

(a) is not a hard drug, is less than one pound in weight, and the power of sentence for that offence is contained in subsection (2) of section 13; or

(b) is less than two ounces in weight and the power of sentence for that offence is contained in subsection (4) of section 13."

(c) substituting "etc., when applicable" for "and sections 30 and 31 of the Penal Code not applicable" in the marginal note.

Passed the Legislative Assembly this 26th day of April, 1988.

ALAN J. SCOTT
President.

WENDY LAUER EBANKS
Acting Clerk of the Legislative Assembly.

CAYMAN ISLANDS



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THE MISUSE OF DRUGS (AMENDMENT)
LAW, 1988
(LAW 8 OF 1988)

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

(6) For the purposes of sections 16A to 16N inclusive -

- (a) a reference to an offence includes a reference to an offence committed before the date of commencement of the Misuse of Drugs (Amendment) Law, 1988; but nothing in those sections imposes any duty or confers any power on any court in or in connection with proceedings against a person for a drug trafficking offence instituted before that date;
- (b) a reference to property applies to property whether it is situated in the Islands or elsewhere;
- (c) property is held by a person if he holds any interest in it;
- (d) property is transferred by one person to another if the first person transfers or grants to the other any interest in it;
- (e) a reference to anything received in connection with drug trafficking includes a reference to anything received both in that connection and in some other connection.”.

Amendment of s. 18.

7. Section 18 of the principal Law is amended by -

- (a) substituting “(1) Subject to subsection (2), where” for “Where” in the first line;
- (b) adding the following new subsection -

“(2) Subsection (1) does not apply where a person is convicted of an offence under paragraphs (k) or (l) of subsection (1) of section 3 in relation to a controlled drug that -

instituted for a drug trafficking offence 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 him; and

(b) in those circumstances, subsection (5) of section 16E and subsections (1), (2), (4) and (5) of this section shall apply as if he had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by him.

(3) Subject to subsection (5) of section 16E and subsections (1), (2), (4) and (5) of this section, for the purposes of this Law the value of property (other than cash) in relation to any person holding the property is -

- (a) where any other person holds an interest in the property, the market value of the first mentioned person's beneficial interest in the property, less the amount required to discharge any incumbrance on that interest;
 - (b) in any other case, its market value.
- (4) Subject to subsection (2), a reference in this Law to the value at any time (referred to in subsection (5) as "the material time") of a gift caught by this Law, as defined in subsection (1), or of any payment or reward is a reference 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 (5) applies, the value there mentioned,
- whichever is the greater.

(5) Subject to subsection (2), if at the material time the recipient holds -

CAYMAN ISLANDS

Law 8 of 1988

I Assent

ALAN J. SCOTT

Governor

24th August 1988

A LAW TO AMEND THE MISE OF DRUGS LAW
(SECOND REVISION).

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Misuse of Drugs (Amendment) Law, 1988.

2. Section 2 of the Misuse of Drugs Law (Second Revision), in this Law referred to as the principal Law, is amended by inserting -

- (a) the following new definition immediately after the definition of "C.M.O." -
" "confiscation order" means an order made under subsection (5) of section 16A;";
- (b) the following two new definitions immediately after the definition of "constructive possession" -
" "drug trafficking" means doing or being concerned in any of the following, whether in the Islands or elsewhere -
(a) producing or supplying a controlled drug where the production or supply contravenes paragraphs (c) or (f) of subsection (1) of section 3;
(b) storing a controlled drug where possession of the drug contravenes paragraph (d) of subsection (1) of section 3;

Amendment of s. 2.

Short title.

(c) importing or exporting a controlled drug where the importation or exportation is prohibited by paragraphs (a) or (b) of subsection (1) of section 3;

“drug trafficking offence” means any of the following-

- (a) an offence under paragraphs (c), (f) or (m) of subsection (1) of section 3;
- (b) an offence under subsection (1) of section 3 of attempting any of the matters mentioned in paragraph (a);
- (c) an offence under subsection (1) of section 10 of the Customs Law (Second Revision), in connection with a prohibition on importation or exportation having effect by virtue of section 3;
- (d) an offence under section 292 of the Penal Code of conspiracy to commit any of the offences in paragraphs (a), (c) or (d);
- (e) an offence under section 290 of the Penal Code of attempting to commit any of the offences in paragraphs (a), (c) or (d);
- (f) an offence at common law of inciting another to commit any of the offences in paragraphs (a), (c) or (d); and
- (g) aiding, abetting, counselling or procuring the commission of any of the offences in paragraphs (a), (c) or (d);”;

Law 12 of 1976.

(c) the following new definition immediately after the definition of “prescription” -

““realisable property” means any property held by -

- (a) a person against whom proceedings have been instituted for a drug trafficking offence; and
- (b) another person to whom that person has directly or indirectly made a gift caught by this Law, as defined in subsection (1) of section 16N,

Provided that property is not realisable property if an order under section 16 is in force in respect of the property;”.

3. The principal Law is amended by inserting the following new section immediately after section 2-

with any person entitled to grant entry to the premises; 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 constable arriving at the premises could secure immediate entry to them.
- (5) Where a constable 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.

16N. (1) A gift, including a gift made before the commencement of the Misuse of Drugs (Amendment) Law, 1988, is caught by this Law if -

- (a) it was made by a person against whom proceedings have been instituted for a drug trafficking offence at any time since the beginning of the period of six years ending when the proceedings were instituted; or
- (b) it was made by him at any time and was a gift of property -
 - (i) received by him in connection with drug trafficking carried on by him or another; or
 - (ii) which in whole or in part directly or indirectly represented in his hands property received by him in that connection.

(2) For the purpose of subsection (1) -

- (a) the circumstances in which a person against whom proceedings have been

Other provisions re offences, gifts, property etc.

(c) the conditions in subsection (4) are fulfilled.

(3) The conditions referred to in paragraph (b) of subsection (2) are that -

(a) there are reasonable grounds for suspecting that a specified person has trafficked; carried on or has benefited from drug

(b) the conditions in paragraphs (b) and (c) of subsection (4) of section 16L are fulfilled in relation to any material on the premises; and it would not be appropriate to make an order under that section in relation to the material because -

(i) it is not practicable to communicate with any person entitled to produce the material;

(ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or

(iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.

(4) The conditions referred to in paragraph (c) of subsection (2) are that -

(a) there are reasonable grounds for suspecting that a specific person has carried on or has benefited from drug trafficking;

(b) there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking 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 be at the time of the application

(c) (i) it is not practicable to communicate be particularised; and

2A. (1) There is hereby established an Advisory Council on the Misuse of Drugs.

(2) The Governor shall appoint a chairman, a deputy chairman and not more than ten nor less than five other members of the Advisory Council, after consultation with such persons as he considers appropriate, and such members shall include -

(a) at least two persons appearing to him to have wide and recent experience in the respective health professions of medicine and pharmacy, within the meaning of the Health Practitioners' Law, 1974; and

(b) at least two persons appearing to him to have wide and recent experience of social problems connected with the misuse of drugs and other substances.

(3) It shall be the duty of the Advisory Council to keep under review the situation in the Islands with respect to controlled drugs and other substances which are being or appear to them likely to be misused and of which the misuse is having or appears to them capable of having harmful effects sufficient to constitute a social problem; and to give to the Member, where either the Advisory Council consider it expedient to do so or they are consulted by the Member, advice on measures which in the opinion of the Advisory Council ought to be taken for preventing the misuse of such drugs and other substances or dealing with social problems connected with their misuse, and in particular on measures which in the opinion of the Advisory Council, ought to be taken for -

(a) restricting the availability of such drugs and other substances or supervising the arrangements for their supply;

(b) enabling persons affected or likely to be affected by the misuse of such drugs and other substances to obtain proper advice, and for securing the provision of proper facilities and services for the treatment, rehabilitation and after-care for such persons;

(c) promoting co-operation between the various persons, clubs, societies, associations or other bodies, or any

department, branch, agency or organ of Government, which in the opinion of the Advisory Council have a part to play in dealing with social problems connected with the misuse of such drugs and other substances;

(d) educating the public or a section of the public in the dangers of misusing such drugs and other substances, and for giving publicity to those dangers; and

(e) promoting research into, or otherwise obtaining information about, any matter which in the opinion of the Advisory Council, is of relevance for the purpose of preventing the misuse of such drugs and other substances or dealing with any social problem connected with their misuse.

(4) It shall also be the duty of the Advisory Council to consider any matter relating to drug dependence or the misuse of drugs or other substances which may be referred to them by the Member and to advise him thereon.

(5) The Advisory Council may appoint one or more committees, which may consist in part of persons who are not members of the Advisory Council, to consider and report to the Advisory Council on any matter referred to them by the Advisory Council.

(6) At meetings of the Advisory Council the quorum shall be one-half of the members appointed, and subject to that the Advisory Council may determine their own procedure.

(7) The Governor, in the exercise of his own deliberate judgment and subject to such conditions as he may impose, shall approve of the secondment of a public officer (not being a member of the Advisory Council) to be the secretary of the Advisory Council to perform all the secretarial and clerical functions thereof and to attend all its meetings and take minutes of the business transacted thereat.

(8) The public officer seconded under subsection (7) shall be paid such remuneration as the Governor may determine, but in relation to salary, pension,

or access to, items subject to legal privilege;

(b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information whether imposed by the Confidential Relationships (Preservation) Law, any other Law or by the common Law;

(c) may be made in relation to material in the possession of the Government.

(9) Where, in relation to an investigation into drug trafficking, an order under subsection (2) has been made or has been applied for and has not been refused or a warrant under section 16M 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 is guilty of an offence.

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

(a) that he did not know or suspect that the disclosure was likely to prejudice the investigation; or

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

(11) A person guilty of an offence under subsection (9) shall be liable on conviction to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

16M. (1) A constable may for the purpose of an investigation into drug trafficking, apply to the Grand Court for a warrant under this section in relation to specified premises.

(2) On such application the court may issue a warrant authorising a constable to enter and search the premises if he is satisfied that -

(a) an order made under subsection (2) of section 16L in relation to material on the premises has not been complied with;

(b) the conditions in subsection (3) are fulfilled; or

(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 there are reasonable grounds for believing that it is in the public interest, having regard to - (i) the benefit likely to accrue to the investigation if the material is obtained; and (ii) the circumstances under which the person in possession of the material holds it, that the material should be produced or that access to it should be given.

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

(6) The Chief Justice may make rules governing the procedure in relation to -

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

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

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

(8) An order under subsection (2) -

- (a) shall not confer any right to production of,

gratuity and the like and to other rights and to discipline as a public officer, shall be treated, whilst so seconded, as if he were not so seconded.

(9) In this section -

“Advisory Council” means the Advisory Council on the Misuse of Drugs established under subsection (1);

“Member” means the member of Executive Council responsible for health matters.”.

4. Section 3 of the principal Law is amended by inserting “and whether in the Islands or elsewhere” immediately after “person” where that word appears for the first time in the third line of paragraph (m) of subsection (1).

5. Section 16 of the principal Law is amended by substituting “Notwithstanding and not in derogation of section 16A, but subject” for “Subject” in the first line of subsection (1).

6. The principal Law is amended by inserting the following fourteen new sections immediately after section 16 -

16A. (1) Where a person, who has not previously been sentenced or otherwise dealt with in respect of his conviction for that offence, appears before a court to be sentenced in respect of a drug trafficking offence, the court shall act in accordance with subsections (2), (4) and (5).

(2) The court shall first determine whether he has benefited from drug trafficking.

(3) For the purpose of this section, a person who has at any time, whether before or after the date of commencement of the Misuse of Drugs (Amendment) Law, 1988, received any payment or other reward in connection with drug trafficking carried on by him or another has benefited from drug trafficking.

(4) If the court determines that he has so benefited, it shall, before sentencing or otherwise dealing with him in respect of the offence, determine in accordance with section 16B the amount to be recovered by virtue of this section.

(5) The court shall then, in respect of that offence -

Insertion of new ss. 16A to 16N.

Amendment of s. 16.

Amendment of s. 3.

“Confiscation orders.”

- (a) order him to pay that amount;
- (b) take account of the order before -
 - (i) imposing any fine on him;
 - (ii) making any order involving any payment by him; or
 - (iii) making any order under section 16;
- (c) subject to paragraph (b), leave the order out of account in determining the appropriate sentence or other manner of dealing with the person against whom proceedings have been instituted for the drug trafficking offence.

(6) No Law restricting the power of a court dealing with an offender in a particular way from reason only of the making of an order under this section restrict the court from dealing with an offender in any way it considers appropriate in respect of a drug trafficking offence.

(7) Where the court makes a confiscation order, sections 24 and 25 of the Penal Code shall apply *mutatis mutandis* as if the amount mentioned in such order were a fine imposed by the court.

(8) Where the court has directed that in default of payment of an amount ordered to be paid under a confiscation order the person against whom that order is made shall serve a term of imprisonment, and at the time such direction is made that person is liable to serve a term of imprisonment in respect of a drug trafficking offence, the term of imprisonment under section 25 of the Penal Code, as applied by subsection (7), to be served in default of payment of that amount shall not begin to run until after such term has been served:

tion, -
 Provided that, for the purposes of this subsection, -
 (a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term;
 (b) there shall be disregarded any sentence suspended under section 23A of the Penal Code which has not taken effect at the time the warrant is issued.

16B. (1) If, on an application by a person against whom proceedings have been instituted for a drug trafficking offence in respect of a confiscation order,

Law 12 of 1975.

Law 12 of 1975.

variation of
 confiscation
 orders.

Order to make
 material
 available.

- (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 that, but for that default, the proceedings would not have been instituted or continued; and
- (b) that the applicant has suffered substantial loss in consequence of anything done in relation to the property by or in pursuance of an order of the Grand Court under section 16G or section 16H.

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

16L. (1) A constable may, for the purpose of an investigation into drug trafficking, apply to the Grand Court for an order under subsection (2) in relation to particular material or to material of a particular description.

(2) If on such an application the court is satisfied that the conditions in subsection (4) are fulfilled, it may make an order that the person who appears to it to be in possession of the material to which the application relates shall -
 (a) produce it to a constable for him to take away; or
 (b) give a constable access to it, within such period as the order may specify.

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

- (a) there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
- (b) there are reasonable grounds for suspecting that the material to which the application relates -
 - (i) is likely to be of substantial value

(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.

(8) Any amount due in respect of the remuneration and expenses of a receiver appointed under subsection (5) of section 16G or under subsection (2) of section 16H shall, if no sum is available to be applied in payment of it under paragraph (a) of subsection (3) of section 16I, be paid by the prosecution or, in a case where proceedings for a drug trafficking offence are not instituted, by the person on whose application the receiver was appointed.

16K. (1) If proceedings are instituted against a person for a drug trafficking offence and either -

(a) the proceedings do not result in his conviction for any drug trafficking offence; or

(b) where he is convicted of the offence -

(i) the conviction concerned is quashed without a conviction for any other drug trafficking offence being substituted; or

(ii) Her Majesty has granted pardon in respect of the conviction,

the Grand Court may, on an application by a person who held property which was realisable property, order compensation to be paid by the Government to the applicant.

(2) The Grand Court shall not order compensation to be paid in any case unless the court is satisfied -

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

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

(a) in the case of realisable property held by a person against whom an absolute order for bankruptcy has been made, the court shall take into account the extent to which any property held by him may be distributed among creditors; and

(b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable wholly or partly to anything done by the person against whom the proceedings have been instituted for the purpose of preserving any property held by a person to whom he had directly or indirectly made a gift caught by this Law, as defined in subsection (1) of section 16N, from any risk of realisation under section 16H.

(3) Where a certificate has been issued under subsection (1), the person against whom the proceedings have been instituted may apply to the Grand Court for the amount to be recovered under the order to be reduced.

(4) The Grand Court shall, on an application under subsection (3) -

(a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and

(b) substitute for the term of imprisonment fixed in respect of the amount to be recovered under the order a shorter term in respect of the lesser amount.

(5) An application under subsections (1) or (3) may be made in chambers, and notice thereof shall be given to the prosecution.

16C. (1) The court may, for the purpose of determining whether the person against whom proceedings have been instituted for a drug trafficking offence has benefited from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking, make the assumptions mentioned in subsection (2), except to the extent that any of them are shown to be incorrect in his case.

(2) Those assumptions are -

- (a) that any property appearing to the court -
 - (i) to have been held by him at any time since his conviction; or
 - (ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him whether before or after the date of commencement of the Misuse of Drugs (Amendment) Law, 1988, 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;
 - (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.
- (3) For the purpose of assessing the value of the proceeds of drug trafficking of a person against whom proceedings have been instituted for a drug trafficking offence in a case where a confiscation order has previously been made against him, the court shall leave out of 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.
- (4) For the purposes of this section -
- (a) any payments or other rewards received

prosecution under subsection (8) of section 16J,

and the balance shall be treated as if it were a fine imposed by the court.

16J. (1) Subsections (1) to (6) inclusive apply to the powers conferred on the Grand Court by sections 16G, 16H and 16I or on a receiver appointed under subsection (5) of section 16G or under subsection (2) of section 16H.

(2) Subject to the following 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 case of the person against whom proceedings have been instituted for a drug trafficking offence 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 person against whom the proceedings have been instituted has directly or indirectly made a gift caught by this Law, as defined in subsection (1) of section 16N, the powers shall be exercised with a view to realising no more than the value for the time being of that gift.

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

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

(6) In exercising those powers, no account shall be taken of any obligations of the person against whom the proceedings have been instituted or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

(7) Where a receiver appointed under subsection (5) of section 16G or under subsection (2) of section 16H takes any action -

Exercise of
powers by
Grand Court
or receiver.

an appeal or further appeal is pending against it or, if it was made on a conviction, against that conviction; and, for this purpose, an appeal or further appeal shall be treated as pending (where one is competent but has not been brought) until the expiration of the time for bringing that appeal.

161. (1) Subject to subsection (2), the following sums in the hands of a receiver appointed under subsection (5) of section 16G or under subsection (2) of section 16H that is-

- (a) the proceeds of the realisation of any property under paragraph (b) of subsection (5) of section 16G or under subsections (5) or (6) of section 16H; and
 - (b) any other sums, being property held by a person against whom proceedings have been instituted for a drug trafficking offence,
- shall, after such payments (if any) as the Grand Court may direct have been made out of those sums, be applied on that person's behalf towards the satisfaction of the confiscation order.

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

- (a) among such of those who held property which has been realised; and
- (b) in such proportions,

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

(3) The receipt of any sum by the Clerk of the Court on account of an amount payable under a confiscation order shall reduce the amount so payable, but the sum shall be applied as follows -

- (a) if paid by a receiver under subsection (1), it shall first be applied in payment of his remuneration and expenses;
- (b) subject to paragraph (a), it shall be applied in reimbursement of any sums paid by the

by a person at any time, whether before or after the date of commencement of the Misuse of Drugs (Amendment) Law, 1988, in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking; (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

16D. (1) Where -

- (a) there is tendered to the court by the prosecution a statement as to any matters relevant to the determination whether a person against whom proceedings have been instituted for a drug trafficking offence has benefited from drug trafficking or to the assessment of the value of his proceeds of drug trafficking; and
 - (b) that person accepts to any extent any allegation in the statement,
- the court may, for the purposes of that determination and assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where -

- (a) a statement is tendered under paragraph (a) of subsection (1); and
- (b) the court is satisfied that a copy of that statement has been served on the person against whom the proceedings have been instituted,

the court may require him 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.

(3) If the person against whom the proceedings have been instituted fails in any respect to comply with a requirement under subsection (2), he may be treated for the purposes of this section as accepting every allegation in the statement apart from -

- (a) any allegation in respect of which he has

(b) 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.

(4) Where -

(a) there is tendered to the court by the person against whom the proceedings have been instituted 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 prosecution accepts to any extent any allegation in the statement,

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

(5) An allegation may be accepted or a matter indicated for the purposes of this section either orally before the court or in writing.

(6) No acceptance by the person against whom the proceedings have been instituted under this section that any payment or other reward was received by him in connection with drug trafficking carried on by him or another shall be admissible in evidence in any proceedings for an offence.

16B. (1) Subject to subsection (3), the amount to be recovered in the case of a person against whom proceedings have been instituted for a drug trafficking offence under the confiscation order shall be the amount the court assesses to be the value of his proceeds of drug trafficking.

(2) 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 16D or otherwise, the court may issue a certificate giving its opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3).
(3) If the court is satisfied that the amount that might be realised at the time the confiscation order

Amount to be recovered under confiscation order.

paragraph (a) of subsection (1) of section 16F) in the Islands for a drug trafficking offence, a confiscation order is made; the order is not subject to appeal; and
(c) the proceedings have not been concluded, which latter word, for the purposes of this paragraph, has the same meaning as applies to subsection (5) of section 16F, the Grand Court may, on an application by or on behalf of the Attorney General, exercise the powers conferred by subsections (2) to (6).

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

(3) The court may empower a receiver appointed under subsection (2) of this section or under subsection (5) of section 16G, in relation to any realisable property, to take possession of that property subject to such conditions or exceptions as may be specified by the court.

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

(5) The court may empower any such 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 a gift caught by this Law, as defined in subsection (1) of section 16N, as it may direct and it 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 subsections (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to it.

(8) For the purposes of paragraph (b) of subsection (1), an order is subject to appeal so long as

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

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

(6) For the purposes of this section, 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 Islands.

(7) Where the Grand Court has made a restraint order, a constable may seize any realisable property for the purpose of preventing it being removed from the Islands.

(8) Property seized under subsection (7) shall be dealt with in accordance with the court's directions.

(9) For the purposes of this section, at any time when the powers conferred on the Grand Court by section 16F are exercisable before proceedings have been instituted, a reference to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in paragraph (a) of subsection (2) of section 16F for a drug trafficking offence.

(10) In this section, "restraint order" means an order made under subsection (1).

16H. (1) Where -

- (a) in proceedings instituted (which latter word, for the purposes of this paragraph, has the same meaning as applies to

Realisation of property.

is made is less than the amount it assesses to be the value of his proceeds of drug trafficking, the amount to be recovered under the confiscation order shall be the amount appearing to the court to be the amount that might be so realised.

(4) For the purposes of this section -

- (a) any payments or other rewards received by a person at any time, whether before or after the date of commencement of the Misuse of Drugs (Amendment) Law, 1988, in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking;
- (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

(5) For the purposes of this section, the amount that might be realised at the time a confiscation order is made is -

- (a) the total of the values at that time of all realisable property, less
- (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations, together with the total of the values at that time of all gifts caught by this Law, as defined in subsection (1) of section 16N.

(6) For the purposes of subsection (5), an obligation has priority at any time if it is an obligation to pay -

- (a) an amount due in respect of a fine or 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) any sum which, if the defendant has had an absolute order for bankruptcy made against him or was being wound up, would be among debts to be paid in priority to all other debts.

16F. (1) The powers conferred on the Grand Court by subsection (1) of section 16G are exercisable where -

Cases in which restraint orders may be made.

(a) proceedings have been instituted in the Islands for a drug trafficking offence; the proceedings have not been concluded; and
(c) the court is satisfied that there is reasonable cause to believe that the person against whom the proceedings have been instituted has benefited from drug trafficking.

(2) Those powers are also exercisable where the court is satisfied that -

(a) a complaint is to be made under subsection (1) of section 13 of the Criminal Procedure Code that a person has or is suspected of having committed a drug trafficking offence; and
(b) there is reasonable cause to believe that he has benefited from drug trafficking.

Law 13 of 1976.

(3) Where the court has made an order under subsection (1) of section 16F by virtue of subsection (2) of this section, the court shall discharge the order if the proposed proceedings are not instituted within such time as it considers reasonable.
(4) For the purposes of paragraph (a) of subsection (1), proceedings for an offence are instituted in the Islands -

(a) when a charge has been signed under subsections (3) or (4) of section 13 of the Criminal Procedure Code in respect of the offence; or
(b) when a person is charged with the offence after being arrested without a warrant under subsection (5) of that section,

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

(5) For the purposes of paragraph (b) of subsection (1), proceedings in the Islands for an offence are concluded on the occurrence of one of the following events -

(a) the discontinuance of the proceedings;

(b) the acquittal of the person against whom the proceedings were instituted; the quashing of his conviction for the offence;
(d) the grant of Her Majesty's pardon in respect of his conviction for the offence; the court sentencing or otherwise dealing with him in respect of his conviction for the offence without having made a confiscation order;
(f) the satisfaction of a confiscation order made in the proceedings, whether by payment of the amount due under the order or by the person serving imprisonment in default.
16G. (1) The Grand Court may by order prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) 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.

(3) A restraint order -

(a) may be made only on an application by or on behalf of the Attorney General;
(b) may be made on an *ex parte* application in chambers; and
(c) shall provide for notice to be given to persons affected by the order.

(4) A restraint order -

(a) may be discharged or varied in relation to any property; and
(b) shall be discharged when proceedings for the offences are concluded, which latter word, for the purposes of this paragraph, has the same meaning as applies to subsection (5) of section 16F.

(5) Where the Grand Court has made a restraint order, it may at any time appoint a receiver -