Authority may require, but without prejudice to the requirement for such additional information as may be considered necessary for the purpose of giving effect to the request.

16.—(1) A request for assistance under this Act made by a foreign state—

Grounds for  
refusal of  
assistance.

- (a) shall be refused if, in the opinion of the Central Authority—
  - (i) compliance with the request would contravene the provisions of the Constitution, or prejudice the security, international relations or other essential public interests of Jamaica;

- (ii) there are substantial grounds for believing that compliance with the request would facilitate the prosecution or punishment of a person affected by the request on account of the person's race, religion, nationality or political opinions or, for any of the foregoing reasons, would cause prejudice to such person;
  - (iii) the request relates to an offence under military law only or under a law relating to military obligations;
  - (iv) the request relates to conduct in respect of which the person accused or suspected of having committed an offence has been convicted or acquitted by a court in Jamaica;
  - (v) the steps required to be taken in order to comply with the request cannot be legally taken in Jamaica in respect of criminal matters arising in Jamaica;
  - (vi) the request relates to an offence or proceedings of a political character not being an offence included in any relevant treaty to which Jamaica and the relevant foreign state are parties and which imposes on the parties thereto an obligation either to extradite or prosecute a person accused of that offence;
  - (vii) any confidentiality requested in relation to information or evidence furnished by Jamaica would not be protected by the relevant foreign state;
- (b) may be refused if, in the opinion of the Central Authority—
- (i) the request relates to conduct which would not constitute an offence under any law in force in Jamaica;

- (ii) the use of information or evidence furnished by Jamaica would not be restricted by the relevant foreign state to the purposes stated in the request.

(2) The Central Authority shall forthwith notify the relevant foreign state of the refusal of a request and of the ground under subsection (1) on which the request was refused.

17. Assistance in response to a request may be provided—

Assistance  
in part or  
subject to  
conditions.

- (a) in relation to the whole request or such part thereof as the Central Authority may determine; or
- (b) subject to such conditions as the Central Authority may determine.

18.—(1) The Central Authority may postpone the execution of a request if such execution is likely to interfere with an investigation or proceeding in Jamaica or for any other reason which, in the opinion of the Central Authority, justifies such postponement.

Postpone-  
ment of  
execution  
of requests.

(2) The relevant foreign state shall be notified forthwith of any postponement referred to in subsection (1) and of the proposed date of execution.

19.—(1) Subject to the provisions of this Act, requests to Jamaica shall be executed in accordance with the relevant laws in force in Jamaica and the procedures applicable under those laws.

Execution  
of requests.

(2) Where a request contains particulars of procedures to be followed in the execution of a request, those procedures shall be followed to the extent possible under the relevant laws in force in Jamaica.



Assistance  
in relation  
to taking  
of testi-  
mony and  
production  
of docu-  
ments.

20.—(1) Subject to the provisions of this Act, where a request is made to Jamaica for—

- (a) the taking of evidence; or
- (b) the production of documents (other than judicial or official records referred to in section 22) or other articles,

the Central Authority may, in its discretion, in writing authorize the taking of the evidence or the production of the documents or other articles, and the transmission of the evidence, documents or other articles to the relevant foreign state.

(2) Where the Central Authority authorises the taking of evidence or the production of documents or other articles under subsection (1), a Judge of the Supreme Court or a Resident Magistrate—

- (a) in the case of a request for the taking of evidence, may take the evidence on oath of each witness appearing before the Judge or Resident Magistrate to give evidence in relation to the matter; and shall—
  - (i) cause any evidence so taken to be put in writing and certify that it was so taken; and
  - (ii) cause the writing so certified to be sent to the Central Authority;
- (b) may, in the case of a request for the production of documents or other articles, require such production and shall send to the Central Authority any articles so produced or any such documents or copies thereof, and shall certify that—
  - (i) the documents or articles so sent are the documents or articles produced to the Judge or Resident Magistrate; or

- (ii) any copies of documents are true copies of documents so produced.

(3) The Judge of the Supreme Court or the Resident Magistrate conducting a proceeding under subsection (2)—

- (a) may, subject to section 22, order any person to attend the proceeding and to give evidence or to produce any documents or other articles at that proceedings;
- (b) may permit—
  - (i) the relevant foreign state;
  - (ii) the person to whom the proceeding in that state relates; and
  - (ii) any other person giving evidence or producing documents or other articles at the proceeding,to have legal representation during the proceeding;
- (c) shall afford to the person referred to in paragraph (b) (ii) facilities to examine in person or by his legal representative, any person giving evidence at that proceeding.

(4) A certificate by the Judge of the Supreme Court or the Resident Magistrate under subsection (2) shall state whether, when the evidence was taken or the documents or other articles were produced, any of the following persons was present—

- (a) the person to whom the proceeding in the relevant foreign state relates or any legal representative of that person;
- (b) any other person giving evidence or producing documents or other articles or any legal representative of that person.

(5) Where compliance with a request relating to the production of documents or articles requires the transmission of such documents or articles to the relevant foreign state, the Central Authority may, subject to subsection (6)—

- (a) postpone such transmission if the documents or articles are required in connection with any proceeding in Jamaica;
- (b) require the relevant foreign state to agree to such terms and conditions as the Central Authority shall specify in order to protect the rights of third parties in relation to such documents or articles.

(6) The Central Authority—

- (a) shall, where transmission of documents is postponed, provide certified copies thereof pending transmission of the original; or
- (b) may refuse to effect such transmission pending the conclusion of an agreement referred to in subsection (5) (b).

**Privileges  
of witnesses**

21. No person shall be compelled, in relation to a request referred to in section 20, to give evidence or to produce documents or other articles which he could not be compelled to give or produce in criminal proceedings in Jamaica or in the relevant foreign state.

**Requests  
for production  
of  
judicial or  
official  
records.**

22. Where a request relates to the production of judicial or official records relevant to a criminal matter arising in the relevant foreign state, the Central Authority—

- (a) shall provide copies of such records which are publicly available;
- (b) may provide copies of such records which are not publicly available to the like extent and under like conditions as apply in the case of the production

of such records to law enforcement agencies or prosecution or judicial authorities in Jamaica.

23.—(1) Where—

- (a) a proceeding or investigation relating to a criminal matter has commenced in a relevant foreign state;
- (b) there are reasonable grounds for believing that an article (not being tainted property) relevant to the proceeding or investigation is located in Jamaica; and
- (c) the relevant foreign state requests the Central Authority to arrange for the issue of a search warrant under this section in relation to that article,

Requests by a relevant foreign state for search and seizure.

the Central Authority may authorize a police officer to apply to a Resident Magistrate for the search warrant requested by the relevant foreign state.

(2) Where a police officer authorized under subsection (1) has reason to believe that the articles to which the request relates is, or will, at a specified time be—

- (a) on a person or in his possession or under his control; or
- (b) upon any land or upon or in any premises,

the police officer may lay before a Resident Magistrate an information on oath setting out the grounds for that belief and apply for the issue of a warrant under this section to search the person, land or premises for that article.

(3) A Resident Magistrate may, on an application under subsection (2), issue a warrant authorizing a police officer named in the warrant with such assistance as may be necessary—

- (a) to search the person;

- (b) to enter upon the land or upon or into the premises;
- (c) to search the land and premises for the article; and
- (d) to seize any article found in the course of the search that the police officer believes, on reasonable grounds, to be relevant to the proceeding or investigation.

(4) A Resident Magistrate shall not issue a warrant under this section unless—

- (a) the informant or some other person has given to the Resident Magistrate either orally under oath or by affidavit, such further information (if any) as the Resident Magistrate requires concerning the grounds on which the issue of the warrant is sought; and
- (b) the Resident Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(5) There shall be stated in a warrant issued under this section—

- (a) the purpose for which the warrant is issued, including a reference to the nature of the criminal matter in relation to which the search is authorized;
- (b) whether the search is authorized at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of articles authorized to be seized; and
- (d) the date, not being later than twenty-eight days after the issue of the warrant, on which it ceases to have effect.

(6) Where a police officer finds, as a result of a search in accordance with a warrant issued under this section, an article which the police officer seizes because he believes on reasonable grounds that it is relevant to the proceeding or investigation in the relevant foreign state, the police officer shall deliver the article to the custody and control of the Commissioner of Police.

(7) Where an article is delivered into the custody and control of the Commissioner of Police under subsection (6), the Commissioner shall arrange for the article to be kept for a period not exceeding twenty-eight days from the day on which the article was seized pending a direction in writing by the Central Authority as to the manner in which the article is to be dealt with.

(8) A police officer who executes a search warrant issued under this section shall, as soon as practicable thereafter, give to the person or the owner or occupier of the premises or leave in a conspicuous position on the land or at the premises, as the case may require, a notice stating—

- (a) the police officer's name and rank;
- (b) the name of the Resident Magistrate who issued the warrant and the date of such issue; and
- (c) a description of any articles seized and removed in accordance with the warrant.

(9) A person may only be searched under a warrant issued under this section by a person of the same sex.

(10) Where a police officer is authorized by a warrant issued under this section to search a person, the officer may also search—

- (a) the clothing that is being worn by the person; and

- (b) any property in, or apparently in, the person's immediate control.

(11) Nothing in this section shall be taken to authorize a police officer, in executing a warrant under this section, to carry out a search by way of an examination of a body cavity of a person.

Confiden-  
tiality of  
informa-  
tion or  
evidence  
etc.

24.—(1) Where assistance is provided to a foreign state in relation to the provision of information or evidence, the Central Authority may, subject to subsection (2) require that such information or evidence be kept confidential in accordance with such conditions as the Central Authority may specify.

(2) Subsection (1) shall not apply in any case where the information or evidence is required for the purpose of any criminal proceedings in the relevant foreign state.

Requests  
for giving  
of evi-  
dence by  
inmate  
at hearing  
in  
foreign  
state.

25.—(1) Where a proceeding relating to a criminal matter has commenced in a relevant foreign state and—

- (a) that state requests the attendance of an inmate at a hearing in connection with the proceeding;
- (b) there are reasonable grounds for believing that the inmate is capable of giving evidence relevant to the proceeding; and
- (c) the Central Authority is satisfied that—
  - (i) the inmate has consented to giving such evidence in the relevant foreign state; and
  - (ii) that state has given adequate undertakings in respect of the matters specified in subsection (3),

the Central Authority may, in its discretion, make arrangements for the inmate's travel to the relevant foreign state in the custody of a police officer or correctional officer

designated by the Central Authority for the purpose and shall notify that state of such arrangements.

(2) Where a proceeding relating to a criminal matter has commenced in a relevant foreign state and—

- (a) that state requests the attendance at a hearing in connection with the proceeding of a person (other than an inmate) who is in Jamaica;
- (b) there are reasonable grounds for believing that the person is capable of giving evidence relevant to the proceeding; and
- (c) the Central Authority is satisfied that—
  - (i) the person has consented to giving evidence in the relevant foreign state; and
  - (ii) that state has given adequate undertakings in respect of the matters referred to in subsection (3),

the Central Authority may, in its discretion, make arrangements for the person to travel to the relevant foreign state and shall notify that state of such arrangements.

(3) The matters in relation to which undertakings are to be given by a relevant foreign state for the purpose of a request under this section are as follows—

- (a) the person shall not—
  - (i) be detained, prosecuted or punished for any offence against the law of the relevant foreign state that is alleged to have been committed, or that was committed, before the person's departure from Jamaica;
  - (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred or that occurred



before the person's departure from Jamaica, being a civil suit to which the person could not be subjected if the person were not in the relevant foreign state; or

- (iii) be required to give evidence in any proceeding in the relevant foreign state other than a proceeding to which the request relates,

unless the person has voluntarily returned to the relevant foreign state after having left it or has had the opportunity of so leaving and has remained in that state otherwise than for the purpose of giving evidence in the proceedings to which the request relates;

- (b) any evidence given by the person in the proceeding to which the request relates will not, without the prior consent of the Central Authority, be used for any purposes other than those stated in the request, so, however, that this restriction shall not apply to the prosecution of the person for the offence of perjury in relation to the giving of that evidence;
- (c) the person will be returned to Jamaica in accordance with arrangements agreed between the Central Authority and the relevant foreign state;
- (d) in a case where the person is an inmate in Jamaica and the Central Authority requests the relevant foreign state to make arrangements for the keeping of the person in custody while the person is in that state—
  - (i) appropriate arrangements will be made for that purpose;

- (ii) the person will not be released from custody in the relevant foreign state unless the Central Authority notifies the appropriate authority of that state that the person is entitled to be released from custody under Jamaican law; and
- (iii) if the person is released in the relevant foreign state as mentioned in sub-paragraph (ii), the person's accommodation and expenses pending the completion of the proceeding in question will be paid for by the relevant foreign state; and
- (e) such other matters (if any) as the Central Authority thinks appropriate including, in the case of an inmate, an undertaking that the inmate will be released from custody at the time when the Central Authority advises the relevant foreign state that the person is entitled under Jamaican law to be so released.

26.—(1) Where an investigation relating to a criminal matter has commenced in a relevant foreign state and—

Requests for assistance re investigations in relevant foreign state.

- (a) that state requests the removal of an inmate to the relevant foreign state for the purpose of giving assistance in relation to the investigation;
- (b) there are reasonable grounds for believing that the inmate is capable of giving such assistance; and
- (c) the Central Authority is satisfied that—
  - (i) the inmate has consented to being removed to the relevant foreign state for the purpose of giving such assistance as aforesaid; and
  - (ii) the relevant foreign state has given adequate undertakings in respect of the matters referred to in subsection (3),

the Central Authority may, in its discretion, make arrangements for the inmate's travel to the relevant foreign state in the custody of a police officer or correctional officer designated by the Central Authority for the purpose and shall notify that state of such arrangements.

(2) Where an investigation relating to a criminal matter has commenced in a relevant foreign state and---

- (a) that state requests that a person (other than an inmate) who is in Jamaica travel to the relevant foreign state to give assistance in relation to the investigation;
- (b) there are reasonable grounds for believing that the person is capable of giving such assistance; and
- (c) the Central Authority is satisfied that—
  - (i) the person has consented to travel to the relevant foreign state for the purpose of giving such assistance; and
  - (ii) the relevant foreign state has given adequate undertakings in respect of the matters referred to in subsection (3).

the Central Authority may, in its discretion, make arrangements for the person's travel to the relevant foreign state.

(3) The matters in relation to which undertakings are to be given by a relevant foreign state for the purpose of a request that a person be removed to, or travel to, that state for the purpose of giving assistance in relation to an investigation are—

- (a) that the person shall not—
  - (i) be detained, prosecuted or punished for any offence against the law of the relevant foreign state that is alleged to have been

committed, or that was committed, before the person's departure from Jamaica; or

- (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred or that occurred before the person's departure from Jamaica, being a civil suit to which the person could not be subjected if the person were not in the relevant foreign state.

unless the person has voluntarily returned to the relevant foreign state after having left it or has had the opportunity of leaving that state and has remained in that state otherwise than for the purpose of giving assistance in relation to the investigation to which the request relates;

- (b) that the person will be returned to Jamaica in accordance with arrangements agreed between the Central Authority and the relevant foreign state;
- (c) that, in a case where the person is an inmate in Jamaica and the Central Authority requests the relevant foreign state to make arrangements for the keeping of the inmate in custody while the inmate is in the relevant foreign state--
  - (i) appropriate arrangements will be made for that purpose;
  - (ii) the person will not be released from custody in the relevant foreign state unless the Central Authority notifies the appropriate authority of the relevant foreign state that the person is entitled to be released from custody under Jamaican law; and
  - (iii) if the person is released in the relevant foreign state as mentioned in sub-paragraph

(ii), the person's accommodation and expenses pending the completion of the investigation to which the request relates will be paid for by the relevant foreign state; and

- (d) such other matters (if any) as the Central Authority thinks appropriate including, in the case of an inmate, an undertaking that the inmate will be released from custody at the time when the Central Authority advises the relevant foreign state that the person is entitled under Jamaican law to be so released.

Request by  
foreign  
state for  
enforce-  
ment and  
issue of  
orders.

27.—(1) Where a relevant foreign state requests the Central Authority to make arrangements for the enforcement of—

- (a) a foreign forfeiture order against tainted property that is believed to be located in Jamaica; or
- (b) a foreign pecuniary penalty order, where some or all of the property available to satisfy the order is believed to be located in Jamaica,

and the Central Authority is satisfied that—

- (c) a person has been convicted of an offence to which the foreign forfeiture order or foreign pecuniary penalty order relates, being an offence in respect of which, if it had been committed in Jamaica, a forfeiture order or pecuniary penalty order could be made by a court in Jamaica; and
- (d) the conviction and the order are not subject to further appeal in the relevant foreign state,

the Central Authority may, in its discretion apply for the registration of the order in the Supreme Court.

(2) Where a relevant foreign state requests the Central Authority to make arrangements for the enforcement of a foreign restraint order, made in respect of a criminal offence, against property that is believed to be located in Jamaica, the Central Authority may, in its discretion, apply for the registration of the order in the Supreme Court.

(3) Where the Central Authority applies to the Supreme Court for registration of a foreign order in accordance with this section, the Court may register the order accordingly if it is satisfied that the circumstances so warrant.

(4) A foreign forfeiture order, foreign pecuniary penalty order or foreign restraint order registered in the Supreme Court in accordance with this section has effect, and may be enforced, as if it were a forfeiture order, pecuniary penalty order or restraint order made by a court in Jamaica in respect of a prescribed offence.

(5) The Central Authority may, in its discretion, apply to the Supreme Court for cancellation of the registration of a foreign forfeiture order, foreign pecuniary penalty order or foreign restraint order, as the case may be.

(6) Without prejudice to the generality of subsection (5), the Central Authority may make an application under that subsection if the Central Authority is satisfied that—

- (a) the order to which the application relates has ceased to have effect in the relevant foreign state in which that order was made;
- (b) cancellation of the registration of the order is appropriate having regard to the arrangements entered into between Jamaica and the relevant foreign state in relation to the enforcement of orders of that kind.

(7) Where the Central Authority applies to the Supreme Court for cancellation of the registration of an order referred to in subsection (5), the Court shall, if satisfied as to the matters specified in paragraphs (a) and (b) of subsection (6), cancel the registration accordingly.

(8) Upon a request by a foreign state the Central Authority may in its discretion and on behalf of that state—

- (a) apply to the Supreme Court for a forfeiture order or pecuniary penalty order under the Drug Offences (Forfeiture of Proceeds) Act, 1994, in relation to property that is believed to be located in Jamaica; and
- (b) make arrangements for the enforcement of any order so made.

Request by  
foreign  
state for  
warrants  
for search  
and seizure  
in respect  
of tainted  
property.

28.—(1) Where a criminal proceeding or criminal investigation has commenced in a foreign state in respect of a prescribed offence and—

- (a) the Central Authority has reasonable grounds for believing that tainted property in relation to the offence is located in Jamaica; and
- (b) the foreign state requests the Central Authority to obtain the issue of a search warrant in relation to the tainted property,

the Central Authority may, in its discretion, authorize a police officer to apply to a Resident Magistrate for the search warrant so requested.

(2) A Resident Magistrate may, on an application made under this section, issue a warrant authorizing a police officer named in the warrant, with such assistance and by such force as is necessary and reasonable to—

- (a) enter upon the premises specified in the warrant;
- (b) search the premises for tainted property;

- (c) seize property found in the course of the search that the police officer believes, on reasonable grounds, to be tainted property.

(3) A warrant issued under this section shall include—

- (a) a statement of the purpose for which the warrant is issued, and a reference to the nature of the prescribed offence;
- (b) a description of the kind of property to be seized;
- (c) a time, not being later than twenty-eight days after the issue thereof, upon the expiration of which the warrant ceases to have effect; and
- (d) a statement as to whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night.

(4) A police officer who executes a warrant issued under this section shall—

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



(5) The Clerk of Courts referred to in subsection (4) (c) shall furnish a copy of the report to—

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

(6) Where property is seized under this section otherwise than because it may afford evidence as to the commission of a prescribed offence, any person who claims an interest in the property may apply to the Resident Magistrate who issued the search warrant for an order that the property be returned to that person.

(7) Where an application is made under subsection (6), the Resident Magistrate referred to in that subsection shall order the return of the property to the applicant if the Resident Magistrate is satisfied that—

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

Request by  
foreign  
state for  
restraint  
order.

29.—(1) Where a criminal proceeding has commenced in foreign state in respect of a prescribed offence and—

- (a) the Central Authority has reasonable grounds to believe that property that may be made the subject of a foreign restraint order is located in Jamaica being property which—
  - (i) is liable to forfeiture under the law of the foreign state; and
  - (ii) would be liable to forfeiture under the law of Jamaica had the offence been committed in Jamaica; and

- (b) the foreign state requests the Central Authority to obtain the issue of a restraint order against the property,

the Central Authority may, in its discretion, apply to the Supreme Court for the issue of the restraint order requested by the relevant foreign state and the Supreme Court may, subject to subsection (2), issue the order if it is satisfied, having regard to the information specified in the request, that the order should be so issued.

(2) Before issuing a restraint order under this section the Supreme Court may require notice to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property unless the Court is of the opinion that giving such notice before making the order would result in the disappearance, dissipation or reduction in the value of the property.

(3) A copy of a restraint order issued under this section shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by rules of Court.

(4) A copy of a restraint order issued under this section which affects registered land in Jamaica shall be registered with the Registrar of the Supreme Court and with the Registrar of Titles who shall record the particulars of the order in the Register Book of Titles.

(5) A restraint order issued under this section is of no effect with respect to registered land unless it is so registered.

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

Service of  
documents.

30.—(1) Where a foreign state requests the Central Authority to arrange for the service in Jamaica of a process relating to a criminal matter in the relevant foreign state, the Central Authority may, in its discretion and subject to subsection (3), arrange for the service of the process.

(2) Service of such process may be proved by affidavit of the person who served it.

(3) The Central Authority may refuse to execute a request for the service of any process—

- (a) which requires the attendance of a person before a court or tribunal in the relevant foreign state; or
- (b) in relation to which, under the law of the relevant foreign state, there is a penalty or other criminal sanction for non-compliance with the requirements of such document.

#### PART IV. *General*

Application  
of the pro-  
visions of  
this Act  
to foreign  
state.

31.—(1) The Minister may, by order, designate a Commonwealth country as a designated Commonwealth state for the purpose of this Act, subject to such exceptions, adaptations or modifications as are specified in the order.

(2) Where any relevant treaty has been made with any foreign state, the Minister may, by order, declare that the provisions of this Act shall apply in respect of such foreign state, subject to such exceptions, adaptations or modifications, as the Minister, having due regard to the terms of such treaty, may deem expedient to specify in the order for the purposes of implementing such terms.

(3) The Minister may from time to time, by order, compile and publish in the *Gazette* a list of foreign states with which relevant treaties binding on Jamaica are in force;

and, without prejudice to any other form of proof of the existence of such a treaty, such a list shall, in any proceedings, be conclusive evidence that a relevant treaty is in force between Jamaica and each foreign state named in the list.

(4) An order made under this section shall be subject to affirmative resolution.

32. Subject to section 33, the Minister may make regulations generally for giving effect to the purposes and provisions of this Act. Regulations.

33. Rules of Court may be made dealing generally with all matters of practice and procedure in proceedings under this Act. Rules of Court.

34. The Evidence by Commission Act, 1859 (of the United Kingdom) and the Foreign Tribunals Act, 1856 (of the United Kingdom) shall cease to have effect in Jamaica after the commencement of this Act. Repeals.

**SCHEDULE**

**(Section 15 (4) )**

*Particulars to be included in request by a foreign state*

**1. General Requirements**

**(1) Every request for assistance shall specify—**

- (a) the nature of the assistance requested;
- (b) the agency or authority initiating the request;
- (c) the time limit for compliance with the request;
- (d) the subject matter and nature of the investigation or proceeding and a summary of the relevant facts;
- (e) the purpose for which the assistance is being sought; and
- (f) in the case of a request by—
  - (i) Jamaica; or
  - (ii) a relevant foreign state,

details of the procedure that Jamaica or the relevant foreign state, as the case may be, wishes to be followed in giving effect to the request, including details of the manner and form in which any information, document or thing is to be supplied to Jamaica or the relevant foreign state, as the case may be, pursuant to the request.

**(2) Where criminal proceedings have been instituted, every request for assistance shall specify—**

- (a) the court exercising jurisdiction in the proceedings or any other law enforcement agency or authority conducting such proceedings;
- (b) the identity of the accused person unless prohibited by the law of the relevant foreign state;
- (c) the offences to which the request relates and a summary of the relevant facts;
- (d) the stage reached in the proceedings and dates fixed for further stages.

**(3) Where criminal proceedings have not been instituted, every request for assistance shall specify the offence which is believed by—**

- (a) the Central Authority, in the case of a request by Jamaica; or
- (b) the appropriate authority of the relevant foreign state, to have been committed or to be likely to be committed.

**2. *Requests for identification and location of persons and objects***

Every such request shall contain such information as is available to the relevant foreign state in respect of the identification and whereabouts of the person or object concerned.

**3. *Requests relating to the examination and taking of testimony of witnesses and production of documents***

Every such request shall specify—

- (a) the names and addresses or official designations of witnesses;
- (b) the subject matter in relation to which witnesses are to be examined;
- (c) the questions to be put to witnesses;
- (d) the manner in which any testimony is to be taken and recorded;
- (e) whether it is desired that witnesses give evidence on oath or on affirmation;
- (f) any provisions of the law of—
  - (i) Jamaica, in the case of a request by Jamaica; or
  - (ii) the relevant foreign state, in the case of a request by that state,

relating to privilege or exemption from giving evidence, which, in the opinion of the Central Authority or, as the case may be, the appropriate authority of the relevant foreign state, is relevant to the request;

- (g) such special requirements of the law of—
  - (i) Jamaica, in the case of a request by Jamaica; or
  - (ii) the relevant foreign state, in the case of a request by that state,

in relation to the manner of taking evidence as may be relevant to its admissibility in Jamaica or the relevant foreign state, as the case may be.

**4. *Request for facilitating the appearance of witnesses in Jamaica or the relevant foreign state***

Every such request shall specify—

- (a) the subject matter in relation to which the witness is to be examined;

- (b) the reasons for which the appearance of the witness is required and the importance of such appearance;
- (c) details as to the kinds and amounts of allowances and expenses payable in respect of the appearance of the witness in Jamaica the relevant foreign state, as the case may be.

**5. *Requests for the transfer of persons in custody for testimonial purposes***

Every such request shall specify—

- (a) the subject matter in relation to which the witness is to be examined;
- (b) the reasons for which the transfer of the person is being sought and the importance of such transfer.

**6. *Requests for search and seizure***

Every such request shall contain—

- (a) a precise description of the place to be searched and things to be seized;
- (b) all such information as is available to—
  - (i) the Central Authority in the case of a request by Jamaica; or
  - (ii) the relevant foreign state in the case of a request by that state,

which is required to be adduced under the law of the relevant foreign state or the law of Jamaica, as the case may be, for any necessary warrant or authorization of the carrying out of the search and seizure;

- (c) a description of any particular procedure to be followed in executing the request.

**7. *Request for production of judicial or official records***

Every such request shall contain a description of the records to be produced.

**8. *Requests for service of documents***

Every such request shall contain a statement of any particular method of service desired.

**9. *Requests for enforcement of foreign forfeiture orders or foreign Pecuniary penalty order***

Every such request shall contain—

- (a) a description of the order to be enforced;

- (b) a description of the property, located in Jamaica, to which the order relates;
- (c) particulars of the offence to which the order relates and the date of the conviction in the foreign state;
- (d) information as to whether the conviction or order is subject to any further appeal in the foreign state.

10. *Requests for issue of restraint order*

Every such request shall contain—

- (a) a description and the location of the property to be restrained;
- (b) particulars of the offence which is the subject matter of the criminal proceeding in the foreign state;
- (c) whether any person has been charged with or convicted of, the offence and whether an appeal has been lodged against the conviction;
- (d) the name and address of the person who is believed to be in possession of the property;
- (e) the grounds for believing that the property should be made the subject of a restraint order;
- (f) the grounds for believing that a person charged with or convicted of, the offence derived a benefit directly or indirectly from the commission of the offence;
- (g) the grounds for believing that the property in question is subject to the effective control of the person charged with or convicted of, the offence.