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MISUSE OF DRUGS LAW

(2010 Revision)

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Law 8 of 1992-13th July, 1992
Law 3 of 1995-5th April, 1995
Law 3 of 1996-20th March, 1996
Law 17 of 1997-28th August, 1997
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Law 10 of 2008-30th June, 2008
Law 18 of 2009-23rd November, 2009.

Consolidated and revised this 19th day of October, 2010.

Note (not forming part of the Law): This revision replaces the 2009 Revision which should now be discarded.

MISUSE OF DRUGS LAW

(2010 Revision)

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MISUSE OF DRUGS LAW

(2010 Revision)

1. This Law may be cited as the Misuse of Drugs Law (2010 Revision).

Short title

2. (1) In this Law-

Definitions and interpretation

“authorised” means authorised by this or any other law, and includes a person acting in the course of his lawful duties as a medical practitioner, dentist, veterinary practitioner or pharmacist, any of whom prescribes, administers, manufactures, compounds or supplies a controlled drug; and a person lawfully conducting the business of a retail pharmacy or of an importer, acting in either case in his capacity as such; and a person in possession of a controlled drug under a prescription;

“authorised possession” with respect to any drug means actual or constructive possession -

- (i) by the C.M.O. or any practitioner authorised by the C.M.O. in that behalf;
- (ii) by any person for the purpose of lawful administration thereof; or
- (iii) authorised by any regulation;

“cash” includes coins and notes in any currency;

“Cayman ship” means a ship registered in the Islands;

“C.M.O.” means the Chief Medical Officer and any medically qualified person acting under his authority;

“constructive possession” includes the power to control the storage, use or distribution of any substance;

“consume” includes eat, drink, smoke, sniff, inhale, absorb, suck, chew, inject, use and destroy;

“contravene” and its grammatical derivations include “fail to comply”;

“controlled drug” means a drug listed in the First Schedule;

“Convention state” means a state that is a party to the Vienna Convention;

“corresponding law” has the meaning assigned to it by subsection (2);

“customs officer” means a person appointed by the Governor to be an officer of the Customs under section 6(1) of the Customs Law (2010 Revision);

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“designated country” means a country or territory outside the Islands designated by an Order made under section 34(1);

“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 paragraph (c) or (f) of section 3(1) or a corresponding law;
- (b) storing a controlled drug where possession of the drug contravenes paragraph (d) of section 3(1) or a corresponding law;
- (c) importing or exporting a controlled drug where the importation or exportation is prohibited by paragraph (a) or (b) of section 3(1) or a corresponding law; or
- (d) manufacturing or supplying a scheduled substance within the meaning of section 4 where the manufacture or supply is an offence under that section,

and includes a person doing the following (whether on the Islands or elsewhere), that is, entering into or being otherwise concerned in an arrangement whereby-

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

“drug trafficking offence” means any of the following -

- (a) an offence under paragraph (c), (f) or (m) of section 3(1);
- (b) an offence under section 3(1) of attempting any of the matters mentioned in paragraph (a);
- (c) an offence under section 4 (manufacture and supply of scheduled substances);
- (d) an offence under section 11 (assisting in or inducing commission outside the Islands of an offence punishable under a corresponding law);
- (e) an offence under section 19 (using ship for illicit trafficking);
- (f) an offence under section 12(1) of the Customs Law (2010 Revision), in connection with a prohibition on importation or exportation having effect by virtue of section 3;
- (g) an offence under section 321 of the Penal Code (2010 Revision) of conspiracy to commit any of the offences in paragraph (a), (c), (d), (e), or (f);

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- (h) an offence under section 319 of the Penal Code (2010 Revision) of attempting to commit any of the offences in paragraph (a), (c), (d), (e) or (f);
- (i) any offence at common law of inciting another to commit any of the offences in paragraph (a),(c), (d), (e) or (f);or
- (j) aiding, abetting, counselling or procuring the commission of any of the offences in paragraph (a), (c), (d), (e) or (f); or

“exported”, in relation to any cash, includes its being brought to a place in the Islands for the purpose of being exported;

“external confiscation order” means an order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value;

“Governor” means the Governor in Cabinet;

“hard drug” means any substance or product specified in Part I of the First Schedule;

“lawful administration” with respect to a drug means administration of the same by any person to himself or another in accordance with a prescription issued by a practitioner authorised in that behalf;

“Minister” means the member of Cabinet responsible for health matters;

“practitioner” means the C.M.O. and any person authorised by him in writing to import, export, produce, store, deal in, supply, distribute, dispense, issue a prescription for or administer controlled drugs for medicinal or research purposes, limited to the extent of such authorisation;

“prescription” means a lawful authorisation by a practitioner for the administration of any drug;

“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 that is tainted within the meaning of section 70 of the Proceeds of Crime Law, 2008.

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Provided that property is not realisable property if an order under section 30 is in force in respect of the property;

“scheduled substance” means a substance specified in the Third Schedule;

“ship” includes any vessel used in navigation;

“to produce” with reference to any drug includes to prepare, manufacture, refine, process or cultivate such drug or any harmful or potentially harmful ingredient thereof;

“vessel” includes any ship, aircraft, hovercraft, vehicle or thing in which anything may be carried, stored or secreted; and

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

(2) In this Law-

“corresponding law” means a law stated in a certificate purporting to be issued by or on behalf of the government of a country outside the Islands to be a law providing for the control and regulation in that country of the production, supply, use, export and import of drugs and other substances -

- (a) in accordance with the Single Convention on Narcotic Drugs signed at New York on 30 March, 1961; or
- (b) in pursuance of a treaty, convention or other agreement or arrangement to which the Government of that country and Her Majesty’s Government in the United Kingdom are for the time being parties.

(3) A statement in a certificate referred to in subsection (2) to the effect that an act constitutes an offence against the law mentioned in the certificate is evidence of the matter stated.

(4) For the purposes of this Law -

- (a) a payment or other reward received by a person at any time in connection with drug trafficking carried on by him or by another person is his proceeds of drug trafficking;
- (b) the value of a person’s proceeds of drug trafficking is the aggregate of the values of payments or other rewards referred to in paragraph (a) received by that person.

Offence to have dealings in controlled drugs unless authorised

3. (1) A person who, without lawful excuse or without being authorised in that behalf,-

- (a) imports;
- (b) exports;
- (c) produces;
- (d) stores;
- (e) sells, buys or otherwise deals in;
- (f) supplies;
- (g) distributes;

- (h) dispenses;
- (i) issues a prescription for;
- (j) administers;
- (k) possesses, constructively or otherwise;
- (l) consumes; or
- (m) has in his possession, whether lawfully or not, with intent that it be supplied, whether by himself or some other person, and whether in the Islands or elsewhere to another person in contravention of this subsection,

any controlled drug, pipe, utensil or thing used in the preparation or consumption of any controlled drug, or who attempts, assists or is concerned in any of such matters is guilty of an offence.

(2) A person is guilty of an offence if, without lawful excuse or without being authorised in that behalf -

- (a) being the occupier or concerned in the management of any premises, he permits or suffers any of the following activities to take place on those premises, that is to say, producing, supplying, distributing, dispensing, administering or consuming or attempting to do any of such things in contravention of subsection (1); or
- (b) he frequents any place used for the purpose of consuming any controlled drug.

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

“lawful excuse” in relation to possession, means possession by a customs officer, constable or person officially taking part in an investigation or trial of a matter arising out of a contravention or suspected contravention of this Law.

(4) Subject to subsection (5), in a prosecution under this section it shall be a defence for an accused person to prove that he neither knew, suspected nor had reason to suspect the existence of some fact alleged by the prosecution which it is necessary for the prosecution to prove if he is to be convicted.

(5) Where in a prosecution under this section it is necessary, if the accused person is to be convicted, for the prosecution to prove that some substance or product involved in the alleged offence was the controlled drug which the prosecution alleges it to have been, and it is proved that such substance or product was that controlled drug, the accused person -

- (a) shall not be acquitted by reason only of proving that he neither knew, suspected nor had reason to suspect that such substance or product was the particular controlled drug alleged; but

- (b) shall be acquitted if he proves that he neither believed, suspected nor had reason to suspect that the substance or product was a controlled drug.

(6) Nothing in subsection (4) or (5) shall prejudice any defence which it is open to a person charged with an offence under this section to raise apart from those subsections.

Manufacture and supply of scheduled substances

4. (1) A person who-

- (a) manufactures a scheduled substance; or
- (b) supplies a scheduled substance to another person,

knowing or suspecting that the scheduled substance is to be used in or for the production of a controlled drug contrary to paragraph (c) of section 3(1) is guilty of an offence and liable-

- (i) on summary conviction, to a fine of ten thousand dollars and to imprisonment for five years; or
- (ii) on conviction on indictment, to a fine and to imprisonment for fourteen years.

(2) The Governor may make regulations-

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

(3) Regulations made under paragraph (b) of subsection (2) may, in particular, require-

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

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and for the purposes of section 12 of the Customs Law (2010 Revision) (prohibited or restricted goods) any such substance is to be taken to have been exported contrary to a restriction for the time being in force with respect to it under this Law if it is exported without the requisite notification having been given.

(4) Regulations under this section may make different provisions in relation to the substances specified in Tables I and II in the Third Schedule and in relation to different cases or circumstances.

- (5) A person who-
 - (a) fails to comply with a requirement imposed by regulations under this section; or
 - (b) in purported compliance with a requirement imposed by regulations under this section, furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular,

is guilty of an offence and liable-

- (c) on summary conviction to a fine of three thousand dollars and to imprisonment for twelve months; or
- (d) on conviction on indictment to a fine and to imprisonment for two years.

(6) Information obtained pursuant to regulations made under this section shall not be disclosed except in criminal proceedings or proceedings under this Law relating to the confiscation of the proceeds of drug trafficking.

5. (1) A constable or customs officer may arrest without warrant a person who has committed, or whom such constable or customs officer reasonably suspects to have committed an offence under this Law. Powers of arrest

- (2) A person who has been arrested-
 - (a) under subsection (1); or
 - (b) in respect of an offence under section 242 (robbery), 243 (burglary) or 244 (aggravated burglary) of the Penal Code (2010 Revision), 2010 Revision

may, while at a police station, hospital or other convenient place, be required by a constable or customs officer to provide a specimen of his urine for a laboratory test and, if such person, without reasonable excuse, fails to provide such a specimen he is guilty of an offence.

(3) When requesting any person to provide a specimen for the purpose of subsection (2) the constable or customs officer shall warn such person of the possible consequences of failure to supply such specimen.

(4) If the person giving a specimen so desires, he shall be given a portion of the specimen for examination by his own medical adviser.

6. (1) If a constable or customs officer has reasonable grounds to suspect that any person is in possession of a controlled drug or scheduled substance in contravention of this Law he may, without warrant, detain and search such person and whether or not any person is detained or searched may, without warrant, Powers of search

break open and search any premises, vessel or thing whatsoever in which he has reasonable grounds to suspect that any such drug or substance may be concealed.

(2) No person shall, in exercise of the powers conferred by subsection (1), conduct a personal search of a person not of the same sex.

(3) A Justice of the Peace may, at any time, issue a warrant for the search of any premises in furtherance of the enforcement of this Law and such warrant may be executed at any time of the day or night within one month of its issue, and, where necessary for entry to such premises, such force may be used as may be requisite thereto.

Evidence

7. (1) The presence on, in or about any place or premises or the possession by any person of any pipe, syringe, inhaler, still, retort or other device commonly used for the production or consumption of any controlled drug shall be receivable in evidence by any court in order to assist such court to determine whether or not any person has contravened this Law, and the court may thereafter order the same (if exhibited) to be forfeited.

(2) Notwithstanding any other law, a certificate purporting to be under the hand of the C.M.O., a qualified chemist, a qualified medical laboratory technician or any other person appointed by the Governor in that behalf either specially or generally, stating or certifying that a given substance has been analysed or examined and stating the result of such analysis or examination, shall be admissible in evidence on any prosecution under this Law and, in the absence of evidence to the contrary, shall be proof of the statements contained therein as to the foregoing matters and any other matter specified therein concerning the substance analysed or examined or the analyst or examiner thereof, and no evidence shall be required by the court as to the signature or qualifications of the person purporting to have signed the certificate.

(3) No certificate shall be received in evidence unless the party intending to produce it has given to the other parties three days notice of such intention and has furnished with such notice a copy of the certificate.

(4) Where it is considered necessary or advisable, the court may require the attendance of the person under whose hand the certificate was issued to give evidence on oath.

(5) If, in proceedings under this Law, a question arises whether a country or territory is a state or is a party to the Vienna Convention, a certificate issued by the Governor is conclusive evidence on that question.

8. The court may, at its discretion, in any proceedings in which an accused person has been charged with an offence against this Law, on the application of the prosecution and after giving the accused person the opportunity of being heard, at any time order the destruction of any controlled drug which has been or is intended to be produced, in whole or in part, as evidence in such proceedings:

Destruction of evidence
pending prosecution

Provided that such quantity of such controlled drug as the court may direct shall not be ordered to be destroyed and shall be produced in such proceedings.

9. (1) Without prejudice to any other provision of this Law-

- (a) where it is proved beyond reasonable doubt that a person imported anything containing a controlled drug, it shall be presumed, until the contrary is proved, that such person knew that such drug was contained in such thing;
- (b) where it is proved beyond reasonable doubt that a person had in his possession or custody or under his control anything containing a controlled drug, it shall be presumed, until the contrary is proved, that such person was in possession of such drug;
- (c) where it is proved beyond reasonable doubt that a person supplied to any other person anything containing a controlled drug, it shall be presumed, until the contrary is proved, that such first-mentioned person knew that such drug was contained in such thing;
- (d) where it is proved beyond reasonable doubt that a person is in any way concerned in carrying, removing, harbouring, keeping, concealing, handling or dealing in any manner with anything containing a controlled drug, it shall be presumed, until the contrary is proved, that such person knew that such drug was contained in such thing; and
- (e) where it is proved beyond reasonable doubt that a person had in his possession or custody or under his control a dock warrant, warehouse warrant or order, baggage receipt or claim, airway-bill, bill of lading or other similar document relating to anything containing a controlled drug, it shall be presumed, until the contrary is proved, that such person was in possession of such drug.

Presumption of
possession and
knowledge of controlled
drug

(2) The presumptions provided by subsection (1) shall not-

- (a) be rebutted by proof that a person never had physical possession of the controlled drug; nor

- (b) be construed as requiring the prosecution to prove any fact which, by virtue of any other provision of this Law, it does not have to prove.

Seizure and forfeiture 10. Any controlled drug found in the course of a search under section 6 or otherwise coming into the hand of any constable shall be held in police custody and, unless claimed within fifteen days by a person found to be authorised to be in possession of the same, shall be forfeited to the Crown.

Assisting in or inducing commission outside Islands of offence punishable under a corresponding law 11. A person shall not, in the Islands, assist in or induce the commission in a place outside the Islands of an offence punishable under a corresponding law in force in that place.

Offence by corporation 12. Where any offence under this Law by a body corporate is proved to have been committed, the consent, connivance or negligence of any director or officer, howsoever designated, of such body corporate may be presumed unless he proves the contrary to the satisfaction of the court, and such person as well as the body corporate shall be guilty of that offence.

Regulations 13. The Governor may make regulations -

- (a) amending the First or Third Schedule (whether by addition or deletion, or by transfer from one Table in a Schedule to another);
- (b) for the control of the import, export, transport and storage of controlled drugs; and
- (c) prescribing anything required to be prescribed under this Law or any regulation,

and may thereby make provision for penalties consequent upon any contravention thereof and for contravention of any rules made under section 14, which penalties shall not be limited to the provisions of paragraph (b) of section 27 of the Interpretation Law (1995 Revision).

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Rules 14. The C.M.O. may make rules for inspection, keeping of inventories, and general control and distribution of controlled drugs in the hands of persons authorised under this Law to be in possession of the same, and every such person shall, at the request of the C.M.O. or of any constable, give full information as to the controlled drugs in his possession and the whereabouts of the same and account for the distribution of all such drugs as have passed through his hands.

Resisting arrest or search or giving false information 15. A person who resists any lawful arrest or search or gives to any constable, customs officer or the C.M.O. any information of a kind required to be given under this Law in the truth of which he does not believe (the onus of proof of his belief being upon him) is guilty of an offence.

16. (1) Subject to subsections (2), (3) and (4), a person who is guilty of an offence contrary to section 3(1) or (2) is liable on summary conviction to a fine of three thousand dollars and to imprisonment with hard labour for three years, and, in the case of a third or subsequent conviction, to a fine of ten thousand dollars and to imprisonment with hard labour for ten years.

Penalties for offences
under section 3

(2) Notwithstanding subsection (1), a person who is guilty of an offence that -

- (a) is contrary to section 3(1);
- (b) is specified in Part A of the Second Schedule; and
- (c) is in relation to a controlled drug that-
 - (i) is not a hard drug; and
 - (ii) is less than one pound in weight,

is, on summary conviction, liable to a fine of twenty thousand dollars and to imprisonment with hard labour for seven years and, in the case of a second or subsequent conviction for any such offence, to a fine of twenty thousand dollars and to imprisonment with hard labour for ten years.

(3) Notwithstanding subsection (1), a person who is guilty of an offence that -

- (a) is contrary to section 3(1);
- (b) is specified in Part A of the Second Schedule; and
- (c) is in relation to a controlled drug that -
 - (i) is not a hard drug; and
 - (ii) is one pound or more in weight,

is, on summary conviction, liable to a fine of twenty thousand dollars and to imprisonment with hard labour for seven years and , in the case of a second or subsequent conviction for any such offence, to a fine and to imprisonment with hard labour for fifteen years.

(4) Notwithstanding subsection (1), a person who is guilty of an offence that-

- (a) is contrary to section 3(1); and
- (b) is in relation to a controlled drug that-
 - (i) is a hard drug; and
 - (ii) is less than two ounces in weight; and
- (c) consists of buying, consuming, possessing or attempting to buy, consume or possess any such drug,

is, on summary conviction, liable in the case of a first conviction for such an offence to a fine of ten thousand dollars and to imprisonment for seven years; and

in the case of a second or subsequent conviction for any such offence to a fine of twenty thousand dollars and to imprisonment for fifteen years.

(5) Notwithstanding subsection (1), a person who is guilty of an offence that-

- (a) is contrary to any provision of this Law;
- (b) is specified in Part B of the Second Schedule; and
- (c) is in relation to a controlled drug that is a hard drug,

is, on summary conviction, liable to imprisonment and a fine in accordance with Part B of the Second Schedule.

(6) Where a person who has attained the age of seventeen years is convicted of an offence punishable under subsection (1), (2), (3) or (4), the court before whom he is convicted may, with the consent of the person convicted and subject to sections 38 to 41, in addition to or instead of dealing with him in any other way, make a community service order.

(7) Where a person is convicted of an offence punishable under subsection (1), (2), (3) or (4), the court before whom he is convicted may, in addition to or instead of dealing with him in any other way, make an attendance order under sections 42 to 44.

(8) Where a court makes a community service order under subsection (6), it may also, in respect of the same offence, make an attendance order under subsection (7), and where a court makes an attendance order under subsection (7), it may also, in respect of the same offence, make a community service order under subsection (6).

Powers of naval officer

17. (1) A captain of any ship belonging to the Royal Navy or any person acting under his orders shall have and exercise all of the powers of a constable under sections 5(1), 6(1) and 25(1) to seize and detain any vessel which he has reasonable cause to suspect of conveying any controlled drug within the territorial waters of the Islands and to arrest any person thereon.

(2) Where a captain of any ship belonging to the Royal Navy or any person acting under his orders-

- (a) finds any controlled drug in any vessel-
 - (i) searched under section 6(1); or
 - (ii) seized and detained under section 25(1);
- (b) arrests any person in such vessel under section 5(1); or
- (c) finds anything in the course of a search of such vessel under section 6(1) which gives such captain or person reasonable cause to suspect that an offence under this Law has been committed,

he shall, as soon as practicable, hand over such vessel, thing or person to a constable or take it or him to a police station.

18. Anything which would constitute a drug trafficking offence if done on land in the Islands constitutes that offence if done on a Cayman ship. Offences on Cayman ships

19. (1) This section applies to- Ships used for illicit traffic

- (a) a Cayman ship;
- (b) a ship registered in a state other than the Islands which is a party to the Vienna Convention; and
- (c) a ship that is not registered in any country or territory.

(2) A person on a ship to which this section applies, wherever it may be who-

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

knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to section 3(1) or the law of any state other than the Islands is guilty of an offence and liable-

- (i) if the controlled drug is a hard drug -
 - (A) on summary conviction to a fine of twenty thousand dollars and to imprisonment for five years; or
 - (B) on conviction on indictment to a fine and to imprisonment for life; or
- (ii) if the controlled drug is not a hard drug -
 - (A) on summary conviction to a fine of ten thousand dollars and to imprisonment for two years; or
 - (B) on conviction on indictment to a fine and to imprisonment for fourteen years.

(3) A certificate purporting to be issued by or on behalf of the government of a state to the effect that the import or export of a controlled drug is prohibited by the law of that state is evidence of the matter stated.

20. (1) The powers conferred on an enforcement officer by the Fourth Schedule are exercisable in relation to a ship to which section 18 or 19 applies for detecting and taking appropriate action in respect of the offences mentioned in those sections. Enforcement powers in respect of ships

(2) The powers referred to in subsection (1) are not exercisable outside the landward limits of the territorial sea of the Islands in relation to a ship registered in a Convention state except with the authority of the Governor.

(3) The Governor shall not give his authority under subsection (2) unless the relevant state has, in relation to the ship-

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

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

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

(6) Subsection (5) is without prejudice to any agreement made, or which may be made, on behalf of the Islands whereby the Islands undertake not to object to the exercise by any other state in relation to a Cayman ship of powers corresponding to those conferred by the Fourth Schedule.

(7) The powers conferred by the Fourth Schedule are not exercised in the territorial sea of a state other than the Islands without the authority of the Governor.

(8) The Governor shall not give his authority under subsection (7) unless the relevant state has consented to the exercise of those powers.

Jurisdiction and prosecutions in respect of ships

21. (1) Proceedings under this Law in respect of an offence on a ship are to be taken, and the offence is, for all incidental purposes, to be treated as having been committed in the Islands.

(2) Proceedings referred to in subsection (1) shall not be instituted except by or with the consent of the Attorney General.

(3) Without prejudice to subsection (2), proceedings for an offence under section 19 alleged to have been committed outside the landward limits of the territorial sea of the Islands on a ship registered in a Convention state shall not be instituted except with the authority of the Governor.

Pursuit into territorial waters

22. (1) Subject to this section, a law enforcement official on board a law enforcement vessel of a designated Convention state may exercise in the internal waters and the territorial sea of the Islands the powers specified in paragraphs 2, 3 and 4 of the Fourth Schedule in relation to-

- (a) any ship, when so authorised by a law enforcement official of the Islands who is embarked on a law enforcement vessel of the designated Convention state;
- (b) a ship which is reasonably suspected of engaging in the commission of a drug trafficking offence outside the landward limits of the territorial sea and is pursued into the territorial sea of the Islands by a law enforcement vessel of the designated Convention state; or
- (c) a ship (other than a Cayman ship) which is suspected of engaging in the commission of a drug trafficking offence.

(2) A law enforcement official may only seize and detain a ship where a search under subsection (1) reveals evidence that the ship is being used for the commission of a drug trafficking offence.

(3) A law enforcement vessel of a designated Convention state shall not exercise the powers specified in subsection (1) unless a law enforcement vessel of the Islands is not immediately available to exercise the powers specified in this section in relation to the ship suspected of engaging in a drug trafficking offence.

(4) A law enforcement official of the designated Convention state shall, before exercising the powers under this section-

- (a) give advance notice of his proposed action in relation to the ship to an enforcement officer of the Islands; or
- (b) where it is not practical to give advance notice, notify an enforcement officer of the Islands of any action taken in relation to the ship at the earliest opportunity after the action has been taken.

(5) Where a law enforcement official of a Convention state exercises any of the powers conferred on him by this section-

- (a) paragraphs 5, 6, 7 and 8 of the Fourth Schedule shall apply to him; and
- (b) the Governor in Cabinet may waive the right of the Islands to its primary jurisdiction and may authorise the enforcement of the law of the designated Convention state against the ship, its cargo or any person on board the ship.

(6) An enforcement officer of the Islands may exercise in the territorial sea of a designated Convention state any of the powers given to a law enforcement official under this section subject to the same conditions applicable to the exercise of those powers by a law enforcement official.

(7) In this section-

“designated Convention state” means a state which is a party to the Vienna Convention and which has been designated for the purposes of this Law by an order by the Governor in Cabinet;

“law enforcement official” means an official of a class selected by a designated Convention state to carry out the powers specified in this section; and

“law enforcement vessel” of a designated Convention state means a warship or other non-commercial ship of that state-

- (a) which is authorised to be in the government’s service of that state for the purposes of enforcement under this Law;
- (b) on which law enforcement officials of that state are embarked; and
- (c) which is clearly marked and identifiable as a law enforcement vessel,

and includes any boat or aircraft embarked on that ship.

Offences relating to section 22

23. (1) A person is guilty of an offence if he-
- (a) intentionally obstructs a law enforcement official in the performance of any of his functions under section 22;
 - (b) fails without reasonable excuse to comply with a requirement made by a law enforcement official in the performance of those functions; or
 - (c) in purporting to give information required by an official 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 a material particular.

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to a fine of ten thousand dollars.

General penalty

24. A person who contravenes this Law or any rule or regulation pursuant thereto is, if no other penalty is specifically provided, liable on summary conviction to a fine of one thousand dollars and to imprisonment for one year.

Seizure and forfeiture of vessels

25. (1) If any constable or customs officer has reasonable cause to suspect that any vessel is being used or has been used for the commission of any offence against this Law, he may, without a warrant, board and search such vessel and, if such search reveals evidence that the vessel is being used for the commission of any such offence, seize and detain such vessel.

(2) Where a person is convicted of an offence against this Law, and the court by or before which he is convicted is satisfied that any vessel which was in his possession or under his control at the time of his apprehension -

- (a) has been used in connection with or for the purpose of committing or facilitating the commission of such offence; or
- (b) was intended by him to be used for that purpose,

the court shall order the forfeiture to the Crown of such vessel.

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

(4) If any vessel to which an order under this section relates is not already in the possession of a constable at the time of the making of the order, the vessel shall be taken into such possession with all reasonable despatch.

(5) Part V of the Police Law (2006 Revision) shall not apply to any vessel which is the subject of an order under this section. 2006 Revision

(6) Where any vessel is ordered to be forfeited under subsection (2), the owner of such vessel may make within fourteen days of such order, and after having given not less than four days notice to the Attorney General, a claim to the court making such order of forfeiture for the vessel to be restored to him.

(7) Where a claim is made to the court under subsection (6), the court may, subject to subsection (8), order that the vessel shall be restored to the owner thereof on payment by him of any expenses incurred for transporting and keeping such vessel for the purposes of this section.

(8) A court shall not make an order under subsection (7) unless it is satisfied that the owner, charterer, master, pilot, operator or person in control of the vessel -

- (a) (i) did not permit any person convicted of an offence under this Law to use the vessel for the purpose of conveying any controlled drug in respect of which the offence was committed; and
- (ii) had no knowledge that any person convicted of an offence under this Law would use the vessel for the purpose of conveying any controlled drug in respect of which the offence was committed; or
- (b) has paid into court a redemption fee equivalent to seventy-five per cent of the value of the vessel:

Provided that no order under this section shall give rise to a claim based on the difference in value at the time of revesting from such value at the time of seizure.

Seizure and detention of drug trafficking money imported or exported in cash

26. (1) A constable or customs officer may seize and, in accordance with this section, detain cash which is being imported into or exported from the Islands if he has reasonable grounds for suspecting that it directly or indirectly represents a person's proceeds of drug trafficking or is intended by a person for use in drug trafficking.

(2) Cash seized by virtue of subsection (1) shall not be detained for more than forty-eight hours unless its continued detention is authorised by an order made by a Justice of the Peace

(3) A Justice of the Peace shall not make an order under subsection (2) unless he is satisfied that -

- (a) there are reasonable grounds for the suspicion mentioned in subsection (1); and
- (b) continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the Islands or elsewhere) of criminal proceedings against a person for an offence with which the cash is connected.

(4) An order under subsection (2) authorises the continued detention of the cash to which it relates for such period, not exceeding three months, as is specified in the order.

(5) If a magistrate is satisfied as to the matters mentioned in subsection (3) he may, from time to time by order, authorise the further detention of the cash but so that-

- (a) no period of detention in such an order exceeds three months; and
- (b) the total period of detention does not exceed two years from the date of the order made under subsection (2).

(6) Any application for an order under subsection (2) or (5) shall be made by the Attorney General.

(7) At any time while cash is detained by virtue of this section a magistrate may direct its release if he is 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 grounds or are no longer any grounds for its detention, as mentioned in subsection (3); or

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

(8) At any time while cash is detained by virtue of this section a constable or customs officer may release the cash -

- (a) if he is satisfied that its detention is no longer justified; and
- (b) he is authorised to do so by the justice or magistrate under whose order it is being detained.

(9) If, at a time while cash is detained by virtue of this section-

- (a) an application for its forfeiture is made under section 27; or
- (b) proceedings are instituted (whether in the Islands or elsewhere) against a 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.

27. (1) A magistrate may order the forfeiture of cash which has been seized under section 26 if he is satisfied, on an application made while the cash is detained under that section, that the cash directly or indirectly represents a person's proceeds of drug trafficking or is intended by a person for use in drug trafficking. Forfeiture of cash

(2) Any application under subsection (1) shall be made by the Attorney General.

(3) The standard of proof in proceedings on an application under subsection (1) is that applicable to civil proceedings.

(4) An order may be made under subsection (1) whether or not proceedings are brought against a person for an offence with which the cash in question is connected.

(5) Any money representing cash forfeited under subsection (1) and any interest accrued on that money forms part of the revenue of the Islands.

28. (1) Cash seized under section 26 and detained for more than forty-eight hours shall, unless required as evidence of an offence, be held in an interest-bearing account. Interest

(2) Interest accruing on cash seized under section 26 shall be added to the cash on its forfeiture or release.

Procedure 29. (1) An order under section 26(2) shall provide for notice to be given to persons affected by the order.

(2) Provision may be made by rules of court-

- (a) with respect to applications to a court under section 26 or 27;
- (b) for the giving of notice of such applications to persons affected;
- (c) for the joinder of such persons as parties; and
- (d) generally with respect to the procedure under those sections before a court.

(3) Subsection (2) is without prejudice to the generality of existing powers to make rules.

Forfeiture, etc., of
acquired assets

30. (1) Subject to subsection (2), where a person is convicted of an offence against this Law, and the court by or before which he is convicted is satisfied that any monies or any other thing relate to or have been acquired due to or as a result of the offence, the court shall order that such monies or other thing be forfeited to the Crown or dealt with in such other manner as it may direct.

(2) The court shall not order any monies or other thing to be forfeited or dealt with under subsection (1) where a person claiming to be the owner of or otherwise interested therein applies to be heard by the court within fourteen days of conviction, unless an opportunity has been given to him to show cause why the order should not be made.

2006 Revision

(3) Part V of the Police Law (2006 Revision) shall not apply to any monies or other thing which is the subject of an order under subsection (1).

Compensation

31. (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 -

- (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 52 of the Proceeds of Crime Law, 2008 or any other provision of that Law empowering a court to restrict the use of property.

Law 10 of 2008

(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.

32. (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.

Order to make material available

(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 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 (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) 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) applications for the discharge and variation of orders under this section; and
- (b) proceedings 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, 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 (2009 Revision), any other law or the common law; and
- (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 33 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 who is guilty of an offence under subsection (9) is liable on conviction to a fine and to imprisonment for five years.

33. (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. Authority for search

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

- (a) an order made under section 32(2) in relation to material on the premises has not been complied with;
- (b) the conditions in subsection (3) are fulfilled; or
- (c) the conditions in subsection (4) are fulfilled.

(3) The conditions referred to in paragraph (b) of 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) the conditions in paragraphs (b) and (c) of section 32(4) are fulfilled in relation to any material on the premises; and
- (c) it would not be appropriate to make an order under that section in relation to the material because-
 - (i) it is not practicable to communicate with any person entitled to produce the material;
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless 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 at the time of the application be particularised; and

- (c) (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
- (ii) entry to the premises will not be granted unless a warrant is produced; or
- (ii) 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.

Enforcement of external
confiscation orders

34. (1) The Governor may, by Order-

- (a) direct in relation to a designated country that, subject to such modifications (which expression includes additions, alterations and omissions) as may be specified, this Law shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
- (b) make-
 - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order;
 - (ii) such provision as to evidence or proof of any matter for the purposes of this section and of section 35; and
 - (iii) such incidental, consequential and transitional provision, as appears to him to be expedient; and
- (c) without prejudice to the generality of this subsection, direct that, in such circumstances as may be specified, proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under such order to such extent as may be specified.

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

(3) The power to make an order under this section includes power to modify (which expression includes to add to, to alter and to make omissions from) this Law in such a way as to confer power on a person to exercise a discretion.

35. (1) On an application made by or on behalf of the Government of a designated country, the Grand Court may register an external confiscation order made there if it is-

Registration of external confiscation orders

- (a) satisfied that at the time of registration the order is in force and not subject to appeal (which expression includes both any proceedings by way of discharging or setting aside a judgment or an application for a new trial or for a stay of execution);
- (b) satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
- (c) of the opinion that enforcing the order in the Islands would not be contrary to the interests of justice.

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

36. Notwithstanding any other law prescribing the time within which proceedings for an offence punishable on summary conviction may be commenced, any proceedings for an offence under this Law, may be commenced either within the time so prescribed or within three months from the date on which evidence sufficient in the opinion of the Attorney General to justify a prosecution for the offence comes to his knowledge, whichever time is the longer, and for the purposes of this section a certificate purporting to be signed by the Attorney General as to the date on which such evidence came to his knowledge shall be conclusive evidence thereof.

Time within which proceedings may be brought

37. (1) Subject to subsection (2), where a person is convicted of an offence under this Law and the powers of sentence for that offence are contained in section 16(2), (3) or (4), neither the Probation of Offenders Law (1999 Revision) nor sections 35 and 36 of the Penal Code (2010 Revision) nor section 75 of the Criminal Procedure Code (2010 Revision) shall apply for the purpose of avoiding or mitigating that sentence.

Probation of Offenders Law, etc. not applicable
1999 Revision
2010 Revision
2010 Revision

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

- (a) is not a hard drug, is less than one pound in weight, and the power of sentence for that offence is contained in section 16(2);
or
- (b) is less than two ounces in weight and the power of sentence for that offence is contained in section 16(4).

Community service
order in respect of
convicted person

38. (1) A community service order made under section 16(6) shall require the person convicted to perform unpaid work in accordance with the subsequent provisions of this Law for such number of hours (being in the aggregate not less than forty nor more than two hundred and forty) as may be specified in the order.

(2) A court shall not make a community service order in respect of any offender unless the offender consents and the court -

- (a) has been notified by the Governor that arrangements exist for persons to perform work under such orders; and
- (b) is satisfied -
 - (i) after considering a report by a probation officer about the offender and his circumstances and, if the court thinks it necessary, hearing a probation officer, that the offender is a suitable person to perform work under such an order; and
 - (ii) that provision can be made under the arrangements for him to do so.

(3) Where a court makes community service orders in respect of two or more offences of which the offender has been convicted by or before the court, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders.

(4) A community service order shall specify the area in which the offender resides or will reside; and the functions conferred by the subsequent provisions of this Law on the relevant officer shall be discharged by a probation officer appointed for or assigned to the area.

(5) Before making a community service order the court shall explain to the offender in ordinary language -

- (a) the purpose and effect of the order (and in particular the requirements of the order as specified in section 39);
- (b) the consequences which may follow under section 40 if he fails to comply with any of those requirements; and
- (c) that the court has under section 41 the power to review the order on the application either of the offender or of a probation officer.

(6) The court by which a community service order is made shall forthwith give copies of the order to the offender and to the relevant officer.

(7) The Governor may, by notice, direct that subsection (1) shall be amended by substituting, for the maximum number of hours specified, such number of hours as may be specified in the notice.

(8) Nothing in subsection (1) shall be construed as preventing a court which makes a community service order in respect of any offence from making an order for costs against, or imposing any disqualification on, the offender.

39. (1) An offender in respect of whom a community service order is in force shall-

Obligations of person
subject to community
service order

- (a) report to the relevant officer and subsequently from time to time notify him of any change of address; and
- (b) perform, for the number of hours specified in the order, such work at such times as he may be instructed by the relevant officer.

(2) Subject to section 41, the work required to be performed under a community service order shall be performed during the period of twelve months beginning with the date of the order.

(3) The instructions given by the relevant officer under this section shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which he normally works or attends a school or other educational establishment.

40. (1) If, at any time while a community service order is in force in respect of an offender, it appears on information to a Justice of the Peace that the offender has failed to comply with any of the requirements of section 39 (including any failure satisfactorily to perform the work which he has been instructed to do), the Justice may issue a summons requiring the offender to appear at the place and time specified therein, or may, if the information is in writing and on oath, issue a warrant for his arrest.

Breach of requirements
of community service
order

(2) Any summons or warrant issued under this section shall direct the offender to appear or be brought before the magistrates court.

(3) If it is proved to the satisfaction of the magistrates court before which an offender appears or is brought that he has failed without reasonable excuse to comply with any of the requirements of section 39 the court may, without prejudice to the continuance of the order, impose on him a fine not exceeding one hundred dollars or may revoke the order and impose in substitution therefor, in addition to any other sentence either by way of fine or imprisonment, or both, which may have already been imposed at the time of the original conviction a further fine or a further term of imprisonment, or both, but not so as to cause the further fine when added to the fine originally imposed, if any, or the further term of imprisonment when added to the term of imprisonment originally imposed, if any, to exceed the fine or term of imprisonment laid down in the section of the Law in respect of contravention of which the person convicted was originally

sentenced and where no fine or imprisonment has been imposed at the time of the original conviction then the court before whom the offender is brought under the provisions of this subsection may impose such fine or imprisonment or both as could have been imposed by the court by whom the offender was originally convicted, and in all such cases imprisonment shall be imprisonment with hard labour.

Amendment of
community service order

41. Where a community service order is in force in respect of any offender and, on the application of the offender or the relevant officer, it appears to the court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, the court may extend, in relation to the order, the period of twelve months specified in section 39(2).

Attendance order in
respect of convicted
person

42. (1) An attendance order made under section 16(7) shall require the person convicted to attend during such period not exceeding twelve months as may be specified in the order at a training centre or such other place as may be specified in the said order.

(2) A court shall not make an attendance order in respect of any offender unless -

- (a) it has been notified by the Governor that a training centre or other suitable place exists in respect of which the order may be made; and
- (b) it is satisfied that arrangements can be made for his attendance at such place.

(3) An attendance order made shall require the person in respect of whom it is made -

- (a) to attend at the place specified in such order on not more than sixty days in accordance with such instructions as shall be given by the probation officer who has been appointed by the order to be responsible for his supervision; and
- (b) shall further require the person in respect of whom the order is made while attending there to comply with such instructions as are given by or under the authority of the person in charge of the place.

(4) For the purposes of this section references to attendance at a training centre shall include references to attendance elsewhere for the purpose of receiving training in accordance with instructions given by or under the authority of the person in charge of the centre.

(5) Where a court makes attendance orders in respect of two or more offences of which the offender has been convicted by or before the court, the

court may direct that the orders shall be concurrent with or additional to those specified in any other of those orders.

(6) The court by which an attendance order is made shall forthwith give copies of the order to the offender and to the relevant officer.

(7) The Governor may, by notice, direct that subsection (1) or (3) shall be amended by substituting, for the maximum number of months or days specified, such number of months or days as may be specified in the notice.

(8) Nothing in subsection (1) shall be construed as preventing a court which makes an attendance order in respect of any offence from making an order for costs against, or imposing any disqualification on, the offender.

43. (1) If, at any time while an attendance order is in force in respect of an offender, it appears on information to a Justice of the Peace that the offender has failed to comply with any of the requirements of the attendance order, the Justice may issue a summons requiring the offender to appear at the place and time specified therein, or may, if the information is in writing and on oath, issue a warrant for his arrest.

Breach of requirements
of attendance order

(2) Any summons or warrant issued under this section shall direct the offender to appear or be brought before the magistrates court.

(3) If it is proved to the satisfaction of the magistrates court before which an offender appears or is brought that he has failed without reasonable excuse to comply with any of the requirements of the attendance order, the court may, without prejudice to the continuance of the order, impose on him a fine not exceeding one hundred dollars or may revoke the order and impose in substitution therefor, in addition to any other sentence either by way of fine or imprisonment, or both, which may have already been imposed at the time of the original conviction a further fine or a further term of imprisonment, or both, but not so as to cause the further fine when added to the fine originally imposed, if any, to exceed the fine or term of imprisonment laid down in the section of the Law in respect of contravention of which the person convicted was originally sentenced, and, where no fine or imprisonment has been imposed at the time of the original conviction, then the court before whom the offender is brought under this subsection may impose such fine or imprisonment, or both, as could have been imposed by the court by whom the offender was originally convicted, and in all such cases imprisonment shall be imprisonment with hard labour.

44. Where an attendance order is in force in respect of any offender and, on the application of the offender or the relevant officer, it appears to the court that it would be in the interests of justice to do so having regard to the circumstances

Amendment of
attendance order

which have arisen since the order was made, the court may extend, in relation to the order, the period of twelve months specified in section 42(1).

Procedure in respect of certain offences

45. (1) Notwithstanding any other section of this Law or any other Law -

- (a) where a person is charged with -
 - (i) importing;
 - (ii) exporting;
 - (iii) producing;
 - (iv) storing;
 - (v) dispensing;
 - (vi) issuing a prescription;
 - (vii) administering; or
 - (viii) attempting, assisting or being concerned in any matter specified in subparagraphs (i) to (vii),

contrary to section 3(1) which relates to a controlled drug that is a hard drug, then such offence shall be deemed, for the purpose of determining the mode of trial, a category B offence in accordance with section 5 of the Criminal Procedure Code (2010 Revision); and

2010 Revision

- (b) where a person is charged with -
 - (i) selling;
 - (ii) buying;
 - (iii) dealing;
 - (iv) supplying;
 - (v) distributing;
 - (vi) possessing;
 - (vii) consuming;
 - (viii) possessing with intent to supply; or
 - (ix) attempting, assisting or being concerned in any matter specified in subparagraphs (i) to (viii),

contrary to section 3(1) which relates to a controlled drug that is a hard drug, then such offence shall be deemed, for the purpose of determining the mode of trial, a category C offence in accordance with section 5 of the Criminal Procedure Code (2010 Revision).

(2) Notwithstanding any other section of this Law or sections 6(2) and 8 of the Criminal Procedure Code (2010 Revision) or any provision of any other Law, where a person is convicted of an offence on trial upon indictment pursuant to subsection (1)(a), the Grand Court may impose a term of imprisonment and a fine in accordance with section 16(4) or Part B of the Second Schedule.

46. For the avoidance of doubt, it is hereby declared that nothing in this Law derogates from the provisions of the Rehabilitation of Offenders Law (1998 Revision).

No derogation from
Rehabilitation of
Offenders Law (1998
Revision)

FIRST SCHEDULE

section 2(1)

CONTROLLED DRUGS

PART I

1. The following substances and products, namely-

(a)

Acetorphine	Ethylmethylthiambutene
Alfentanil	Etorphine
Allylprodine	Etoxadine
Alphacetylmethadol	Fentanyl
Alphameprodine	Furethidine
Alphamethadol	Hydrocodone
Alphaprodine	Hydromorphanol
Anileridine	Hydromorphone
Benzethidine	Hydroxypethidine
Benzylmorphine	Isomethadone
(3-benzylmorphine)	Ketobemidone
Betacetylmethadol	Levomethorphan
Betameprodine	Levomoramide
Betamethadol	Levophenacymorphan,
Betaprodine	Levorphanol
Bezitramide	Lofentanil
Bufotenine	Lysergamide
Cannabinol, except where contained in cannabis or cannabis resin	Lysergide and other N-alkyl derivatives of lysergamide
Cannabinol derivatives	Mescaline
Carfentanil	Metazocine
Clonitazene	Methadone
Coca leaf	Methadyl acetate
Cocaine	Methyldesorphine
Desomorphi	Methyldihydromorphone (6-methyl- dihydromorphone)

Dextromoramide	Metopon
Diamorphine	Morpheridine
Diampromide	Morphine
Diethylthiambutene	Morphine methobromide, morphine N-oxide and other prevalent nitrogen morphine derivatives
Difenoxin (1-(3-cyano-3,3-diphenylpropyl)-4-phenylpiperidine-4 carboxylic acid)	Myrophine
Dihydrocodeinone O-carboxymethyloxime	Nicomorphine (3,6-dinicotinoyl-morphine)
Dihydromorphine	Noracymethadol
Dimenoxadole	Norlevorphanol
Dimepheptanol	Normethadone
Dimethylthiambutene	Normorphine
Dioxaphertyl butyrate	Norpipanone
Diphenoxylate	Opium, whether raw, prepared or medicinal
Dipipanone	Oxycodone
Drotebanol (3,4-dimethoxy-17 methyl-morphinan-6 β ,- 14-diol)	Oxymorphone
Ecgonine, and any derivative of ecgonine which is convertible to ecgonine or to cocaine	Pethidine
Phenampramide.	Phenadoxone
Phenazocine	Trimeperidine
Phencyclidine	4-Bromo-2,5-dimethoxy- α -methyl-phenethylamine
Phenomorphan	4-Cyano-2-dimethyl-amino-4, 4-diphenyl-butane
Phenoperidine	4-Cyano- 1 -methyl-4-phenyl-piperidine
Piminodine	N, N -Diethyltryptamine
Piritramide	N, N-Dimethyltryptamine
Poppy-straw and concentrate of poppy-straw	2,5-Dimethoxy- α ,4-dimethyl-phenethylamine
Proheptazine	N-Hydroxytenamphetamine
Properidine	1 -Methyl -4-phenyl-piperidine-4-carboxylic acid
(1-methyl-4-phenylpiperidine-4-carboxylic acid isopropyl ester)	2-Methyl-3-morpholino- 1, 1-diphenylpropane-carboxylic acid
Psilocin	4-Methylaminorex.
Racemethorphan	4-Phenylpiperidine-4-carboxylic acid ethyl ester
Racemoramide	
Racemorphan	
Rolicyclidine	
Sufentanil	
Tenocyclidine	
Thebacon	
Thebaine	
Tilidate	

- (b) any compound (not being a compound for the time being specified in sub-paragraph (a)) structurally derived from tryptamine or from a ring-hydroxy tryptamine by substitution at the nitrogen atom of the sidechain with one or more alkyl substituents but no other substituent;
- (c) any compound (not being methoxyphenamine or a compound for the time being specified in sub-paragraph (a)) structurally derived from phenethylamine, an N-alkylphenethylamine, α -methylphenethylamine, an N-alkyl- α -methylphenethylamine, α -ethylphenethylamine, or an N-alkyl- α -ethylphenethylamine by substitution in the ring to any extent with alkyl, alkoxy, alkylendioxy or halide substituents, whether or not further substituted in the ring by one or more other univalent substituents;
- (d) any compound (not being a compound for the time being specified in sub-paragraph (a)) structurally derived from fentanyl by modification in any of the following ways, that is to say-
 - (i) by replacement of the phenyl portion of the phenethyl group by any heteromonocycle whether or not further substituted in the heterocycle;
 - (ii) by substitution in the phenethyl group with alkyl, alkenyl, alkoxy, hydroxy, halogeno, haloalkyl, amino or nitro groups;
 - (iii) by substitution in the piperidine ring with alkyl or alkenyl groups;
 - (iv) by substitution in the aniline ring with alkyl, alkoxy, alkylendioxy, halogeno or haloalkyl groups,
 - (v) by substitution at the 4-position of the piperidine ring with any alkoxycarbonyl or alkoxyalkyl or acyloxy group;
 - (vi) by replacement of the N-propionyl group by another acyl group;
- (e) any compound (not being a compound for the time being specified in sub-paragraph (a)) structurally derived from pethidine by modification in any of the following ways, that is to say-
 - (i) by replacement of the 1-methyl group by an acyl, alkyl whether or not unsaturated, benzyl or phenethyl group, whether or not further substituted;
 - (ii) by substitution in the piperidine ring with alkyl or alkenyl groups or with a propano bridge, whether or not further substituted;
 - (iii) by substitution in the 4-phenyl ring with alkyl, alkoxy, aryloxy, halogeno or haloalkyl groups;

- (iv) by replacement of the 4-ethoxycarbonyl by any other alkoxy carbonyl or any alkoxyalkyl or acyloxy group;
 - (v) by formation of an N-oxide or of a quaternary base.
2. Any stereoisomeric form of a substance for the time being specified in paragraph 1 not being dextromethorphan or dextrorphan.
 3. Any ester or ether of a substance for the time being specified in paragraph 1 or 2 not being a substance for the time being specified in Part II of this Schedule.
 4. Any salt of a substance for the time being specified in any of paragraphs 1 to 3.
 5. Any preparation or other produce containing a substance or produce for the time being specified in any of paragraphs 1 to 4.
 6. Any preparation designed for administration by injection which includes a substance or produce for the time being specified in any of paragraphs 1 to 3 of Part II of this Schedule.

PART II

1. The following substances and products, namely -

(a)

Acetylhydrocodeine	Methylamphetamine
Amphetamine	Methylphenidate
Cannabis and cannabis resin	Methylphenobarbitone
Codeine	Nicocodine
Dihydrocodeine	Nicodicodine
Ethylmorphine (3-ethylmorphine)	(6-nicotinoyidihydrocodeine)
Ganja	Norcodeine
Glutethimide	Pentazocine
Lefetamine	Phenmetrazine
Mecloqualone	Pholcodine
Methaqualone	Propiram

(b) any 5,5 disubstituted barbituric acid.

2. Any stereoisomeric form of a substance for the time being specified in paragraph 1 of this Part of this Schedule.
3. An salt of a substance for the time being specified in paragraph 1 or 2 of this Part of this Schedule.

4. Any preparation or other product containing a substance or produce for the time being specified in any of paragraphs 1 to 3 of this Part of this Schedule, not being a preparation falling within paragraph 6 of Part 1 of this Schedule.

PART III

1. The following substances, namely-

Alprazolam	Haloxazolam
Benzphetamine	Ketazolam
Bromazepam	Loprazolam
Buprenorphine	Lorazepam
Camazepam	Lormetazepam
Cathine	Mazindol
Cathinone	Medazepam
Chlordiazepoxide	Mefenorex
Chlorphentermine	Mephentermine
Clobazam	Meprobamate
Clonazepam	Methypylone
Clorazepic acid	Midazolam
Clotiazepam	Nimetazepam
Cloxazolam	Nitrazepam
Delorazepam	Nordazepam
Dextropropoxyphene	Oxazepam
Diazepam	Oxazolam
Diethylpropion	Pemoline
Estazolam	Phendimetrazine
Ethchlorvynol	Phentermine
Ethinamate	Pinazepam
Ethyl loflazepate	Pipadrol
Fencanfamin	Prazepam
Fenethylamine	Propylhexedrine
Fenproporex	Pyrovalerone
Fludiazepam	Temazepam
Flunitrazepam	Tetrazepam
Flurazepam	Triazolam
Halazepam	N-Ethylamphetamine

2. Any stereoisomeric form of a substance for the time being specified in paragraph 1 of this Part of this Schedule not being phenylpropanolamine.

3. Any salt of a substance for the time being specified in paragraph 1 or 2 of this Part of this Schedule.

4. Any preparation of other produce containing a substance for the time being specified in any of paragraphs 1 to 3 of this Part of this Schedule not being phenylpropanolamine.

PART IV

MEANING OF CERTAIN EXPRESSIONS USED IN THIS SCHEDULE

For the purposes of this Schedule, the following expressions (which are not among those defined in section 2(1)) have the meaning hereby assigned to them respectively, that is to say -

“cannabinol derivatives” “Carfentanil” means the following substances except where contained in cannabis or cannabis resin namely tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives;

“cannabis” (except in the expression “cannabis resin”) means any plant of the genus Cannabis or any part of any such plant (by whatever name designated) except that it does not include cannabis resin or any of the following products after separation from the rest of the plant, namely -

- (a) mature stalk of any such plant.
- (b) fibre produced from mature stalk of any such plant,

“coca leaf” means the leaf of any plant of the genus Erythroxylon from whose leaves cocaine can be extracted either directly or by chemical transformation;

“concentrate of poppy-straw” means the material produced when poppy-straw has entered into a process for the concentration of its alkaloids;

“ganja” means cannabis and cannabis resin;

“medicinal opium” means raw opium which has undergone the process to adapt it for medicinal use in accordance with the requirements of the British Pharmacopoeia whether it is in the form of powder or is granulated or is in any other form, and whether it is or is not mixed with neutral substances;

“opium poppy” means the plant of the species *Papaver somniferum* L;

“poppy straw” means all parts, except the seeds, of the opium poppy after mowing;

“raw opium” includes powdered or granulated opium but does not include medicinal opium.

SECOND SCHEDULE

section 16(2), (3) and (4)

PART A

LIST OF OFFENCES CONTRARY TO SECTION 4(1) RELATING TO A CONTROLLED DRUG THAT IS NOT A HARD DRUG.

- | | |
|---|---|
| (i) Importing; | (vii) Possessing; |
| (ii) Exporting; | (viii) Possessing with intent to supply; |
| (iii) Producing; | (ix) Attempting, assisting or being concerned in any offence specified in paragraphs (i) to (viii) inclusive. |
| (iv) Selling, buying or otherwise dealing in; | |
| (v) Supplying; | |
| (vi) Distributing; | |

PART B

sections 16 and 45

SENTENCES RELATING TO OFFENCES CONTRARY TO SECTION 3(1) WHICH RELATE TO A CONTROLLED DRUG THAT IS A HARD DRUG

OFFENCE	AMOUNT OF HARD DRUG	PENALTY		
		First conviction before a Court of Summary Jurisdiction	Second or subsequent conviction before a Court of Summary Jurisdiction	Conviction before the Grand Court
		Maximum	Maximum	Maximum
Buying Consuming Possessing Assisting or being concerned in Attempting	2 ounces or more	15 years + a fine without limit as to amount	20 years + a fine without limit as to amount	25 years + a fine without limit as to amount

Selling Dealing in Distributing Supplying Dispensing Storing Issuing a prescription for Administering Possessing with intent to supply Importing Exporting Producing Assisting or being concerned in Attempting	less than 2 ounces	15 years + a fine without limit as to amount	20 years + a fine without limit as to amount	25 years + a fine without limit as to amount
Selling Dealing in Distributing Supplying Dispensing Storing Issuing a prescription for Administering Possessing with intent to supply Importing Exporting Producing Assisting or being concerned in Attempting	2 ounces or more	20 years + a fine without limit as to amount	30 years + a fine without limit as to amount	35 years + a fine without limit as to amount

THIRD SCHEDULE

section 4

SUBSTANCES USEFUL FOR MANUFACTURING

CONTROLLED DRUGS

TABLE I

Ephedrine	Lysergic Acid
Ergometrine	1-Phenyl-2 Propanone
Ergotamine	Pseudoephedrine

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

TABLE II

Acetic Anhydride	Ethyl Ether
Acetone	Phenylacetic Acid
Anthranilic Acid	Piperidine

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

FOURTH SCHEDULE

section 20

ENFORCEMENT POWERS IN RESPECT OF SHIPS

Preliminary

1. In this Schedule -

“an enforcement officer” means -

- (a) a constable;
- (b) a customs officer; or

- (c) any other person of a description specified in an order made for the purposes of this Schedule by the Governor.

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

Power to stop, board, divert and detain

2. (1) An enforcement officer may stop the ship, board it and, if he thinks it necessary for the exercise of his functions, require it to be taken to a port in the Islands and detain it there.
- (2) Where an enforcement officer is exercising his powers with the authority of the Governor given under section 20(2) the officer may require the ship to be taken to a port in the Convention state in question or, if that state has so requested in any other country or territory willing to receive it.
- (3) For any of those purposes he may require the master or member of the crew to take such action as may be necessary.
- (4) If an enforcement officer detains a ship he must serve on the master a written notice stating that it is to be detained until the notice is withdrawn by the service on him of a further written notice 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 a person on the ship to give information concerning himself or anything on the ship.
- (3) Without prejudice to the generality of those powers an enforcement officer may
- (a) open containers;
 - (b) make tests and take samples of anything on the ship;
 - (c) require the production of documents, books or records relating to the ship or anything on it; or
 - (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 18 or 19 has been committed on a ship to which that section applies he may -

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

Assistants

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

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

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

Use of reasonable force

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

Evidence of authority

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

Protection of officers

8. An enforcement officer is not liable in 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 is guilty of an offence if he -

- (a) intentionally obstructs an enforcement officer in the performance of any of his functions under this Schedule;

- (b) fails without reasonable excuse to comply with a requirement made by an enforcement officer in the performance of those functions; or
- (c) in purporting to give information required by an officer for the performance of those functions-
 - (i) 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 a material particular.

(2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine of ten thousand dollars.

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Kim Bullings
Clerk of Cabinet

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