



UNITED NATIONS

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ENGLISH ONLY*

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 text.*

IRELAND

Communicated by the Government of Ireland

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 [...].

CRIMINAL JUSTICE ACT, 1994

***Note by the Secretariat:** This document is a direct reproduction of the text communicated to the Secretariat by the Government of Ireland.

CRIMINAL JUSTICE ACT, 1994

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Number 15 of 1994

CRIMINAL JUSTICE ACT, 1994

AN ACT TO MAKE PROVISION FOR THE RECOVERY OF THE PROCEEDS OF DRUG TRAFFICKING AND OTHER OFFENCES, TO CREATE AN OFFENCE OF MONEY LAUNDERING, TO MAKE PROVISION FOR INTERNATIONAL CO-OPERATION IN RESPECT OF CERTAIN CRIMINAL LAW ENFORCEMENT PROCEDURES AND FOR FORFEITURE OF PROPERTY USED IN THE COMMISSION OF CRIME AND TO PROVIDE FOR RELATED MATTERS. [30th June, 1994]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY

- Short title. 1.—This Act may be cited as the Criminal Justice Act, 1994.
- Commencement. 2.—This Act shall come into operation on such day or days as may be appointed by order or orders of the Minister, either generally or with reference to a particular purpose or provision, and different days may be so appointed for different purposes and different provisions of this Act.
- Interpretation. 3.—(1) In this Act—
- “benefited from drug trafficking” shall be construed in accordance with *section 4 (5)* of this Act;
- “benefited from an offence other than a drug trafficking offence” shall be construed in accordance with *section 9 (4)* of this Act;
- “confiscation order” means an order made under *section 4 (4)* or *9 (1)* of this Act;
- “controlled drug” has the same meaning as in *section 2* of the Misuse of Drugs Act, 1977;¹

“Convention state” means a state other than the State that is a party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances done at Vienna on the 20th day of December, 1988;

“corresponding law” has the same meaning as in section 20 (2) of the Misuse of Drugs Act, 1977;

“dealing with property” shall be construed in accordance with *section 24 (8)* of this Act;

“defendant” means, for the purposes of the provisions of this Act relating to confiscation, and subject to *section 23 (2) (a)* of this Act, a person against whom proceedings for the relevant drug trafficking or other offence have been instituted;

“drug trafficking” means doing or being concerned in any of the following, whether in the State or elsewhere, that is to say—

- (a) producing or supplying a controlled drug where the production or supply contravenes any regulations made under *section 5* of the Misuse of Drugs Act, 1977, and in force at the material time (whether before or after the commencement of the relevant provision of this Act) or a corresponding law,
- (b) transporting or storing a controlled drug where possession of the drug contravenes *section 3* of that Act or a corresponding law,
- (c) importing or exporting a controlled drug where the importation or exportation contravenes any such regulations as mentioned in *paragraph (a)* of this definition or a corresponding law,
- (d) doing any act, whether in the State or elsewhere and whether before or after the commencement of the relevant provision of this Act, in relation to property obtained, whether directly or indirectly, from anything done in relation to a controlled drug, that amounts to an offence under *section 31* of this Act or would have amounted to such an offence if that section had been in operation at the time when the act was done or, in the case of an act done in a country or territory outside the State, would amount or have amounted to such an offence if done in corresponding circumstances in the State (and for the purpose of this definition the references in *subsections (1)* and *(2)* of the said *section 31* to removing property from the State shall include references to removing it from the country or territory in question), or
- (e) using any ship for illicit traffic in controlled drugs in contravention of *section 33* or *34* of this Act;

“drug trafficking offence” means any of the following—

- (a) an offence under any regulations made under *section 5* of the Misuse of Drugs Act, 1977, involving the manufacture, production, preparation, importation, exportation, supply, offering to supply, distribution or transportation of a controlled drug,

- (b) an offence under section 15 of that Act of possession of a controlled drug for unlawful sale or supply,
- (c) an offence under section 20 of that Act (assisting in or inducing the commission outside the State of an offence punishable under a corresponding law),
- (d) an offence under the Customs Acts in relation to the importation or exportation of a controlled drug or in relation to the fraudulent evasion of any prohibition, restriction or obligation in relation to such importation or exportation,
- (e) an offence under *section 31* of this Act in relation to the proceeds of drug trafficking,
- (f) an offence under *section 33* or *34* of this Act, or
- (g) an offence of aiding, abetting, counselling or procuring the commission of any of the offences mentioned in *paragraphs (a) to (f)* of this definition or of attempting or conspiring to commit any such offence or inciting another person to do so;

“enforcement officer” has the meaning assigned to it by *paragraph 1* of the *First Schedule* to this Act;

“forfeiture order” means an order made under *section 61* of this Act;

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

“Irish ship” has the same meaning as in section 9 of the Mercantile Marine Act, 1955;

“Minister” means the Minister for Justice;

“premises” includes any building or any part of a building and any vehicle, vessel or structure;

“proceeds of drug trafficking” has the meaning assigned to it by *section 5 (1) (a)* of this Act;

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

“realisable property” means—

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

but does not include property which is the subject of—

- (a) an order under section 30 of the Misuse of Drugs Act, 1977 (forfeiture orders), or
- (b) an order under *section 61* of this Act;

“receiver” means a person appointed as a receiver under *section 20 (2)* or *24 (7)* of this Act;

“restraint order” has the meaning assigned to it by *section 24* of this Act;

“ship” includes any vessel used in navigation;

“value of proceeds of drug trafficking” has the meaning assigned to it by *section 5 (1) (b)* of this Act.

(2) For the purposes of this Act the amount that might be realised at the time a confiscation order is made against the defendant is—

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

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

(3) Subject to the provisions of *subsections (4) to (12)* of this section, for the purposes of this Act the value of property (other than cash) in relation to any person holding the property—

- (a) where any other person holds an interest in the property, is—
 - (i) the market value of the first-mentioned person’s beneficial interest in the property, less
 - (ii) the amount required to discharge any incumbrance on that interest,

and

- (b) in any other case, is its market value.

(4) References in this Act to the value at any time (referred to in *subsection (5)* of this section as “the material time”) of a person’s proceeds of drug trafficking or, as the case may be, of any property obtained by a person as a result of or in connection with the commission of an offence other than a drug trafficking offence are references to—

- (a) the value of the said proceeds or property to the recipient when he obtained them or it, adjusted to take account of subsequent changes in the value of money, or
- (b) where *subsection (5)* of this section applies, the value there mentioned,

whichever is the greater.

(5) If at the material time the recipient holds—

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

the value referred to in *subsection (4) (b)* of this section is the value to him at the material time of the proceeds or property mentioned in *paragraph (a)* of this subsection or, as the case may be, of the proceeds or property mentioned in *paragraph (b)* of this subsection, so far as it so represents the proceeds or property which he obtained.

(6) Subject to *subsection (12)* of this section, references in this Act to the value at any time (referred to in *subsection (7)* of this section as "the material time") of a gift caught by this Act or to a payment or reward are references to—

- (a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money, or
- (b) where *subsection (7)* of this section applies, the value there mentioned,

whichever is the greater.

(7) Subject to *subsection (12)* of this section, if 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)* of this section is the value to him at the material time of the property mentioned in *paragraph (a)* of this subsection or, as the case may be, of the property mentioned in *paragraph (b)* of this subsection so far as it so represents the property which he received.

(8) For the purposes of *subsection (2)* of this section, an obligation has priority at any time if it is an obligation of the defendant to—

- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order, or
- (b) pay any sum which would be included among the preferential payments (within the meaning of the Bankruptcy Act, 1988) in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.

(9) For the purposes of the provisions of this Act relating to drug trafficking, a gift (including a gift made before the commencement of *section 4* of this Act) is caught by this Act if—

- (a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him, or
- (b) it was made by the defendant at any time and was a gift of property—
 - (i) which was received by the defendant in connection with drug trafficking carried on by him or another, or

- (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.

(10) For the purposes of the provisions of this Act relating to offences other than drug trafficking offences, a gift (including a gift made before the commencement of *section 9* of this Act) is caught by this Act if—

- (a) it was made by the defendant at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate, and
- (b) the court considers it appropriate in all the circumstances to take the gift into account.

(11) The reference in *subsection (10)* of this section to an offence to which the proceedings for the time being relate includes, where the proceedings have resulted in the conviction of the defendant, a reference to any offence which the court takes into consideration when determining his sentence.

(12) For the purposes of this Act—

- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant, and
- (b) in those circumstances, *subsections (2) to (11)* of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in *paragraph (a)* of this subsection bears to the value of the consideration provided by the defendant.

(13) This Act applies to property wherever situated.

(14) A reference in this Act to an offence includes a reference to an offence committed before the commencement of the provision of this Act in which the reference occurs, but nothing in this Act imposes any duty or confers any power on any court in connection with proceedings against a person for an offence instituted before the commencement of the provision of this Act in which the reference occurs.

(15) A reference in this Act to property obtained, or to a pecuniary advantage derived, in connection with drug trafficking or the commission of an offence includes references to property obtained, or to a pecuniary advantage derived, both in that connection and in some other connection.

(16) The following provisions shall have effect for the interpretation of this Act, namely,

- (a) property is held by any person if he holds any interest in it,
- (b) references to property held by a person include a reference to property vested in his trustee within the meaning of Part V of the Bankruptcy Act, 1988 or liquidator,

- (c) references to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested,
- (d) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property,
- (e) proceedings for an offence are instituted—
 - (i) when a summons or warrant for arrest is issued in respect of that offence,
 - (ii) when a person is charged with the offence after being taken into custody without a warrant,

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

- (f) proceedings for an offence are concluded—
 - (i) when the defendant is acquitted on all counts;
 - (ii) if he is convicted on one or more counts, but no application for a confiscation order is made against him or the court decides not to make a confiscation order in his case; or
 - (iii) if a confiscation order is made against him in connection with those proceedings, when the order is satisfied,
- (g) an application under *section 7 or 13* of this Act is concluded—
 - (i) if the court decides not to make a confiscation order against the defendant, when it makes that decision; or
 - (ii) if a confiscation order is made against the defendant as a result of that application, when the order is satisfied,
- (h) an application under *section 8 or 18* of this Act is concluded—
 - (i) if the court decides not to vary the confiscation order in question, when it makes that decision; or
 - (ii) if the court varies the confiscation order as a result of the application, when the order is satisfied,
- (i) a confiscation order is satisfied when no amount is due under it,
- (j) an order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

(17) In this Act, a reference to any enactment shall be construed as a reference to that enactment as amended or adapted by or under any subsequent enactment (including this Act).

PART II

CONFISCATION

4.—(1) Where a person has been sentenced or otherwise dealt with by a court in respect of one or more drug trafficking offences of which he has been convicted on indictment, the Director of Public Prosecutions may make, or cause to be made, an application to the court to determine whether the person convicted has benefited from drug trafficking.

Confiscation orders:
drug trafficking
offences.

(2) An application under *subsection (1)* of this section may be made at the conclusion of the proceedings at which the person is sentenced or otherwise dealt with or may be made at a later stage.

(3) An application under *subsection (1)* of this section shall not be made unless it appears to the Director of Public Prosecutions that the person in question has benefited from drug trafficking.

(4) If the court determines that the person in question has benefited from drug trafficking, the court shall determine in accordance with *section 6* of this Act the amount to be recovered in his case by virtue of this section and shall make a confiscation order under this section requiring the person concerned to pay that amount.

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

(6) The standard of proof required to determine any question arising under this Act as to—

(a) whether a person has benefited from drug trafficking, or

(b) the amount to be recovered in his case by virtue of this section,

shall be that applicable in civil proceedings.

5.—(1) For the purposes of this Act—

Assessing the
proceeds of drug
trafficking.

(a) any payments or other rewards received by a person at any time (whether before or after the commencement of *section 4* of this Act) in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking, and

(b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

(2) The court shall, for the purpose of determining whether the defendant has benefited from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking, make the assumptions set out in *subsection (4)* of this section except that the court shall not make any of the said assumptions if—

(a) the assumption is shown to be incorrect in the case of the defendant, or

(b) it is satisfied that there would be a serious risk of injustice in his case if the assumption were to be made.

(3) Where the court does not apply one or more of the assumptions set out in *subsection (4)* of this section it shall state its reasons.

(4) The assumptions referred to in *subsection (2)* of this section are—

(a) that any property appearing to the court—

(i) to have been held by the defendant at any time since his conviction, or

(ii) to have been transferred to him at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him,

was received by him, at the earliest time at which he appears to the court to have held it, as a payment or reward in connection with drug trafficking carried on by him,

(b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him, and

(c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.

(5) For the purpose of assessing the value of the defendant's proceeds of drug trafficking in a case where a confiscation order has previously been made against him, the court shall not take into account any of his proceeds of drug trafficking that are shown to the court to have been taken into account in determining the amount to be recovered under that order.

Amount to be recovered under confiscation order made under *section 4*.

6.—(1) Subject to *subsection (2)* of this section, where a confiscation order has been made under *section 4* of this Act, the amount to be recovered under the order shall be equal to the amount assessed by the court to be the value of the defendant's proceeds of drug trafficking.

(2) If the court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of his proceeds of drug trafficking, the amount to be recovered in the defendant's case under the confiscation order shall be the amount appearing to the court to be the amount that might be so realised.

Re-assessment of whether defendant has benefited from drug trafficking.

7.—(1) This section applies where an application has previously been made to a court under *section 4* of this Act and the court has determined that the defendant has not benefited from drug trafficking.

(2) If the Director of Public Prosecutions has evidence—

(a) which was not considered by the court in making the determination referred to in *subsection (1)* of this section, but

(b) which the Director of Public Prosecutions believes would have led the court to determine that the defendant had benefited from drug trafficking if it had been considered

by the court, he may make, or cause to be made, an application to the court for it to consider that evidence.

(3) If, having considered the evidence, the court is satisfied that it would have determined that the defendant had benefited from drug trafficking if that evidence had been available to it, the court—

(a) shall—

(i) make a fresh determination of whether the defendant benefited from drug trafficking; and

(ii) make a determination under *section 4 (4)* of this Act of the amount to be recovered by virtue of that section; and

(b) may make a confiscation order under *section 4 (4)* of this Act.

(4) In considering an application under this section the court may take into account any payment or other reward received by the defendant on or after the determination referred to in *subsection (1)* of this section, but only if the Director of Public Prosecutions shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another on or before that date.

(5) In considering any evidence under this section which relates to any payments or reward to which *subsection (4)* of this section applies, the court shall not make the assumptions which would otherwise be required by *section 5* of this Act.

(6) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date on which the defendant was convicted.

8.—(1) This section applies where a court has made a determination under *section 4 (4)* of this Act of the amount to be recovered in a particular case by virtue of that section referred to in this section as “the current determination”.

Revised assessment
of proceeds of drug
trafficking.

(2) Where the Director of Public Prosecutions is of the opinion that the real value of the defendant’s proceeds of drug trafficking was greater than their assessed value, the Director of Public Prosecutions may make, or cause to be made, an application to the court for the evidence on which he has formed his opinion to be considered by the court.

(3) In *subsection (2)* of this section—

“assessed value” means the value of the defendant’s proceeds of drug trafficking as assessed by the court under *section 6 (1)* of this Act; and

“real value” means the value of the defendant’s proceeds of drug trafficking which took place—

(a) in the period by reference to which the current determination was made;

or

(b) in any earlier period.

(4) If, having considered the evidence, the court is satisfied that the real value of the defendant's proceeds of drug trafficking is greater than their assessed value (whether because the real value was higher at the time of the current determination than was thought or because the value of the proceeds in question has subsequently increased), the court shall make a fresh determination under *section 4 (4)* of this Act of the amount to be recovered by virtue of that section.

(5) Any determination under *section 4 (4)* of this Act by virtue of this section shall be by reference to the amount that might be realised at the time when the determination is made.

(6) For any determination under *section 4 (4)* of this Act by virtue of this section, *section 5 (5)* of this Act shall not apply in relation to any of the defendant's proceeds of drug trafficking taken into account in respect of the current determination.

(7) In relation to any such determination—

(a) *section 3 (2)* of this Act shall have effect as if for "a confiscation order is made against the defendant" there were substituted "of the determination";

(b) *sections 3 (8), 10 (5) (a) and 12 (4)* of this Act shall have effect as if for "confiscation order" there were substituted "determination"; and

(c) *section 6 (2)* of this Act shall have effect as if for "confiscation order is made" there were substituted "determination is made".

(8) The court may take into account any payment or other reward received by the defendant on or after the date of the current determination, but only if the Director of Public Prosecutions shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another on or before that date.

(9) In considering any evidence under this section which relates to any payment or reward to which *subsection (8)* of this section applies, the court shall not make the assumptions which would otherwise be required by *section 5* of this Act.

(10) If, as a result of making the fresh determination required by *subsection (4)* of this section, the amount to be recovered exceeds the amount set by the current determination, the court may substitute for the amount to be recovered under the confiscation order which was made by reference to the current determination such greater amount as it thinks just in all circumstances of the case.

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

Confiscation orders:
offences other than
drug trafficking
offences.

9.—(1) Where a person has been sentenced or otherwise dealt with in respect of an offence, other than a drug trafficking offence, of which he has been convicted on indictment, then, if an application is made, or caused to be made, to the court by the Director of Public Prosecutions the court may, subject to the provisions of this section, make a confiscation order under this section requiring the person concerned to pay such sum as the court thinks fit.

(2) An application under this section may be made if it appears to the Director of Public Prosecutions that the person concerned has benefited from the offence of which he is convicted or from that offence taken together with some other offence (not being a drug trafficking offence) of which he is convicted in the same proceedings or which the court has taken into consideration in determining his sentence.

(3) An application under *subsection (1)* of this section may be made at the conclusion of the proceedings at which the person is sentenced or otherwise dealt with or may be made at a later stage.

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

(5) Where a person derives a pecuniary advantage as a result of or in connection with the commission of an offence, he is to be treated for the purposes of this section as if he had obtained as a result of or in connection with the commission of the offence a sum of money equal to the value of the pecuniary advantage.

(6) The amount to be recovered by an order under this section shall not exceed—

(a) the amount of the benefit or pecuniary advantage which the court is satisfied that a person has obtained, or

(b) the amount appearing to the court to be the amount that might be realised at the time the order is made,

whichever is the less.

(7) The standard of proof required to determine any question arising under this Act as to—

(a) whether a person has benefited as mentioned in *subsection (2)* of this section, or

(b) the amount to be recovered in his case by virtue of this section,

shall be that applicable in civil proceedings.

10.—(1) Where—

(a) an application has been made to a court under *section 4, 7, 8, or 9*, of this Act and there is tendered to the court by or on behalf of the Director of Public Prosecutions a statement as to any matters relevant to—

(i) the determination of whether the defendant—

(I) (in the case of a conviction for a drug trafficking offence) has benefited from drug trafficking, or

(II) (in the case of a conviction for an offence other than a drug trafficking offence) has benefited as mentioned in *section 9 (4)* of this Act, or

Statements relevant
to making
confiscation orders.

- (ii) the assessment of the value of his proceeds of drug trafficking or the assessment of the value of his benefits as mentioned in *section 9 (4)* of this Act, as the case may be, and

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

the court may, for the purposes of that determination or assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Nothing in this section shall prevent the Director of Public Prosecutions from making more than one statement.

(3) Where—

- (a) a statement is tendered under *subsection (1)* or (2) of this section, and

- (b) the court is satisfied that a copy of that statement has been served on the defendant,

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

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

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

- (b) (in the case of a conviction for a drug trafficking offence or offences) any allegation that he has benefited from drug trafficking or that any payment or other reward was received by him in connection with drug trafficking carried on by him or another, or

- (c) (in the case of a conviction for an offence or offences other than a drug trafficking offence) any allegation that he has benefited from an offence or that any property was obtained by him as a result of or in connection with the commission of an offence.

(5) Where—

- (a) there is tendered to the court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made, and

- (b) the Director of Public Prosecutions accepts to any extent any allegation in the statement,

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

(6) Nothing in this section shall prevent a defendant from making more than one statement.

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

- (a) orally before the court,
- (b) in writing in accordance with rules of court, or
- (c) as the court may direct.

(8) No acceptance by the defendant under this section that any payment or other reward was received by him in connection with drug trafficking carried on by him or another or that he has benefited from an offence other than a drug trafficking offence shall be admissible in evidence in any proceedings for an offence.

11.—(1) This section applies where an application has been made or caused to be made to a court by the Director of Public Prosecutions under *section 4, 7, 8, or 9*, of this Act. Provision of information by defendant.

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

(3) An order under *subsection (2)* of this section may require all, or any specified part, of the required information to be given to the court in such manner, and before such date, as may be specified in the order.

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

(5) Where the Director of Public Prosecutions accepts to any extent any allegation made by the defendant in giving to the court information required by an order under this section, the court may treat that acceptance as conclusive of the matters to which it relates.

(6) For the purposes of this section, an allegation may be accepted in such manner as the court may direct.

12.—(1) When considering whether to make a confiscation order under *section 9* of this Act (but not when considering whether to make such an order under *section 4* of this Act), the court may take into account any information placed before it showing that a victim of an offence to which the proceedings relate has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the offence. Supplementary provisions concerning confiscation orders.

(2) Where a court makes a confiscation order, it may direct that payment of the amount to be recovered in respect of the order shall be made forthwith or at some other time specified in the order.

(3) Where a court makes a confiscation order against a defendant in any proceedings, it shall, in respect of any offence of which he is convicted in those proceedings, take account of—

- (a) any fine imposed on him,
- (b) any order involving any payment by him, or
- (c) any forfeiture order made under *section 30* of the Misuse of Drugs Act, 1977, or *section 61* of this Act.

(4) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under *section 10* of this Act or otherwise), the court may issue a certificate giving the opinion of the court as to the matters concerned and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be—

- (a) (in the case of a conviction for a drug trafficking offence or offences) the value of the defendant's proceeds of drug trafficking, or
- (b) (in the case of a conviction for an offence or offences other than a drug trafficking offence) the value of the defendant's benefit from the offence or offences in respect of which the order may be made.

Power of High Court where defendant has died or is absent.

13.—(1) *Subsection (2)* of this section applies where a person has been convicted on indictment of one or more offences.

(2) If the Director of Public Prosecutions asks it to proceed under this section, the High Court may exercise the powers of a court under *section 4* or *section 9* of this Act, in the case respectively of a conviction for a drug trafficking offence or a conviction for an offence other than a drug trafficking offence, to make a confiscation order against the defendant if satisfied that the defendant has died or absconded.

(3) *Subsection (4)* of this section applies where proceedings for one or more offences in respect of which a confiscation order may be made under this Act have been instituted against a person but have not been concluded.

(4) If the Director of Public Prosecutions asks it to proceed under this section, the High Court may exercise the powers of a court under *section 4* or *section 9* of this Act, where the relevant proceedings have been instituted respectively in respect of a drug trafficking offence or an offence other than a drug trafficking offence, to make a confiscation order against the defendant if satisfied that the defendant has absconded.

(5) The power conferred by *subsection (4)* of this section may not be exercised at any time before the end of the period of two years beginning with the date which is, in the opinion of the court, the date on which the defendant absconded save where it appears to the High Court that it would be reasonable in the circumstances.

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

- (a) *sections 5 (2), 10 (3) and 10 (4)* of this Act shall not apply,
- (b) the court shall not make a confiscation order against a person who has absconded unless it is satisfied that the Director of Public Prosecutions has taken reasonable steps to contact him, and
- (c) any person appearing to the court to be likely to be affected by the making of a confiscation order by the court shall be entitled to appear before the court and make representations.

14.—Where the High Court has made a confiscation order by virtue of *section 13* of this Act, the court shall, in respect of the offence or any of the offences concerned take account of the following, namely:

Effect of conviction where High Court has acted under *section 13*.

- (a) any fine imposed on him,
- (b) any order involving any payment by him, or
- (c) any forfeiture order made under *section 30* of the Misuse of Drugs Act, 1977, or under *section 61* of this Act.

15.—(1) An appeal against the making of a confiscation order shall lie to the Court of Criminal Appeal.

Appeal against confiscation order.

(2) If it upholds the appeal, in whole or in part, the court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if—

- (a) it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order; and
- (b) having regard to all the circumstances of the case, the court considers it to be appropriate.

(3) The amount of compensation to be paid under this section shall be such as the court considers just in all the circumstances of the case.

16.—(1) If, on an application by the defendant or by the Director of Public Prosecutions in respect of a confiscation order, the High Court is satisfied that the value of the realisable property is inadequate for the payment of any amount remaining to be recovered under the order, the court shall substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case.

Variation of confiscation orders.

(2) For the purposes of *subsection (1)* of this section—

- (a) in the case of realisable property held by a person who has been adjudged bankrupt the court shall take into account the extent to which any property held by him may be distributed among creditors, and
- (b) the court may disregard any inadequacy in the value of the realisable property which appears to the court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Act from any risk of realisation under this Act.

17.—(1) This section applies where—

Variation of confiscation orders made by virtue of *section 13*.

- (a) the High Court has made a confiscation order by virtue of *section 13 (4)* of this Act, and
- (b) the defendant has ceased to be an absconder.

(2) If, on an application by the defendant or the Director of Public Prosecutions in respect of the confiscation order, the High Court is satisfied that—

- (a) the value of the defendant's proceeds of drug trafficking or his benefit as mentioned in *section 9 (4)* of this Act in the period by reference to which the determination in question was made ("the original value"), or
- (b) the amount that might have been realised at the time the confiscation order was made,

was less than the amount ordered to be paid under the confiscation order, the court—

- (i) may make a fresh determination of the value of the defendant's proceeds or benefit under *section 4* of this Act in the case of drug trafficking and under *section 9* of this Act in the case of an offence other than a drug trafficking offence, and
- (ii) may, if it considers it just in all the circumstances, vary the amount to be recovered under the confiscation order.

(3) For any determination under *section 4* of this Act by virtue of this section, *section 5 (5)* shall not apply in relation to any of the defendant's proceeds of drug trafficking taken into account in determining the original value.

(4) Where the court varies a confiscation order under this section it may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if—

- (a) it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order; and
- (b) having regard to all the circumstances of the case, the court considers it to be appropriate.

(5) The amount of compensation to be paid under this section shall be such as the court considers just in all the circumstances of the case.

(6) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date on which the confiscation order was made.

Increase in value of
realisable property.

18.—(1) This section shall have effect where the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of drug trafficking or, as the case may be, the value of the benefit he has obtained from an offence other than a drug trafficking offence.

(2) If, on an application made by the Director of Public Prosecutions, the High Court is satisfied that the amount ("the first amount") that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased), the court may substitute for the first amount such amount (not exceeding the amount assessed as the

value referred to in *subsection (1)* of this section) as appears to the court to be appropriate having regard to the amount now shown to be realisable.

PART III

ENFORCEMENT, ETC. OF CONFISCATION ORDERS

19.—(1) Where a court makes a confiscation order, then (without prejudice to the provisions of *section 22* of this Act enabling property of the defendant in the hands of a receiver appointed under this Act to be applied in satisfaction of the confiscation order) the order may be enforced by the Director of Public Prosecutions at any time after it is made (or, if the order provides for payment at a later time, then at any time after the later time) as if it were a judgment of the High Court for the payment to the State of the sum specified in the order (or of any lesser sum remaining due under the order), save that nothing in this subsection shall enable a person to be imprisoned.

Enforcement of
confiscation orders.

(2) Subject to *subsection (3)* of this section, if, at any time after payment of a sum due under a confiscation order has become enforceable in the manner provided for by *subsection (1)* of this section, it is reported to the High Court, by the Director of Public Prosecutions that any such sum or any part thereof remains unpaid, the court may, without prejudice to the validity of anything previously done under the order or to the power to enforce the order in the future in accordance with *subsection (1)* of this section, order that the defendant shall be imprisoned for a period not exceeding that set out in the *second column* of the table to this section opposite to the amount set out therein of the confiscation order remaining unpaid.

(3) An order under *subsection (2)* of this section shall not be made unless the defendant has been given a reasonable opportunity to make any representations to the court that the order should not be made and the court has taken into account any representations so made and any representations made by the Director of Public Prosecutions in reply.

(4) Any term of imprisonment imposed under *subsection (2)* of this section shall commence on the expiration of any term of imprisonment for which the defendant is liable under the sentence for the offence in question or otherwise, but shall be reduced in proportion to any sum or sums paid or recovered from time to time under the confiscation order.

TABLE

Amount outstanding under confiscation order	Period of imprisonment
Not exceeding £500	45 days
Exceeding £500 but not exceeding £1,000	3 months
Exceeding £1,000 but not exceeding £2,500	4 months
Exceeding £2,500 but not exceeding £5,000	6 months
Exceeding £5,000 but not exceeding £10,000	9 months
Exceeding £10,000 but not exceeding £20,000	12 months
Exceeding £20,000 but not exceeding £50,000	18 months
Exceeding £50,000 but not exceeding £100,000	2 years
Exceeding £100,000 but not exceeding £250,000	3 years
Exceeding £250,000 but not exceeding £1 million	5 years
Exceeding £1 million	10 years

20.—(1) Where—

Realisation of
property.

(a) a confiscation order is made under this Act,

- (b) the confiscation order is not subject to appeal, and
- (c) the confiscation order has not been satisfied,

the High Court may, on an application by the Director of Public Prosecutions, exercise the powers conferred by *subsections* (2) to (6) of this section.

(2) The court may appoint a person to be a receiver in respect of realisable property.

(3) The court may empower a receiver appointed under *subsection* (2) of this section or under *section 24* of this Act to take possession of the property subject to such conditions or exceptions as may be specified by the court.

(4) The court may order any person having possession or control of realisable property to give possession of it to the receiver.

(5) The court may empower the receiver to realise any realisable property in such manner as the court may direct.

(6) The court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of any gift caught by this Act as the court may direct and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

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

Interest on sums
unpaid under
confiscation orders.

21.—(1) Subject to *subsection* (2) of this section, if any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of an order or at the time specified by the court), that person shall be liable to pay interest on that sum for the period for which it remains unpaid and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.

(2) The amount of interest payable under *subsection* (1) of this section shall be disregarded for the purposes of calculating the term of imprisonment to be imposed by virtue of *section 19* of this Act.

(3) The rate of interest payable under *subsection* (1) of this section shall be that for the time being applying to a High Court civil judgment debt.

Application of
proceeds of
realisation.

22.—(1) Money paid or recovered in respect of a confiscation order (including any variation of such an order) may, to the extent necessary, be applied to meet expenses incurred in exercising any powers under this Act and the remuneration of any person employed for that purpose.

(2) Money paid or recovered in respect of a confiscation order shall, following the payment of any expenses or remuneration in accordance with *subsection* (1) of this section, be applied towards satisfaction of the confiscation order and paid into or disposed of for

the benefit of the Exchequer in accordance with the directions of the Minister for Finance.

23.—(1) The powers conferred on the High Court by *section 24* of this Act shall be exercisable where—

Cases in which restraint orders may be made.

(a) (i) proceedings have been instituted in the State against the defendant for an offence which is a drug trafficking offence or an indictable offence other than a drug trafficking offence or an application has been made in respect of the defendant under *section 7, 8, 13 or 18* of this Act,

(ii) the proceedings or the application have not or has not been concluded, and

(iii) either a confiscation order has been made or it appears to the court that there are reasonable grounds for thinking that a confiscation order may be made in the proceedings or that in the case of an application under *section 7, 8, 13 or 18* of this Act the court will be satisfied, as the case may be, as mentioned in *section 7 (3), 8 (4), 13 (2), 13 (4) or 18 (2)* of this Act,

or

(b) (i) the court is satisfied that proceedings are to be instituted against a person in respect of an offence which is a drug trafficking offence or an offence in respect of which a confiscation order might be made under *section 9* of this Act or that an application of a kind mentioned in *subsection 1 (a) (i)* of this section is to be made in respect of a person, and

(ii) it appears to the court that a confiscation order may be made in connection with the offence or that a court will be satisfied as mentioned in *subsection 1 (a) (iii)* of this section.

(2) For the purposes of *section 24* of this Act, at any time when those powers are exercisable before proceedings have been instituted—

(a) references in this Act to the defendant shall be construed as references to the person referred to in *subsection (1) (b) (i)* of this section, and

(b) references in this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in *subsection (1) (b) (i)* of this section for an offence which is a drug trafficking offence or an offence in respect of which a confiscation order might be made under *section 9* of this Act.

(3) Where the court has made an order under *section 24* of this Act by virtue of *subsection (1) (b)* of this section, the court shall discharge the order if proceedings in respect of the offence are not instituted or the relevant application is not made within such time as the court considers reasonable.

Restraint orders.

24.—(1) The High Court may by order (in this Act referred to as a “restraint order”) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in that order.

(2) Without prejudice to the generality of *subsection (1)* of this section, a restraint order may make such provision as the court thinks fit for living expenses and legal expenses.

(3) A restraint order may apply—

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

(4) A restraint order—

- (a) may be made only on an application by the Director of Public Prosecutions, which may be made *ex parte* and otherwise than in public, and
- (b) shall provide for notice to be given to persons affected by the order.

(5) A restraint order—

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

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

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

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

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

(8) For the purposes of this Act, dealing with property held by any person includes (without prejudice to the generality of the expression)—

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

(9) Where the High Court has made a restraint order, a member of the Garda Síochána or an officer of customs and excise may, for the purpose of preventing any realisable property being removed from the State, seize the property.

(10) Property seized under *subsection (9)* of this section shall be dealt with in accordance with the court's directions.

25.—(1) Where a restraint order is made, the registrar of the High Court shall, in the case of registered land, furnish the Registrar of Titles with notice of the order and the Registrar of Titles shall thereupon cause an entry to be made in the register under the Registration of Title Act, 1964, inhibiting, until such time as the order is discharged, any dealing with any registered land or charge which appears to be affected by the order.

Registration of
restraint orders.

(2) Where notice of an order has been given under *subsection (1)* of this section and the order is varied, the registrar of the High Court shall furnish the Registrar of Titles with notice to that effect and the Registrar of Titles shall thereupon cause the entry made under *subsection (1)* of this section to be varied to that effect.

(3) Where notice of an order has been given under *subsection (1)* of this section and the order is discharged, the registrar of the High Court shall furnish the Registrar of Titles with notice to that effect and the Registrar of Titles shall cancel the entry made under *subsection (1)* of this section.

(4) Where a restraint order is made, the registrar of the High Court shall, in the case of unregistered land, furnish the Registrar of Deeds with notice of the order and the Registrar of Deeds shall thereupon cause the notice to be registered in the Registry of Deeds pursuant to the Registration of Deeds Act, 1707.

(5) Where notice of an order has been given under *subsection (4)* of this section and the order is varied, the registrar of the High Court shall furnish the Registrar of Deeds with notice to that effect and the Registrar of Deeds shall thereupon cause the entry made under *subsection (4)* of this section to be varied to that effect.

(6) Where notice of an order has been given under *subsection (4)* of this section and the order is discharged, the registrar of the High Court shall furnish the Registrar of Deeds with notice to that effect and the Registrar of Deeds shall thereupon cancel the entry made under *subsection (4)* of this section.

(7) Where a restraint order is made which applies to an interest in a company or to the property of a company, the registrar of the High Court shall furnish the Registrar of Companies with notice of the order and the Registrar of Companies shall thereupon cause the notice to be entered in the Register of Companies maintained under the Companies Acts, 1963 to 1990.

(8) Where notice of an order has been given under *subsection (7)* of this section and the order is varied, the registrar of the High Court shall furnish the Registrar of Companies with notice to that effect and the Registrar of Companies shall thereupon cause the entry made under *subsection (7)* of this section to be varied to that effect.

(9) Where notice of an order has been given under *subsection (7)* of this section and the order is discharged, the registrar of the High Court shall furnish the Registrar of Companies with notice to that effect and the Registrar of Companies shall thereupon cancel the entry made under *subsection (7)* of this section.

Exercise of powers
by High Court or
receiver.

26.—(1) This section applies to the powers conferred on the High Court by *section 20* or *24* of this Act or on a receiver appointed under either of those sections.

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

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

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

(5) In exercising the powers no account shall be taken of any obligations of the defendant or of the recipient of any such gift that conflict with the obligation to satisfy the confiscation order.

Receivers:
supplementary
provisions.

27.—Where a receiver takes any action—

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

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

Bankruptcy of
defendant, etc.

28.—(1) Where a person who holds realisable property is adjudicated bankrupt—

- (a) property for the time being subject to a restraint order made before the order adjudicating him bankrupt, and
- (b) any proceeds of property realised by virtue of *section 20* (5) or (6) or *24* (7) of this Act, for the time being in the hands of a receiver,

is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act, 1988.

(2) Where a person has been adjudicated bankrupt, the powers conferred on the High Court or on a receiver by *section 20* or *24* of this Act shall not be exercised in relation to property of the bankrupt for the purposes of the said Act of 1988.

(3) Where a person is adjudicated bankrupt and has directly or indirectly made a gift caught by this Act—

- (a) no decision as to whether the gift is void shall be made under

section 57, 58 or 59 of the said Act of 1988 in respect of the making of the gift at any time when—

- (i) proceedings for an offence in respect of which a confiscation order might be made have been instituted against him and have not been concluded, or
- (ii) an application has been made in respect of the defendant under *section 7, 8, 13, or 18* of this Act and has not been concluded, or
- (iii) property of the person to whom the gift was made is subject to a restraint order,

and

- (b) any decision as to whether it is void made under any of those sections after the conclusion of the proceedings or of the application shall take into account any realisation under this Act of property held by the person to whom the gift was made.

(4) In any case in which a petition in bankruptcy was presented, or an adjudication in bankruptcy was made, before 1st January, 1989, this section shall have effect with the modification that for references to the property of the bankrupt for the purposes of the said Act of 1988 there shall be substituted references to the property of the bankrupt vesting in the assignees for the purposes of the law of bankruptcy existing before that date.

29.—(1) Without prejudice to the generality of any provision of any other enactment, where—

Property subject to restraint order dealt with by Official Assignee.

- (a) the Official Assignee or a trustee appointed under the provisions of Part V of the Bankruptcy Act, 1988, seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order, and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting, and he shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(2) Where the Official Assignee or a trustee appointed as aforesaid incurs expenses in respect of such property as is mentioned in *paragraph (a) of subsection (1)* of this section and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order, he shall be entitled (whether or not he has seized or disposed of that property so as to have a lien) to payment of those expenses under *section 22* of this Act.

Winding up of
company holding
realisable property.

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

- (a) property for the time being subject to a restraint order made before the relevant time, and
- (b) any proceeds of property realised by virtue of *section 20 (5)* or *(6)* or *24 (7)* of this Act for the time being in the hands of a receiver.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred by *section 20* or *24* of this Act on the High Court or on a receiver shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors, or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) In this section—

“company” means any company which may be wound up under the Companies Acts, 1963 to 1990;

“relevant time” means—

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up,
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution, and
- (c) in any other case where such an order has been made, the time of the making of the order.

PART IV

MONEY LAUNDERING

Money laundering,
etc.

31.—(1) A person shall be guilty of an offence if he—

- (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of drug trafficking or other criminal activity, or
- (b) converts or transfers that property or removes it from the State,

for the purpose of avoiding prosecution for an offence or the making or enforcement in his case of a confiscation order.

(2) A person shall be guilty of an offence if, knowing or believing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking or other criminal activity, he—

(a) conceals or disguises that property, or

(b) converts or transfers that property or removes it from the State,

for the purpose of assisting any person to avoid prosecution for an offence or the making or enforcement of a confiscation order.

(3) A person shall be guilty of an offence if he handles any property knowing or believing that such property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking or other criminal activity.

(4) In *subsection (1) (a)* and *(2) (a)* of this section the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(5) In *subsections (1) (b)* and *(2) (b)* of this section the references to converting, transferring or removing any property include the provision of any advice or assistance in relation to converting, transferring or removing such property.

(6) For the purposes of *subsection (3)* of this section, a person handles property if he dishonestly—

(a) receives it, or

(b) undertakes or assists in its retention, removal, disposal or realisation by or for the benefit of another person, or

(c) arranges to do any of the things specified in *paragraph (a)* or *(b)* of this subsection.

(7) Where a person does, in relation to any property which is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking or of any other criminal activity, any of the acts specified in *subsection (2)* or *(3)* of this section in such circumstances that it is reasonable to conclude that he knew or believed that the property was, or in whole or in part directly or indirectly represented, another person's proceeds of drug trafficking or other criminal activity, he shall be taken to have so known or believed unless the court or jury, as the case may be, is satisfied having regard to all the evidence that there is a reasonable doubt as to whether he so knew or believed.

(8) In this section believing property to be, or in whole or in part directly or indirectly to represent, another person's proceeds of drug trafficking or other criminal activity includes thinking that the property was probably, or probably represented, such proceeds.

(9) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both, or

- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 14 years or to both.

(10) Offences created by this section shall be felonies.

(11) The provisions of this section shall, in so far as they relate to the proceeds of drug trafficking or other criminal activity, apply whether the drug trafficking or other criminal activity concerned took place in the State or elsewhere, and whether it occurred before or after the commencement of this section, provided that where the trafficking or other activity occurred outside the State it corresponded to an offence under the law of the State and amounted to an offence under the law of the country or territory in which it occurred.

Measures to be taken to prevent money laundering.

32.—(1) This section shall apply to the following persons or bodies (referred to in this section as “designated bodies”) namely—

- (a) a body licensed to carry on banking business under the Central Bank Act, 1971 or authorised to carry on such business under regulations made under the European Communities Act, 1972,
- (b) a building society incorporated or deemed to be incorporated under section 10 of the Building Societies Act, 1989,
- (c) a person authorised to carry on a money broking business under section 110 of the Central Bank Act, 1989,
- (d) a society licensed to carry on the business of a trustee savings bank under section 10 of the Trustee Savings Banks Act, 1989,
- (e) a life assurance undertaking which is the holder of an authorisation under the Insurance Acts, 1909 to 1990, or under regulations made under the European Communities Act, 1972,
- (f) a person providing a service in financial futures and options exchanges within the meaning of section 97 of the Central Bank Act, 1989,
- (g) An Post,
- (h) ACC Bank p.l.c.,
- (i) ICC Bank p.l.c.,
- (j) a society which is registered as a credit union under the Industrial and Provident Societies Acts, 1893 to 1978, by virtue of the Credit Union Act, 1966,
- (k) a person providing a service in relation to buying and selling stocks, shares and other securities,
- (l) a person providing foreign currency exchange services, and
- (m) any other person or body prescribed in regulations made under subsection (10) (a) of this section.

(2) This section shall apply in respect of the carrying out of one or more of the operations which are included in numbers 2 to 12 and 14 of the list annexed to Council Directive 89/646/EEC, activities to

which Council Directive 79/267/EEC as amended applies or any other activity which may be prescribed in regulations made under *subsection (10) (b)* of this section.

(3) A designated body shall take reasonable measures to establish the identity of any person for whom it proposes to provide a service of a kind mentioned in *subsection (2)* of this section—

- (a) on a continuing basis, or
- (b) in respect of transactions that, either as an individual transaction or a series of transactions which are or appear to be linked, amount in the aggregate to at least £10,000 or the amount for the time being prescribed by regulations made under *subsection (10) (c)* of this section, or
- (c) otherwise where it suspects that a service is connected with the commission of an offence under *section 31* of this Act.

(4) For the purposes of *paragraph (b)* of *subsection (3)* of this section, where the sum involved is not known at the time of the transaction, the obligations arising under this section shall apply as soon as it is established that the sums involved amount to at least the sum mentioned in the said paragraph of *subsection (3)* of this section.

(5) Where a designated body proposes to provide a service of a kind mentioned in *subsection (2)* of this section for a person whom it knows or has reason to believe to be acting for a third party, the designated body shall take reasonable measures to establish the identity of the third party.

(6) This section shall not apply where a designated body provides a service for another designated body or a body corresponding to a designated body in a member state of the European Union or a state or country which stands prescribed for the time being for the purposes of this subsection.

(7) *Subsections (3), (4) and (5)* of this section shall not apply to a life assurance undertaking referred to in *subsection (1) (e)* of this section in a case where—

- (a) the amount or amounts of the periodic premiums to be paid in respect of the life assurance policy in any twelve month period does not or do not exceed £700 or the amount for the time being prescribed for the purpose of this paragraph by regulations made under *subsection (10) (e)* of this section unless the amount or amounts of the periodic premiums is or are increased so as to exceed in any twelve month period £700 or the amount so prescribed as the case may be, or
- (b) a single premium to be paid in respect of the life assurance policy does not exceed £1,750 or the amount for the time being prescribed for the purpose of this paragraph by regulations made under *subsection (10) (e)* of this section,

and the said *subsections (3), (4) and (5)* shall not apply in the case where the life assurance policy is in respect of a pension scheme taken out by virtue of a contract of employment or the occupation of the person to be insured under the policy, provided that the policy in question does not contain a surrender clause and may not be used as collateral for a loan.

(8) *Subsections (3), (4) and (5) of this section shall not apply to a life assurance undertaking referred to in subsection (1) (e) of this section in a case where there is a transaction or a series of transactions taking place in the course of its business in respect of which payment is made from an account held in the name of the other party with a designated body or a body corresponding to a designated body as referred to in subsection (6) of this section.*

(9) Where a designated body identifies a person for the purposes of this section, it shall retain the following for use as evidence in any investigation into money laundering—

- (a) in the case of the identification of a customer or proposed customer, a copy of all materials used to identify the person concerned for a period of at least 5 years after the relationship with the person has ended,
- (b) in the case of transactions, the original documents or copies admissible in legal proceedings relating to the relevant transaction for a period of at least 5 years following the execution of the transaction.

(10) The Minister may by regulations—

- (a) following consultation with the Minister for Finance, prescribe other persons or bodies to be designated bodies for the purposes of this section, being persons or bodies whose business consists of or includes the provision of services involving the acceptance or holding of money or other property for or on behalf of other persons or whose business appears to the Minister to be otherwise liable to be used for the purpose of committing or facilitating the commission of offences under *section 31* of this Act or any corresponding or similar offences under the law of any other country or territory,
- (b) following consultation with the Minister for Finance, prescribe activities for the purposes of *subsection (2)* of this section which appear to the Minister to be liable to be used for the purpose of committing or facilitating the commission of offences under *section 31* of this Act or any corresponding or similar offences under the law of any other country or territory,
- (c) following consultation with the Minister for Finance, prescribe an amount for the purposes of *subsections (3) (b) and (4)* of this section,
- (d) following consultation with the Minister for Finance, prescribe states or countries for the purposes of *subsection (6)* of this section,
- (e) following consultation with the Minister for Enterprise and Employment, prescribe amounts for the purposes of *subsections (7) (a) and (b)* of this section.

(11) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if either House shall, within the next 21 days on which that House has sat after the regulation was laid before it, pass a resolution annulling the regulation, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulation.

(12) A person who contravenes a provision of this section or who provides false or misleading information for the purposes of *subsection (3), (4) or (5)* of this section when required to do so under this section shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both, or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years or to both.

PART V

DRUG TRAFFICKING OFFENCES AT SEA

33.—Anything which would constitute a drug trafficking offence if done on land in the State shall constitute that offence if done on an Irish ship. Drug trafficking offences on Irish ships.

34.—(1) This section applies to an Irish ship, a ship registered in a Convention state and a ship not registered in any country or territory. Ships used for drug trafficking.

(2) A person shall be guilty of an offence if, on a ship to which this section applies, wherever it may be, he—

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

knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to any regulations made by the Minister for Health under section 5 (1) (a) (ii) of the Misuse of Drugs Act, 1977, or the law of any state outside the State.

(3) A certificate purporting to be issued by or on behalf of the government of any state other than the State to the effect that the importation or exportation of a controlled drug is prohibited by the law of that state shall in a prosecution under this section be evidence of the matters stated in that certificate without further proof.

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

- (a) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both, or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 7 years or to both.

(5) Section 29 (1) of the Misuse of Drugs Act, 1977 (defences generally) is hereby amended by the substitution therefor of the following subsection:

“(1) In any proceedings for an offence under this Act or an offence under *section 34* of the *Criminal Justice Act, 1994* in which it is proved that the defendant had in his possession or supplied a controlled drug, the defendant shall not be acquitted

of the offence charged by reason only of proving that he neither knew nor suspected nor had reason to suspect that the substance, product or preparation in question was the particular controlled drug alleged.”.

Enforcement
powers in respect of
ships.

35.—(1) The powers conferred on an enforcement officer by the *First Schedule* to this Act shall be exercisable in relation to any ship to which *section 33* or *34* of this Act applies for the purpose of detecting and the taking of appropriate action in respect of the offences mentioned in those sections.

(2) The powers conferred by *subsection (1)* of this section shall not be exercised outside the landward limits of the territorial seas of the State in relation to a ship registered in a Convention state except with the authority of the Minister for Foreign Affairs and he shall not give his authority unless that state has in relation to that ship—

(a) requested the assistance of the State for the purpose mentioned in *subsection (1)* of this section, or

(b) authorised the State to act for that purpose.

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

(4) The Minister for Foreign Affairs may, either of his own motion or in response to a request from a Convention state, authorise a Convention state to exercise, in relation to an Irish ship, powers corresponding to those conferred on enforcement officers by the *First Schedule* to this Act but subject to such conditions or limitations, if any, as he may impose.

(5) *Subsection (4)* of this section shall be without prejudice to any agreement made, or which may be made, on behalf of the State whereby the State undertakes not to object to the exercise by any other state in relation to an Irish ship of powers corresponding to those conferred by the *First Schedule* to this Act.

(6) The powers conferred by the *First Schedule* to this Act shall not be exercised in the territorial seas of any state other than the State without the authority of the Minister for Foreign Affairs and he shall not give his authority unless that state has consented to the exercise of those powers.

Jurisdiction and
prosecutions in
relation to offences
on ships.

36.—(1) Proceedings under *section 33* or *34* of this Act or the *First Schedule* to this Act in respect of an offence on a ship may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

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

(3) Without prejudice to *subsection (2)* of this section, no proceedings for an offence under *section 34* of this Act alleged to have been committed outside the landward limits of the territorial seas of the State on a ship registered in a Convention state shall be instituted except in pursuance of the exercise, with the authority of the Minister

for Foreign Affairs, of the powers conferred by the *First Schedule* to this Act.

(4) Section 11 of the Maritime Jurisdiction Act, 1959 (consent of Minister for Foreign Affairs for prosecutions for certain offences on foreign ships), shall not apply to the proceedings to which *subsection (3)* of this section relates.

37.—(1) The Minister for Foreign Affairs may by order declare Convention states.
that any state specified in the order is a Convention state.

(2) An order that is in force under *subsection (1)* of this section shall be evidence that any state specified in the order is a Convention state.

(3) The Minister for Foreign Affairs may by order amend or revoke an order under this section including an order under this subsection.

(4) An order under this section shall, as soon as may be after it is made, be laid before each House of the Oireachtas.

PART VI

DRUG TRAFFICKING MONEY IMPORTED OR EXPORTED IN CASH

38.—(1) A member of the Garda Síochána or an officer of customs and excise may seize and, in accordance with this section, detain any cash which is being imported into or exported from the State if its amount is not less than the prescribed sum and he has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking. Seizure and detention.

(2) Cash seized by virtue of this section shall not be detained for more than forty-eight hours unless its detention beyond forty-eight hours is authorised by an order made by a judge of the District Court and no such order shall be made unless the judge is satisfied—

(a) that there are reasonable grounds for the suspicion mentioned in *subsection (1)* of this section, and

(b) that detention of the cash beyond forty-eight hours is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the State or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.

(3) Any order under *subsection (2)* of this section shall authorise the continued detention of the cash to which it relates for such period, not exceeding three months beginning with the date of the order, as may be specified in the order, and a judge of the District Court, if satisfied as to the matters mentioned in that subsection, may thereafter from time to time by order authorise the further detention of the cash but so that—

(a) no period of detention specified in such an order, shall exceed three months beginning with the date of the order; and

(b) the total period of detention shall not exceed two years from the date of the order under *subsection (2)* of this section.

(4) Any application for an order under *subsection (2)* or *(3)* of this section may be made by a member of the Garda Síochána or an officer of customs and excise.

(5) At any time while cash is detained by virtue of the foregoing provisions of this section a judge of the District Court may direct its release if satisfied—

(a) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer, any such grounds for its detention as are mentioned in *subsection (2)* of this section, or

(b) on an application made by any other person, that detention of the cash is not for that or any other reason justified.

(6) If at a time when any cash is being detained by virtue of the foregoing provisions of this section—

(a) an application for its forfeiture is made under *section 39* of this Act; or

(b) proceedings are instituted (whether in the State or elsewhere) against any person for an offence with which the cash is connected,

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

Forfeiture of cash
seized under *section*
38.

39.—(1) A judge of the Circuit Court may order the forfeiture of any cash which has been seized under *section 38* of this Act if satisfied, on an application made while the cash is detained under that section, that the cash directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking.

(2) Any application under this section shall be made, or caused to be made, by the Director of Public Prosecutions.

(3) The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings; and an order may be made under this section whether or not proceedings are brought against any person for an offence with which the cash in question is connected.

Appeal against
section 39 order.

40.—(1) This section applies where an order for the forfeiture of cash (in this section known as "*the section 39 order*") is made under *section 39* of this Act.

(2) Any party to the proceedings in which the *section 39* order is made (other than the Director of Public Prosecutions) may, before the end of the period of 30 days beginning with the date on which it is made, appeal in respect of the order to the High Court.

(3) An appeal under this section shall be by way of a rehearing.

(4) On an application made by the appellant to a judge of the

Circuit Court at any time, the judge may order the release of so much of the cash to which the *section 39* order relates as he considers appropriate to enable the appellant to meet his legal expenses in connection with the appeal.

(5) When hearing an appeal under this section the High Court may make such order as it considers appropriate.

(6) If it upholds the appeal, the judge may order the release of the cash, or (as the case may be) the remaining cash, together with any accrued interest.

(7) *Section 39 (3)* of this Act shall apply in relation to a rehearing on an appeal under this section as it applies to proceedings under *section 39* of this Act.

41.—Cash seized under this Part of this Act and detained for more than forty-eight hours shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing on any such cash shall be added to that cash on its forfeiture or release. Interest.

42.—(1) An order under *section 38 (2)* of this Act shall provide for notice to be given to persons affected by the order. Procedure.

(2) Provision may be made by rules of court with respect to applications or appeals to any court under this Part of this Act, for the giving of notice of such applications or appeals to persons affected, for the joinder of such persons as parties and generally with respect to the procedure under this Part of this Act before any court.

43.—(1) In this Part of this Act—

Interpretation of
Part VI.

“cash” includes coins and notes in any currency;

“exported” in relation to any cash, includes its being brought to any place in the State for the purpose of being exported.

(2) In *section 38* of this Act “the prescribed sum” means such sum as may for the time being be prescribed for the purposes of that section by any regulations made under *section 44* of this Act.

44.—(1) The Minister may by regulations prescribe a sum for the purposes of *section 38* of this Act and in determining under that section whether an amount of foreign currency is not less than the prescribed sum that amount shall be converted at the prevailing rate of exchange. Prescribed sum for purposes of *section 38*.

(2) Where it is proposed to make regulations under *subsection (1)* of this section, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of such draft has been passed by each such House.

45.—Any money representing cash which is forfeited under this Part of this Act or accrued interest thereon shall, following the payment of any expenses or remuneration that may have arisen in relation to such forfeiture, be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance. Disposal of cash etc. forfeited under *section 39*.

PART VII

INTERNATIONAL CO-OPERATION

External
confiscation orders,
etc.

46.—(1) The Government may by order designate countries as countries in whose case orders (referred to in this section as “confiscation co-operation orders”) may be made for the confiscation, in accordance with the law of the State, of property which is liable to confiscation in accordance with orders (referred to in this section as “external confiscation orders”) made by a court in the country in question for the purpose—

(a) of recovering payments or other rewards received as a result of or in connection with drug trafficking or their value, or

(b) of recovering—

(i) property obtained as a result of or in connection with conduct corresponding to an offence in respect of which a confiscation order could be made under section 9 of this Act, or

(ii) the value of property so obtained,

or

(c) of depriving a person of a pecuniary advantage obtained as mentioned in paragraph (b) of this subsection.

(2) If an application is made to the High Court by or on behalf of the government of a country designated under subsection (1) of this section (referred to in this section as a “designated country”) and with the consent of the Minister for the making of a confiscation co-operation order pursuant to an external confiscation order made by a court in that country, and the High Court is satisfied that the conditions specified in subsection (3) of this section are satisfied, the court may make a confiscation co-operation order.

(3) The conditions referred to in subsection (2) of this section are that the High Court should—

(a) be satisfied that at the time of the making of the order the external confiscation order is in force and not subject to appeal,

(b) be satisfied, where the person against whom that order was made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them, and

(c) be of the opinion that the making of a confiscation co-operation order corresponding to the external confiscation order would not be contrary to the interests of justice.

(4) In subsection (3) of this section “appeal” includes—

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

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

(5) A confiscation co-operation order shall have the like effect as a confiscation order made under section 4 or 9 of this Act save that—

(a) if the external confiscation order was for the confiscation of specified property (other than money), the confiscation co-operation order shall be an order for the recovery of that property (or of so much of the property as is specified in the application), and

(b) if the external confiscation order was for the recovery of a sum of money, the confiscation co-operation order shall be for the recovery of that sum (or, if a lesser sum is specified in the application, then for the recovery of the lesser sum).

(6) The Government may by regulations make such modifications of this Act as appear to it to be necessary or expedient for the purpose of adapting to confiscation co-operation orders any of the provisions of this Act relating to confiscation orders, in particular in relation to enforcement and the taking of provisional measures to prevent any dealing in, or transfer or disposal of, property that may be liable to confiscation in accordance with any confiscation co-operation order that may be made.

(7) The High Court shall revoke the confiscation co-operation order if it appears to the court that the external confiscation order has been satisfied in accordance with the law of the country in which it was made.

(8) Where it is proposed to make regulations under *subsection (6)* of this section, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of such draft has been passed by each such House.

(9) The Government may amend or revoke an order made under this section including an order made under this subsection.

(10) An order under *subsection (1)* or *(9)* of this section shall, as soon as may be after it is made, be laid before each House of the Oireachtas.

47.—(1) The Government may by order designate countries in whose case orders (referred to in this section as “forfeiture co-operation orders”) may be made for the forfeiture, in accordance with the law of the State, of anything—

External forfeiture orders, etc.

(a) in respect of which an offence to which this section applies has been committed or which was used or intended to be used in connection with the commission of such an offence, and

(b) in respect of which an order (referred to in this section as an “external forfeiture order”) has been made by a court in the country in question.

(2) Subject to *subsection (3)* of this section, if an application is made to the High Court by or on behalf of the government of a country designated under *subsection (1)* of this section (referred to in this section as a “designated country”) and with the consent of the Minister for the making of a forfeiture co-operation order pursuant to an external forfeiture order made by a court in that country, and the High Court is satisfied that the conditions corresponding to those specified in *subsections (3)* and *(4)* of *section 46* of this Act are satisfied, the court may make a forfeiture co-operation order.

(3) The court shall not make an order under *subsection (2)* of this section if a person claiming to be the owner of the thing in question or otherwise interested in it applies to be heard by the court unless an opportunity has been given to him to show cause why the order should not be made.

(4) A forfeiture co-operation order shall have the like effect as a forfeiture order made under *section 61* of this Act as specified in *subsection (4)* of that section, and *subsections (7)* and *(8)* of that section shall apply accordingly.

(5) This section applies to any offence which corresponds to—

- (a) an offence under the Misuse of Drugs Act, 1977,
- (b) a drug trafficking offence, or
- (c) an offence in respect of which a confiscation order could be made under *section 9* of this Act.

(6) The Government may amend or revoke an order made under this section including an order made under this subsection.

(7) An order under *subsection (1)* or *(6)* of this section shall, as soon as may be after it is made, be laid before each House of the Oireachtas.

Proof of external
order, etc.

48.—(1) On the hearing of an application to the High Court under *section 46* of this Act for the making of a confiscation co-operation order, or under *section 47* of this Act for the making of a forfeiture co-operation order, a certificate signed by, or with the authority of, a judge of the court which made the external confiscation order or the external forfeiture order in question and recording the making of the order or the giving of any evidence or information in the proceedings leading to the making of the order, shall be admissible as evidence of the making of the order or of any fact contained in the evidence or information without further proof.

(2) A document purporting to be a certificate under *subsection (1)* of this section shall be deemed to be such a certificate, and to have been signed by the person purporting to have signed it (and, in the case of such a document purporting to have been signed with the authority of a judge of the court, to have been signed in accordance with the authorisation), unless the contrary is shown.

(3) Where a document is admissible in evidence under this section, any document which purports to be a translation of that document shall be admissible as evidence of the translation if it is certified as correct by a person competent to do so; and a document purporting to be a certificate under this subsection shall be deemed to be such a certificate, and to be signed by the person purporting to have signed it, unless the contrary is shown.

Service in State of
process issued
outside State.

49.—(1) This section shall have effect where the Minister receives from the government of, or other authority in, a country or territory outside the State—

- (a) a summons or other process requiring a person to appear as defendant or attend as a witness in criminal proceedings in that country or territory, or

- (b) a document issued by a court exercising criminal jurisdiction in that country or territory and recording a decision of the court made in the exercise of that jurisdiction,

together with a request for it to be served on a person in the State.

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

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

(4) The Minister shall not cause a summons or other process requiring a person to appear as defendant in criminal proceedings in another country or territory to be served under *subsection (1) (a)* of this section unless provision is made by the law of that country or territory or by arrangement with the appropriate authority thereof that, if the person concerned appears as defendant in compliance with the summons or process, he will not be proceeded against, sentenced, detained or otherwise restricted in his personal freedom in that country or territory in respect of any offences committed before his departure from the State other than the offences specified in the summons or process unless that person—

- (a) having had for a period of 15 consecutive days from the date of his final discharge in respect of the offences specified in the summons or process an opportunity to leave the country or territory concerned, has not done so, or

- (b) having left that country or territory, has returned to it.

(5) The Minister shall not cause a summons or other process requiring a person to attend as a witness in criminal proceedings in another country or territory to be served under *subsection (1) (a)* of this section unless provision is made by the law of that country or territory or by arrangement with the appropriate authority thereof that, if the person concerned attends as a witness in compliance with the summons or process, he will not be proceeded against, sentenced, detained or otherwise restricted in his personal freedom in that country or territory in respect of any offences committed before his departure from the State unless that person—

- (a) having had for a period of 15 consecutive days from the date when his presence is no longer required as a witness in the proceedings concerned an opportunity to leave the country or territory concerned, has not done so, or

- (b) having left that country or territory, has returned to it.

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

- (a) stating the effect of *subsections (3), (4) and (5)* of this section,

- (b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of his failing to comply with the process under the law of the country or territory where it was issued, and

- (c) indicating that under that law he may not, as a witness,

be accorded the same rights and privileges as would be accorded to him in criminal proceedings in the State.

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

Service outside
State of process
issued in State.

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

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

may be issued or made notwithstanding that the person in question is outside the State and may be served outside the State in accordance with arrangements made by the Minister for Foreign Affairs.

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

(3) *Subsection (2)* of this section shall operate without prejudice to the service of any process on the person in question if subsequently effected in the State.

(4) Where a person is in the State in compliance with a summons such as is referred to in *subsection (1) (a)* of this section which has been served on him by virtue of this section, that person shall not be proceeded against, sentenced, detained or otherwise restricted in his personal freedom in the State in respect of any offences committed before his arrival in the State other than the offences specified in the summons unless that person—

- (a) having had for a period of 15 consecutive days from the date of his final discharge in respect of the offences specified in the summons an opportunity to leave the State, has not done so, or
- (b) having left the State, has returned to it.

(5) Where a person is in the State in compliance with a summons such as is referred to in *subsection (1) (b)* of this section which has been served on him by virtue of this section, that person shall not be proceeded against, sentenced, detained or otherwise restricted in his personal freedom in the State in respect of any offences committed before his arrival in the State unless that person—

- (a) having had for a period of 15 consecutive days from the date when his presence is no longer required as a witness in the proceedings concerned an opportunity to leave the State, has not done so, or

(b) having left the State, has returned to it.

51.—(1) This section shall have effect where the Minister receives—

Taking of evidence
in State for use
outside State.

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

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

(2) If the Minister is satisfied—

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

he may, if he thinks fit, by a notice in writing nominate a judge of the District Court to receive such of the evidence to which the request relates as may appear to the judge to be appropriate for the purpose of giving effect to the request.

(3) For the purpose of satisfying himself as to the matters mentioned in *subsection (2) (a) and (b)* of this section the Minister may regard as conclusive a certificate issued by such authority in the country or territory in question as appears to him to be appropriate.

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

(5) The Minister shall not exercise the power conferred on him by *subsection (2)* of this section unless provision is made by the law of the country or territory or by arrangement with the appropriate authority thereof that any evidence that may be furnished in response to the request will not, without his consent, be used for any purpose other than that specified in the request.

(6) The *Second Schedule* to this Act shall have effect with respect to the proceedings before the nominated judge in pursuance of a notice under *subsection (2)* of this section.

(7) The following enactments are hereby repealed, that is to say—

- (a) section 24 of the Extradition Act, 1870,
- (b) section 5 of the Extradition Act, 1873,
- (c) sections 3 (1) (b) and (2) (c) and 4 (1) (b) of the Extradition (European Convention on the Suppression of Terrorism) Act, 1987, and

(d) section 1 (3) (c) of the Extradition (Amendment) Act, 1994.

(8) Section 3 of the Genocide Act, 1973, is hereby amended by the substitution therefor of the following section:

"Extradition and
evidence for foreign
courts.

3.—(1) No offence which, if committed in the State, would be punishable as genocide or as an attempt, conspiracy or incitement to commit genocide shall be regarded as a political offence or an offence connected with a political offence for the purposes of the Extradition Act, 1965.

(2) A person shall not be exempt from extradition under the Extradition Act, 1965, for an offence referred to in subsection (1) of this section on the ground that, under the law in force at the time when, and in the place where, he is alleged to have committed the act of which he is accused or of which he was convicted, he could not have been punished therefor."

(9) Notwithstanding *subsections (7) and (8)* of this section, if before the coming into operation of this section any steps have been taken with a view to the taking of evidence under any of the enactments mentioned in those subsections or the taking of such evidence has begun, the taking of the evidence may be begun or continued as if those subsections had not been enacted.

Obtaining of
evidence outside
State for use in
State.

52.—(1) Where on an application made in accordance with *subsection (2)* of this section it appears to a judge of any court—

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

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

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

(2) An application under *subsection (1)* of this section may be made by the Director of Public Prosecutions or, if proceedings have been instituted, by a person charged in those proceedings.

(3) Subject to *subsection (4)* of this section, a letter of request shall be sent to the Minister for transmission either—

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

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

(4) In cases of urgency a letter of request may be sent direct to such a court or tribunal as is mentioned in *subsection (3) (a)* of this section.

(5) In this section "evidence" includes documents and other articles.

(6) Evidence obtained by virtue of a letter of request shall not without the consent of such an authority as is mentioned in *subsection (3) (b)* of this section be used for any purpose other than specified in the letter; and when any document or other article obtained pursuant to a letter of request is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to such an authority unless that authority indicates that the document or article need not be returned.

(7) A statement of evidence of a witness taken in compliance with a letter of request, and certified by or on behalf of the court, tribunal or authority by which it was taken to be a true and accurate statement of the evidence so taken shall be admissible in the proceedings concerned as evidence of any fact stated therein of which evidence would be admissible in those proceedings.

(8) A document purporting to be a certificate of a court, tribunal or authority under *subsection (7)* of this section and to be signed by or on behalf of the court, tribunal or authority shall be deemed, for the purposes of this section, to be such a certificate and to be so signed unless the contrary is shown.

(9) Where a document is admissible in evidence under this section, any document which purports to be a translation of that document shall be admissible as evidence of the translation if it is certified as correct by a person competent to do so; and a document purporting to be a certificate under this subsection shall be deemed to be such a certificate, and to be signed by the person purporting to have signed it, unless the contrary is shown.

(10) In considering whether a statement contained in evidence taken pursuant to a letter of request should be excluded in the exercise of the court's discretion to exclude evidence otherwise admissible the court shall have regard—

- (a) to whether it was possible to challenge the statement by questioning the person who made it, and
- (b) if the statement was taken in proceedings in the country or territory in question, to whether the law of that country or territory allowed the parties to the proceedings to be legally represented when the evidence was being taken.

53.—(1) The Minister may, if he thinks fit, issue a warrant providing for any person (referred to in this section as "a prisoner") serving a sentence in a prison or any other place for which rules or regulations may be made under the Prisons Acts, 1826 to 1980, or section 13 of the Criminal Justice Act, 1960, to be transferred to a country or territory outside the State for the purpose—

Transfer of prisoner in State to give evidence or assist investigation outside State.

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

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

- (a) by the prisoner himself, or
 - (b) in circumstances in which it appears to the Minister inappropriate, by reason of the prisoner's physical or mental condition or his youth, for him to act for himself, by a person appearing to the Minister to be an appropriate person to act on his behalf.
- (3) The effect of a warrant under this section shall be to authorise—
- (a) the taking of the prisoner to a place in the State and his delivery at a place of departure from the State into the custody of a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred, and
 - (b) the bringing of the prisoner back to the State and his transfer in custody to the place where he is liable to be detained under the sentence to which he is subject.
- (4) The Minister shall not issue a warrant under *subsection (1)* of this section unless provision is made by the law of the country or territory or by arrangement with the appropriate authority thereof that the prisoner will not be proceeded against, sentenced, detained or subjected to any other restriction on his personal freedom in respect of any offence against the law of that country or territory committed before his departure from the State.
- (5) Where a warrant has been issued in respect of a prisoner under this section, he shall be deemed to be in legal custody at any time when he is being taken under the warrant to or from any place or being kept in custody under the warrant.
- (6) A person authorised by or for the purposes of a warrant issued under this section to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges of a member of the Garda Síochána.
- (7) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a member of the Garda Síochána and taken to any place to which he may be taken under a warrant issued under this section.
- (8) This section shall apply to a person in custody awaiting trial or sentence and a person committed to prison for default in paying a fine or a sum due under a confiscation order or confiscation co-operation order as it applies to a prisoner and the reference in *subsection (3) (b)* of this section to a sentence shall be construed accordingly.

Transfer of prisoner
outside State to give
evidence or assist
investigation in
State.

54.—(1) This section has effect where—

- (a) a witness order has been made or a witness summons has been issued in criminal proceedings in the State in respect of a person ("a prisoner") who is detained in custody in a country or territory outside the State by virtue of a sentence or order of a court or tribunal exercising criminal jurisdiction in that country or territory, or
- (b) it appears to the Minister that it is desirable for a prisoner to be identified in, or otherwise by his presence to assist,

such proceedings or the investigation in the State of an offence.

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

(3) No warrant shall be issued under this section in respect of any prisoner unless he has consented to being brought to the State to give evidence as aforesaid or, as the case may be, for the purpose mentioned in *subsection (1) (b)* of this section.

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

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

(5) *Subsections (5) to (7) of section 53* of this Act shall have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.

(6) A person shall not be subject to the controls imposed by the Aliens Act, 1935, and orders made thereunder in respect of his entry into or presence in the State in pursuance of a warrant under this section but if the warrant ceases to have effect while he is in the State, he shall be treated for the purposes of that Act and the orders made under it as if he had illegally entered the State and the provisions of that Act and any such orders shall apply to that person except that no carrier shall be liable for his expenses of custody.

(7) A person who is in the State pursuant to a warrant issued under this section shall not be proceeded against, sentenced, detained, or subjected to any other restriction on his personal freedom in respect of any offence committed against the law of the State before his arrival in the State.

(8) This section applies to a person detained in custody in a country or territory outside the State in consequence of having been transferred there under any legislative or other arrangements for the repatriation of prisoners as it applies to a person detained as mentioned in *subsection (1)* of this section.

55.—(1) The Government may by order designate countries in relation to which this section shall apply.

Search, etc. for material relevant to investigation outside State.

(2) *Section 63* of this Act shall have effect as if references in that section to drug trafficking or an offence in respect of which a confiscation order might be made under *section 9* of this Act included any conduct which is an offence under the law of a country or territory outside the State and would constitute drug trafficking or an offence in respect of which a confiscation order might be made under *section 9* of this Act if it had occurred in the State.

(3) If, on an application made by the Director of Public Prosecutions or by a member of the Garda Síochána not below the rank of superintendent, a judge of the District Court is satisfied that—

- (a) there are reasonable grounds for believing that an offence under the law of a country in relation to which this section applies has been committed, and
- (b) the conduct constituting that offence would, if it had occurred in the State, constitute an offence in respect of which the judge would have power under any enactment to issue a search warrant in relation to any place,

then, subject to *subsection (4)* of this section, the judge shall have the same power to issue a search warrant authorising entry, search and seizure in relation to that place as he would have under the enactment in question in respect of an offence committed in the State.

(4) No application for a warrant shall be made under this section except in pursuance of a direction given by the Minister in response to a request received by him from the government of a country in relation to which this section applies and made—

- (a) on behalf of a court or tribunal exercising criminal jurisdiction in the country in question or a prosecuting authority in that country, or
- (b) on behalf of any other authority in that country which appears to the Minister to be an appropriate authority for the purpose of this section,

and any evidence seized by a member of the Garda Síochána by virtue of this section shall be furnished by him to the Minister for transmission to the government of the country concerned or, if that government so requests, to the court, tribunal or authority for which it has been obtained.

(5) If in order to comply with the request it is necessary for any evidence to which this section applies to be accompanied by any certificate, affidavit or other verifying document, the member of the Garda Síochána shall also furnish for transmission such document of that nature as may be specified in the direction given by the Minister.

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

(7) Section 9 of the Criminal Law Act, 1976, (including, in particular, the restriction in subsection (2) of that section relating to the seizure or retention of any document that was or may have been made for the purpose of legal advice) shall apply in relation to a search carried out under this section as it applies to a search such as is mentioned in that section save that for the reference in subsection (1) of the said section 9 to the retention of a thing for use as evidence in any criminal proceedings there shall be substituted a reference to its retention for transmission in accordance with this section.

(8) The Government may amend or revoke an order made under this section including an order made under this subsection.

(9) An order under *subsection (1) or (8)* of this section shall, as soon as may be after it is made, be laid before each House of the Oireachtas.

(10) The Minister shall not give a direction under *subsection (4)* of this section unless provision is made by the law of the country or by arrangement with the appropriate authority thereof that any evidence that may be furnished in response to the request will not, without his consent, be used for any purpose other than that specified in the request and that when such evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it will be returned to him by the court, tribunal or authority that made the request under *subsection (4)* of this section unless he indicates that the evidence need not be returned.

(11) In this section "evidence" includes documents and other articles.

56.—(1) The Government may by regulations make such modifications of this Act as appear to it to be necessary or expedient for the purpose of adapting any of the provisions of this Part of this Act to enable the State to provide co-operation under those provisions for an international tribunal or other body established for the prosecution of persons responsible for serious violations of international humanitarian law committed outside the State.

Provision of co-operation for international war crimes tribunals etc.

(2) Where it is proposed to make regulations under *subsection (1)* of this section, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of such draft has been passed by each such House.

PART VIII

SUPPLEMENTARY

57.—(1) Any person to whom or which *section 32* of this Act applies (including their directors, employees and officers) shall report to the Garda Síochána where they suspect that an offence under *section 31 or 32* of this Act in relation to the business of that person or body has been or is being committed.

Disclosure of information.

(2) A person charged by law with the supervision of a person or body to whom or which *section 32* of this Act applies shall report to the Garda Síochána where he or it suspects that an offence under *section 31 or 32* of this Act has been or is being committed by a person or body with whose supervision the first mentioned person or body is so charged.

(3) A report may be made to the Garda Síochána under this section in accordance with an internal reporting procedure established by an employer for the purpose of facilitating the operation of this section.

(4) In the case of a person who was in employment at the relevant time, it shall be a defence to a charge of committing an offence under this section that the person charged made a report of the type referred to in *subsection (1) or (2)* of this section, as the case may be, to another person in accordance with an internal reporting procedure established for the purpose specified in *subsection (3)* of this section.

(5) A person who fails to comply with *subsection (1)* or (2) of this section shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both, or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years or to both.

(6) In determining whether a person has complied with any of the requirements of this section, a court may take account of any relevant supervisory or regulatory guidance which applies to that person or any other relevant guidance issued by a body that regulates, or is representative of, any trade, profession, business or employment carried on by that person.

(7) Where a person or body—

- (a) discloses in good faith information in the course of making a report under *subsection (1)* or (2) of this section, or
- (b) discloses in good faith to a member of the Garda Síochána or any person concerned in the investigation or prosecution of a drug trafficking offence or an offence in respect of which a confiscation order might be made under *section 9* of this Act a suspicion, or any matter on which such a suspicion is based, that any property—
 - (i) has been obtained as a result of or in connection with the commission of any such offence, or
 - (ii) derives from property so obtained,

the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not involve the person or body making the disclosure (including their directors, employees and officers) in liability of any kind.

Offences of
prejudicing
investigation.

58.—(1) Where, in relation to an investigation into drug trafficking or into whether a person has benefited from an offence in respect of which a confiscation order might be made, an order under *section 63* of this Act has been made, or has been applied for and has not been refused, or a warrant under *section 55* or *64* of this Act has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation shall be guilty of an offence.

(2) Where a report has been made under *subsection (1)* or (2) of *section 57* of this Act, a person who, knowing or suspecting that such a report has been made, makes any disclosure which is likely to prejudice any investigation arising from the report into whether an offence has been committed under *section 31* or *32* of this Act shall be guilty of an offence.

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

- (a) that he did not know or suspect that the disclosure to which the proceedings relate was likely to prejudice the investigation, or

(b) that he had lawful authority or reasonable excuse for making the disclosure.

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

(a) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years or to both.

59.—(1) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Offences by bodies corporate.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* of this section shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director or manager of the body corporate.

60.—Where any property of whatever kind and wherever situated, or any interest in such property, becomes subject to confiscation, forfeiture or any measure of restraint or control by virtue of any provision of this Act (including any provision for giving effect to orders made under the law of any country or territory outside the State) or of any action taken under any such provision, no purported disposition of the property or interest, and no other action purporting to be taken in respect of it, by or on behalf of any owner or other person having or claiming to have any interest in it (whether as beneficial owner or trustee or in any other capacity) in reliance on the law of any country or territory outside the State shall have effect so as to prevent the confiscation, forfeiture or measure from taking effect as provided by this Act.

Voidance of dispositions designed to frustrate confiscation, etc.

61.—(1) Subject to the following provisions of this section, where a person is convicted of an offence, and—

Forfeiture orders.

(a) the court by or before which he is convicted is satisfied that any property which has been lawfully seized from him or which was in his possession or under his control at the time when he was apprehended for the offence or when a summons in respect of it was issued—

(i) has been used for the purpose of committing, or facilitating the commission of, any offence, or

(ii) was intended by him to be used for that purpose,

or

(b) the offence, or an offence which the court has taken into consideration in determining his sentence, consists of unlawful possession of property which—

(i) has been lawfully seized from him, or

(ii) was in his possession or under his control at the time when he was apprehended for the offence of which he has been convicted or when a summons in respect of that offence was issued,

the court may make an order under this section (referred to in this Act as a “forfeiture order”) in respect of that property, and may do so whether or not it also deals with the offender in respect of the offence in any other way.

(2) In considering whether to make a forfeiture order in respect of any property a court shall have regard—

(a) to the value of the property, and

(b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

(3) Facilitating the commission of an offence shall be taken for the purposes of this section to include the taking of any steps after it has been committed for the purpose of disposing of any property to which the offence relates or of avoiding, or enabling any other person to avoid, apprehension or detection.

(4) An order under this section shall operate to deprive the offender of his rights, if any, in the property to which it relates, and the property shall (if not already in their possession) be taken into the possession of the Garda Síochána.

(5) A court shall not order property to be forfeited under this section if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

(6) An order under this section shall not take effect until the ordinary time for instituting an appeal against the conviction or order concerned has expired or, where such an appeal is instituted, until it or any further appeal is finally decided or abandoned or the ordinary time for instituting any further appeal has expired.

(7) The Police Property Act, 1897, shall apply, with the following modifications, to property which is in the possession of the Garda Síochána by virtue of this section, that is to say:

(a) no application shall be made under section 1 (1) of that Act by any claimant of the property after the expiration of 6 months from the date on which the order in respect of the property was made under this section, and

(b) no such application shall succeed unless the claimant satisfies the court either that he had not consented to the offender having possession of the property or that he did not know, and had no reason to suspect, that the property was likely to be used for a purpose mentioned in subsection (1) of this section.

(8) In relation to property which is in the possession of the Garda Síochána by virtue of this section, the power to make regulations under section 2 (1) of the Police Property Act, 1897 (disposal of property in cases where the owner of the property has not been ascertained etc.), shall include power to make regulations for disposal in cases where no application by a claimant of the property has been made within the period specified in *subsection (7) (a)* of this section or no such application has succeeded.

(9) Nothing in this section shall affect the provisions of any enactment whereby property is, or may be ordered to be, forfeited as a result of a conviction for an offence.

62.—Section 30 (1) of the Misuse of Drugs Act, 1977 (forfeiture on conviction of an offence under that Act) is hereby amended by the substitution thereof of the following subsection:

Forfeiture for drug offences.

“(1) Subject to subsection (2) of this section, a court by which a person is convicted of an offence under this Act or a drug trafficking offence (within the meaning of the *Criminal Justice Act, 1994*), may order anything shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the court thinks fit.”.

63.—(1) A member of the Garda Síochána may, for the purpose of an investigation into drug trafficking or an offence under *section 31* of this Act or an investigation into whether a person has benefited from drug trafficking or an offence in respect of which a confiscation order might be made under *section 9* of this Act, apply to a judge of the District Court for an order under *subsection (2)* of this section in relation to any particular material or material of a particular description.

Order to make material available.

(2) If on such an application being made the judge is satisfied that the conditions in *subsection (4)* of this section are fulfilled, he may order that the person who appears to him to be in possession of the material to which the application relates shall—

(a) produce it to a member of the Garda Síochána for him to take away, or

(b) give the member access to it, within such period as the order may specify.

(3) The period to be specified in an order under *subsection (2)* of this section shall be 7 days unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in *subsection (2)* of this section are—

(a) that there are reasonable grounds for suspecting that a specified person has carried on drug trafficking or has committed an offence under *section 31* of this Act or has benefited from drug trafficking or from an offence in respect of which a confiscation order might be made under *section 9* of this Act,

(b) that there are reasonable grounds for suspecting that the material to which the application relates—

(i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and

(ii) does not consist of or include items subject to legal privilege,

and

(c) that there are reasonable grounds for believing that it is in the public interest, having regard—

(i) to the benefit likely to accrue to the investigation if the material is obtained, and

(ii) to the circumstances under which the person in possession of the material holds it,

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

(5) Where a judge makes an order under *subsection (2) (b)* of this section in relation to material on any premises, he may, on the application of a member of the Garda Síochána, order any person who appears to him to be entitled to grant entry to the premises to allow a member of the Garda Síochána to enter the premises to obtain access to the material.

(6) A judge of the District Court may vary or discharge an order made under this section.

(7) Where the material to which an application under this section relates consists of information contained in a computer—

(a) an order under *subsection (2) (a)* of this section shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and

(b) an order under *subsection (2) (b)* of this section shall have effect as an order to give access to the material in a form in which it is visible and legible.

(8) Subject to *subsection (9)* of this section, an order under *subsection (2)* of this section—

(a) shall not confer any right to production of, or access to, items subject to legal privilege, and

(b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(9) In the case of material which has been supplied to a Government department or other authority by or on behalf of the government of another state in accordance with an undertaking (express or implied) on the part of the department or authority that the material will be used only for a particular purpose or purposes no order under this section shall have the effect of requiring or permitting the production of, or the giving of access to, the material as mentioned in *subsection (2)* of this section for a purpose other than one permitted in accordance with the undertaking and the material shall not, without

the consent of the other state, be further disclosed or used otherwise than in accordance with the undertaking.

(10) Any person who without reasonable excuse fails or refuses to comply with an order made under this section shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both, or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years or to both.

64.—(1) A member of the Garda Síochána may, for the purpose of an investigation into drug trafficking or an offence under *section 31* of this Act or an investigation into whether a person has benefited from drug trafficking or an offence in respect of which a confiscation order might be made under *section 9* of this Act, apply to a judge of the District Court for a warrant under this section in relation to specified premises. Authority for search.

(2) On an application being made under *subsection (1)* of this section, the judge may issue a warrant authorising a specified member of the Garda Síochána, accompanied by such other members of the Garda Síochána as the member thinks necessary, to enter, by force if necessary, and search the premises if he is satisfied—

- (a) that an order made under *section 63* of this Act in relation to material on the premises has not been complied with, or
- (b) that the conditions in *subsection (3)* of this section are fulfilled, or
- (c) that the conditions in *subsection (4)* of this section are fulfilled.

(3) The conditions referred to in *subsection (2) (b)* of this section are—

- (a) that there are reasonable grounds for suspecting that a specified person has carried on drug trafficking or has committed an offence under *section 31* of this Act or has benefited from drug trafficking or from an offence in respect of which a confiscation order might be made under *section 9* of this Act, and
- (b) that the conditions in *section 63 (4) (b)* and *(c)* of this Act are fulfilled in relation to any material on the premises, and
- (c) that it would not be appropriate to make an order under that section in relation to the material because—
 - (i) it is not practicable to communicate with any person entitled to produce the material, or
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or

- (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a member of the Garda Síochána could secure immediate access to the material.

(4) The conditions referred to in *subsection (2) (c)* of this section are—

- (a) that there are reasonable grounds for suspecting that a specified person has carried on drug trafficking or has committed an offence under *section 31* of this Act or has benefited from drug trafficking or from an offence in respect of which a confiscation order might be made under *section 9* of this Act, and
- (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking or to an offence under *section 31* of this Act or to an offence in respect of which a confiscation order might be made under *section 9* of this Act which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised, and
- (c) that—
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises, or
 - (ii) entry to the premises will not be granted unless a warrant is produced, or
 - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a member of the Garda Síochána arriving at the premises could secure immediate entry to them.

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

Compensation.

65.—(1) If proceedings are instituted against a person for a drug trafficking offence or offences or for an offence or offences in respect of which a confiscation order might be made under *section 9* of this Act and either—

- (a) the proceedings do not result in his conviction for any such offence, or
- (b) where he is convicted of one or more such offences—
 - (i) the conviction or convictions concerned are quashed, or
 - (ii) he is pardoned by the President in respect of the conviction or convictions concerned,

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

(2) The court shall not order compensation to be paid in any case under this section unless the court is satisfied—

(a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned, and

(b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order under this Act.

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

(4) The court may order compensation to be paid under this section to a person with an interest in property affected by a confiscation order or a restraint order notwithstanding that he is not the person who was the subject of the relevant investigation or prosecution.

(5) The compensation to be paid under this section shall be such amount as the court thinks just in all the circumstances of the case.

66.—(1) This section applies where—

Compensation, etc.
where absconder is
acquitted.

(a) the High Court has made a confiscation order in the exercise of its powers under *section 13 (4)* of this Act, and

(b) the defendant is subsequently tried for the offence or offences concerned and acquitted on all counts.

(2) The court by which the defendant is acquitted shall cancel the confiscation order.

(3) The High Court may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

(4) The amount of compensation to be paid under this section shall be such as the court considers just in all the circumstances of the case.

(5) Where the court cancels a confiscation order under this section it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

67.—(1) This section applies where—

Power to discharge
confiscation order
and order
compensation when
absconder returns.

(a) the High Court has made a confiscation order by virtue of *section 13 (4)* of this Act in relation to an absconder,

(b) the defendant has ceased to be an absconder, and

(c) *section 66* of this Act does not apply.

(2) The High Court may, on the application of the defendant, cancel the confiscation order if it is satisfied that—

- (a) there has been undue delay in continuing the proceedings in respect of which the power under *section 13 (4)* of this Act was exercised; or
- (b) the Director of Public Prosecutions does not intend to proceed with the prosecution.

(3) Where the High Court cancels a confiscation order under this section it may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

(4) The amount of compensation to be paid under this section shall be such as the court considers just in all the circumstances of the case.

(5) Where the court cancels a confiscation order under this section it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

Expenses.

68.—The expenses incurred in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Section 35.

FIRST SCHEDULE

ENFORCEMENT POWERS IN RESPECT OF SHIPS

Preliminary

1. (1) In this Schedule—

“an enforcement officer” means—

- (a) a member of the Garda Síochána,
- (b) an officer of customs and excise,
- (c) a member of the Naval Service of the Defence Forces not below the rank of petty officer, and
- (d) any other person of a description specified in an order made for the purposes of this Schedule by the Minister;

“the ship” means the ship in relation to which the powers conferred by this Schedule are exercised.

(2) An order under this Schedule (including an order made under this subparagraph) may be amended or revoked by the Minister.

(3) Every order made under this Schedule shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Power to stop, board, divert and detain a ship

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

(2) Where an enforcement officer is exercising his powers with the authority of the Minister for Foreign Affairs given under *section 35* of this Act, the officer may require the ship to be taken to a port in the Convention state in question or, if that state has so requested, in any other country or territory willing to receive it.

(3) For any of the purposes of this Schedule an enforcement officer may require the master or any member of the crew to take such action as may be necessary.

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

Power to search and obtain information

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

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

(3) Without prejudice to the generality of the powers conferred by this paragraph, an enforcement officer may—

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

Powers in respect of suspected offence

4. If an enforcement officer has reasonable grounds to suspect that an offence mentioned in *section 33* or *34* of this Act has been committed on a ship to which that section applies he may—

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

and *section 9 (1)* of the Criminal Law Act, 1976, shall apply in relation to anything seized under this paragraph.

Assistants

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

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

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

Use of reasonable force

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

Evidence of authority

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

Protection of officers

8. An enforcement officer shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under this Schedule if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

Offences

9. (1) A person shall be guilty of an offence if he—

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

(2) A person guilty of an offence under this paragraph shall be liable—

- (a) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both, or
- (b) on conviction on indictment, to a fine not exceeding £5,000 or to a term of imprisonment not exceeding 5 years or to both.

Section 51.

SECOND SCHEDULE

TAKING OF EVIDENCE FOR USE OUTSIDE STATE

Securing attendance of witnesses

1. The judge shall have the like powers for securing the attendance of a witness for the purpose of the proceedings as the District Court has for the purpose of any other proceedings before that court.

Power to administer oaths

2. The judge may in the proceedings take evidence on oath and may administer an oath for that purpose.

Privilege of witnesses

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

(a) in criminal proceedings in the State, or

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

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

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

(4) Without prejudice to *subparagraph (1)* of this paragraph, a person shall not be compelled under this Schedule to give any evidence if his doing so would be prejudicial to the security of the State; and a certificate signed by or on behalf of the Minister to the effect that it would be so prejudicial for that person to do so shall be admissible as evidence of that fact.

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

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

Transmission of evidence

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

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

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

Supplementary

5. For the avoidance of doubt it is hereby declared that the Bankers' Books Evidence Act, 1879, applies to the proceedings as it applies to other proceedings before a court.

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