



ST HELENA

REVISED EDITION OF THE LAWS, 2017

CRIME AND CRIMINAL PROCEDURE

**DRUGS (TRAFFICKING OFFENCES) ORDINANCE, 2003<sup>1</sup>**

*Ordinance 13 of 2003*

*In force 1 April 2004*

*Amended by Ordinance 14 of 2017*

*No subsidiary legislation to 1 November 2017*

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**DRUGS (TRAFFICKING OFFENCES) ORDINANCE, 2003**

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<sup>1</sup> Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 November 2017.

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AN ORDINANCE to make provision of for the prevention of drug trafficking.

### **Short title and commencement**

1. This Ordinance may be cited as the Drug (Trafficking Offences) Ordinance 2003, and comes into force on a day the Governor appoints by notice in the *Gazette*.

### **Interpretation**

2. (1) In this Ordinance, unless the context otherwise requires—
- “**corresponding law**” has the meaning assigned to it by section 3;
- “**Court**”, except where the Supreme Court is specified, means the Supreme Court or Magistrate’s Court exercising jurisdiction at first instance in a matter to which this Ordinance applies;
- “**drug trafficking**” means doing or being concerned in any of the following, whether in St Helena or elsewhere—
- (a) importing or exporting a controlled drug where the importation or exportation is prohibited by section 5 of the Drugs (Prevention of Misuse) Ordinance, 2003 or a corresponding law;
  - (b) producing or supplying a controlled drug where the production or supply contravenes section 7 of that Ordinance or a corresponding law;
  - (c) transporting or storing a controlled drug where possession of the drug contravenes section 8 (1) of that Ordinance or a corresponding law;
- and includes a person doing the following, whether in St Helena or elsewhere, that is, entering into or being otherwise concerned in an arrangement whereby—
- (d) the retention or control by or on behalf of another person of the other person’s proceeds of drug trafficking is facilitated; or
  - (e) 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 section 5(3), 7(2) or (3), 8(3), 13 or 22 of the Drugs (Prevention of Misuse) Ordinance, 2003;
  - (b) an offence under section 23 of this Ordinance and attempting or inciting another to commit such an offence;
  - (c) conspiracy or an attempt to commit any offence specified in paragraphs (a) or (b);
  - (d) aiding, abetting, counselling or procuring the commission of any of those

offences;

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

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

“**Relevant Authority**” means the St Helena Police Service or any other authority involved in the enforcement of the provisions of this Ordinance.

(2) *Omitted (combined with (1))*

(3) The expressions listed in the left hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provision of this Ordinance listed in the right hand column in relation to those expressions:

<i>Expression</i>	<i>Relevant provision</i>
Benefited from drug trafficking	Section 5(3)
Charging order	Section 12(2)
Confiscation order	Section 5(7)
Dealing with property	Section 11(8)
Defendant	Section 5(7)
Gift caught by this Ordinance	Section 4(8)
Making a gift	Section 4(9)
Proceeds of drug trafficking	Section 6(1)(a)
Realisable property	Section 4(1)
Restraint order	Section 11(1)
Value of gift, payment or reward	Section 4(5)
Value of proceeds of drug trafficking	Section 6(1)(b)
Value of property	Section 4(4)

(4) This Ordinance applies to property whether it is situated in St Helena or elsewhere.

(5) References in this Ordinance to offences include a reference to offences committed before the coming into force of this Ordinance, but nothing in this Ordinance imposes any duty or confers any power on the Court in or in connection with proceedings against a person for a drug trafficking offence instituted before the coming into operation of this Ordinance.

(6) References in this Ordinance to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection.

(7) The following subsections have effect from the commencement of this Ordinance.

(8) Property is held by any person if the person any interest in it.

(9) References to property held by a person include a reference to property vested in the person’s trustee in bankruptcy or liquidator.

(10) References to an interest held by a person beneficially in property include a reference to an interest which would be held by the person beneficially if the property were

not so vested.

(11) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(12) Proceedings for an offence are instituted in St Helena—

(a) when a summons or warrant is issued in respect of the offence;

(b) when a person is charged with the offence after being taken into custody without a warrant; or

(c) when a bill of indictment is preferred;

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

(13) Proceedings in St Helena for an offence are concluded—

(a) when (disregarding any power of the Court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings; or

(b) on the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

(14) An order is subject to appeal until (disregarding any power of the Court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

(15) Without affecting any other law, the powers exercisable by the Court are exercisable by the Court of Appeal on appeal from the Court.

### Meaning of “corresponding law”

3. (1) In this Ordinance the expression “**corresponding law**” means –

(a) a law stated in a certificate purporting to be issued by or on behalf of the government of a country outside St Helena 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 in accordance with the Single Convention on Narcotic Drugs signed at New York on 30th March, 1961; or

(b) a law providing for the control and regulation in that country of the production, supply, use, export and import of dangerous or otherwise harmful drugs pursuant to any treaty, convention or other agreement or arrangement to which the Government of St Helena and the government of that country are for the time being parties or to which the Government of the United Kingdom has acceded on behalf of St Helena.

(2) A statement in any such certificate as to the effect of the law mentioned in the certificate or a statement in any such certificate that any facts constitute an offence against that law is conclusive evidence of the matters stated.

### Provisions as to profit

**4. (1)** In this Ordinance, “**realisable property**” means, subject to subsection (2) any property held by—

- (a) the defendant; or
- (b) a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance.

**(2)** Property is not realisable property if an order under section 29 of the Drugs (Prevention of Misuse) Ordinance, 2003 is in force in respect of the property.

**(3)** For the purposes of sections 7 and 8 of this Ordinance, the amount that might be realised at the time a confiscation order is made against the defendant is—

- (a) the total of the values at that time of all the realisable property held by the defendant; less—
  - (b) where there are obligations having priority at that time, the total amounts payable pursuant to such obligations,
- together with the total of the values at that time of all gifts caught by this Ordinance.

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

- (a) where any other person holds an interest in the property, is—
  - (i) the market value of the first-mentioned person’s beneficial interest in the property; less—
  - (ii) the amount required to discharge any encumbrance (other than a charging order) on that interest; and
- (b) in any other case, its market value.

**(5)** Subject to subsection (9), references in this Ordinance to the value at any time (referred to in subsection (6) as the “**material time**”) of a gift caught by this Ordinance or of any payment or reward are references to—

- (a) the value of the gift, payment or reward to the recipient when the person received it, adjusted to take account of subsequent changes in the value of money; or
  - (b) where subsection (6) applies, the value there mentioned,
- whichever is the greater.

**(6)** Subject to subsection (9), if at the material time the recipient person holds—

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

the value referred to in paragraph (5)(b) is the value to the person at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it represents the property which the person received, but disregarding in either case any charging order.

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

- (a) pay an amount due in respect of a fine, or other order of the Court, imposed or made on conviction of an offence, if the fine was imposed or order made before the confiscation order; or
- (b) pay any sum which, if the defendant had been adjudged bankrupt or was being

wound up, would be among the preferential debts.

**(8)** A gift (including a gift made before the coming into force of this Ordinance) is caught by this Ordinance if it was made by the defendant –

- (a) within 6 months before the proceedings were instituted against the defendant; or
- (b) at any time, and was a gift of property—
  - (i) received by the defendant in connection with drug trafficking carried on by the defendant or another, or
  - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by the defendant in that connection.

**(9)** For the purposes of this Ordinance—

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

### **Confiscation of proceeds of drug trafficking**

**5.** **(1)** If a person appears before the Court to be sentenced in respect of one or more drug trafficking offences (and has not previously been sentenced or otherwise dealt with in respect of the conviction for the offence or, as the case may be, any of the offences concerned), the Court must act in accordance with the following subsections.

**(2)** The Court must first determine whether the person has benefited from drug trafficking, as explained in subsections (3) and (4).

**(3)** A person who has at any time (whether before or after the coming into force of this Ordinance) received any payment or other reward in connection with drug trafficking carried on by that or another person has benefited from drug trafficking.

**(4)** If the Court determines that the person has so benefited, the Court must, before sentencing or otherwise dealing with the person in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 8 the amount to be recovered in the person's case by virtue of this section.

**(5)** The Court must then, in respect of the offence or offences concerned—

- (a) order the person to pay that amount;
- (b) take account of the order before—
  - (i) imposing any fine on the person;
  - (ii) making any order involving any payment by the person; or
  - (iii) making any order under section 29 of the Drugs (Prevention of Misuse) Ordinance, 2003; and
- (c) subject to paragraph (b), leave the order out of account in determining the appropriate sentence or other manner of dealing with the person.

(6) Any law restricting the power of the Court dealing with an offender in a particular way from dealing with the offender also in any other way does not by reason only of the making of an order under this section restrict the Court from dealing with an offender in any way the Court considers appropriate in respect of a drug trafficking offence.

(7) In this Ordinance—

- (a) an order made under this section is referred to as a “**confiscation order**”; and
- (b) a reference to a “**defendant**” means a person against whom proceedings have been instituted for a drug trafficking offence, whether or not the person has been convicted.

### **Assessing the proceeds of drug trafficking**

6. (1) For the purposes of this Ordinance—

- (a) any payments or other rewards received by a person at any time (whether before or after the coming into force of this Ordinance) in connection with drug trafficking carried on by that or another person are the person’s proceeds of drug trafficking; and
- (b) the value of the person’s proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

(2) The Court may, for the purpose of determining whether the defendant has benefited from drug trafficking, make the assumptions set out in subsection (3), except to the extent that any of the assumptions are shown to be incorrect in the defendant’s case.

(3) Those assumptions are that—

- (a) any property appearing to the Court to have been—
  - (i) held by the defendant at any time since the conviction, or
  - (ii) transferred to the defendant at any time within 6 years before the proceedings were instituted,
 

was received by the defendant, at the earliest time at which the defendant appears to the Court to have held it, as a payment or reward in connection with drug trafficking carried on by the defendant;
- (b) any expenditure of the defendant since the beginning of that period was met out of payments received by the defendant in connection with drug trafficking carried on by the defendant; and
- (c) for the purpose of valuing any property received or assumed to have been received by the defendant at any time as such reward, the defendant received the property free of any other interests in it.

(4) Subsection (2) does not apply if the only drug trafficking offence in respect of which the defendant appears before the Court to be sentenced is an offence under section 23 of this Ordinance.

(5) For the purpose of assessing the value of the defendant’s proceeds of drug trafficking in a case where a confiscation order has previously been made against the defendant, the Court must leave out of account any of the defendant’s 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.

### Statements relating to drug trafficking

**7. (1)** If—

(a) there is tendered to the Court by the prosecutor a statement as to any matters relevant to the determination whether the defendant has benefited from drug trafficking or to the assessment of the value of the defendant's proceeds of drug trafficking; and

(b) the defendant accepts to any extent any allegation in the statement, the Court may, for the purposes of that determination and assessment, treat that acceptance as conclusive of the matters to which it relates.

**(2)** If—

(a) a statement is tendered under paragraph (1)(a); and

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

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

**(3)** A defendant who fails in any respect to comply with a requirement under subsection (2) may be treated for the purposes of this section as accepting every allegation in the statement apart from any allegation—

(a) in respect of which the defendant has complied with the requirement; ~~and~~ **or**

(b) that the defendant has benefited from drug trafficking or that any payment or other reward was received by the defendant in connection with drug trafficking carried on by the defendant or another.

**(4)** If—

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

(b) the prosecutor accepts to any extent any allegation in the statement, the Court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which it relates.

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

(a) orally before the Court; or

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

**(6)** An acceptance by the defendant under this section that any payment or other reward was received by the defendant in connection with drug trafficking carried on by the defendant or another is not admissible in evidence in any proceedings for an offence.

### Amount to be recovered under confiscation order

**8. (1)** Subject to subsection (3), the amount to be recovered in the defendant's case under the confiscation order is the amount the Court assesses to be the value of the defendant's 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 7 or otherwise), the Court may issue a certificate giving the Court's opinion as to the matters concerned, and must 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 is made is less than the amount the Court assesses to be the value of the defendant's proceeds of drug trafficking, the amount to be recovered in the defendant's case under the confiscation order is the amount appearing to the Court to be the amount that might be so realised.

(4) If, on an application by a prosecutor or a receiver appointed under this Ordinance for an increase in the amount to be recovered under a confiscation order, the Court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it is greater than was thought when the order was made or has subsequently increased), the Court may—

- (a) substitute for that amount an amount (not exceeding the amount assessed as the value of the defendant's proceeds of drug trafficking) that appears to the Court to be appropriate having regard to the amount now shown to be realisable; and
- (b) increase the term of imprisonment fixed in respect of the confiscation order under section 9(2) if the effect of that provision is to increase the maximum period applicable in relation to the order.

### **Application of procedure for enforcing fines**

9. (1) If the Court orders the defendant to pay any amount under section 5, the order has effect as if that amount were a fine that may be recovered.

(2) If the whole or any part of an amount ordered to be paid remains unpaid after a period the Court determines, and if the defendant is an individual, he or she must be sentenced to imprisonment not exceeding the period respectively shown in the following table—

If the amount is £7,000 or less	6 months
If the amount exceeds £7,000 but is not more than £50,000	12 months
If the amount exceeds £50,000 but is not more than £150,000	18 months
If the amount exceeds £150,000 but is not more than £300,000	2 years
If the amount exceeds £300,000 but is not more than £700,000	3 years
If the amount exceeds £700,000 but is not more than £3,000,000	5 years
If the amount exceeds £3,000,000	10 years

(3) If—

- (a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under section 4 in respect of an offence or offences; and
- (b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offences,

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

(4) The reference in subsection (3) to the term of custody which the defendant is liable to serve in respect of the offence or offences is a reference to the term of imprisonment which he or she is liable to serve in respect of the offence or offences and consecutive terms and terms which are wholly or partly concurrent are to be treated as a single term.

### **Cases in which restraint orders and charging orders may be made**

**10.** (1) The powers conferred on the Supreme Court by sections 11 and 12 are exercisable if—

- (a) proceedings have been instituted in St Helena against the defendant for a drug trafficking offence;
- (b) the proceedings have not been concluded; and
- (c) the Supreme Court is satisfied that there is reasonable cause to believe that the defendant has benefited from drug trafficking.

(2) The powers conferred on the Supreme Court by sections 11 and 12 are also exercisable if the Supreme Court is satisfied that—

- (a) a charge is to be laid that a person has or is suspected of having committed a drug trafficking offence; and
- (b) there is reasonable cause to believe that the person has benefited from drug trafficking.

(3) For the purposes of sections 11 and 12, at any time when those powers are exercisable before proceedings have been instituted—

- (a) references in this Ordinance to the defendant are to be construed as references to the person referred to in paragraph (2)(a);
- (b) references in this Ordinance to the prosecutor are to be construed as references to the person who the Supreme Court is satisfied is to have the conduct of the proposed proceedings; and
- (c) references in this Ordinance to realisable property are to be construed as if, immediately before that time, proceedings had been instituted against the person referred to in paragraph (2)(a) for a drug trafficking offence.

(4) If the Supreme Court has made an order under section 11 or 12 by virtue of subsection (2), the Supreme Court must discharge the order if the proposed proceedings are not instituted within a time the Supreme Court considers reasonable.

### **Restraint orders**

**11.** (1) The Supreme Court may by order (in this Ordinance referred to as a “**restraint order**”) prohibit any person from dealing with any realisable property, subject to any conditions and exceptions specified in the order.

(2) A restraint order may apply to—

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

(3) This section does not have effect in relation to any property for the time being

subject to a charge under section 12.

- (4) A restraint order—
- (a) may be made only on an application by the prosecutor;
  - (b) may be made on an *ex parte* application to a judge in chambers; and
  - (c) must provide for notice to be given to persons affected by the order.

- (5) A restraint order—
- (a) may be discharged or varied in relation to any property; and
  - (b) must be discharged when proceedings for the offences are concluded.

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

(7) If the Supreme Court has made a restraint order, the Supreme Court may at any time appoint a receiver—

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

subject to any conditions and exceptions specified by the Supreme 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.

(8) For the purposes of this section, dealing with property held by any person includes (without limiting 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 property from St Helena.

(9) If the Supreme Court has made a restraint order, a police officer may, for the purpose of preventing any realisable property being removed from St Helena, seize the property.

(10) Property seized under subsection (9) must be dealt with in accordance with the Supreme Court's directions.

- (11) The Registered Land Ordinance, 1980, applies—
- (a) in relation to restraint orders - as it applies in relation to orders affecting land made by the Supreme Court for the purpose of enforcing judgments or recognisances;
  - (b) in relation to applications for restraint orders - as it applies in relation to other pending land actions.

### **Charging orders in respect of land, securities, etc.**

**12.** (1) The Supreme Court may make a charging order on realisable property for securing the payment to the Crown—

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

confiscation order.

(2) For the purposes of this Ordinance, a charging order is an order made under this section imposing on any such realisable property as may have been specified in the order a charge of securing the payment of money to the Crown.

(3) A charging order—

- (a) may be made only on an application by the prosecutor;
- (b) may be made on an *ex parte* application to a judge in chambers;
- (c) must provide for notice to be given to persons affected by the order; and
- (d) may be made subject to any conditions the Supreme Court thinks fit, in particular (without limiting the power) conditions as to the time when the charge is to become effective.

(4) Subject to subsection (6), a charge may be imposed by a charging order only on—

- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance—
  - (i) in any asset of a kind mentioned in subsection (5), or
  - (ii) under any trust; or
- (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

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

- (a) land in St Helena; or
- (b) securities of any of the following kinds—
  - (i) Government stock,
  - (ii) stock of any body (other than a building society) registered or incorporated within St Helena;
  - (iii) stock of any body incorporated outside of St Helena, being stock registered in a register kept within St Helena.

(6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in paragraph (5)(b), the Supreme Court may provide for the charge to extend to any interest or dividend payable in respect of that asset.

(7) The Supreme Court may make an order discharging or varying the charging order and must make an order discharging the charging order if the proceedings for the offence are concluded or the amount payment of which is secured by the charge is paid into the Supreme Court.

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

### **Charging orders: supplementary provisions**

13. Subject to any provision made under section 12 or by rules of court, a charge

imposed by a charging order has the like effect and is enforceable in the Supreme Court in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees in writing and signed by them.

### **Realisation of property**

**14. (1)** If in proceedings instituted for a drug trafficking offence—

- (a) a confiscation order is made;
- (b) the order is not subject to appeal; and
- (c) the proceedings have not been concluded,

the Supreme Court may, on an application by the prosecutor, exercise the powers conferred by subsections (2) to (6).

**(2)** The Supreme Court may appoint a receiver in respect of realisable property.

**(3)** The Supreme Court may empower a receiver appointed under subsection (2), under section 11 or pursuant to a charging order—

- (a) to enforce any charge imposed under section 12 on realisable property or on interest or dividends payable in respect of such property; or
- (b) in relation to any realisable property other than property for the time being subject to a charge under section 12, to take possession of the property subject to any conditions or exceptions specified by the Supreme Court.

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

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

**(6)** The Supreme Court may –

- (a) 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 Ordinance as the Supreme Court directs; and
- (b) may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

**(7)** Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 12.

**(8)** The Supreme Court must not in respect of any property exercise the powers conferred by paragraph (3)(a) or subsection (5) or (6) unless a reasonable opportunity has been given for persons holding an interest in the property to make representations to the Supreme Court.

### **Application of proceeds of realisation and other sums**

**15. (1)** Subject to subsection (2), the following sums in the hands of a receiver appointed under section 11 or 12 or pursuant to a charging order, that is—

- (a) the proceeds of the enforcement of any charge imposed under section 12;

(b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 11 or 14; and  
 (c) any other sums, being property held by the defendant,  
 must first be applied in payment of expenses that are incurred by a receiver and are payable under section 20, and then must, after any payments the Supreme Court directs have been made out of those sums, be applied on the defendant'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 the receiver, the receiver must distribute those sums—  
 (a) among such of those persons who held property which has been realised under this Ordinance; and  
 (b) in such proportions,  
 as the Supreme Court directs, after giving a reasonable opportunity for such persons to make representations to the Supreme Court.

(3) The receipt of any sum by the Registrar of the Supreme Court on account of an amount payable under a confiscation order, whether the order is made in the Magistrates' Court or the Supreme Court, reduces the amount so payable; but the Registrar of the Supreme Court must apply the money received for the purposes specified in this section and in the order so specified.

(4) The Registrar of the Supreme Court must first pay any expenses incurred by a receiver or a liquidator and payable under section 20 but not already paid under subsection (1) of this section.

(5) If the money was paid to the Registrar of the Supreme Court by a receiver appointed under section 11 or section 14 or pursuant to a charging order, the Registrar of the Supreme Court must next pay the receiver's remuneration and expenses.

(6) After making—  
 (a) any payment required by subsection (4); and  
 (b) in a case to which subsection (5) applies, any payment required by that subsection,  
 the Registrar of the Supreme Court must reimburse any amount paid under section 19.

(7) Any balance in the hands of the Registrar of the Supreme Court after the Registrar has made all payments required by the foregoing provisions of this section is to be treated as if it were a fine imposed by the Supreme Court.

### **Exercise of powers of Supreme Court or receiver**

16. (1) The following provisions apply to the powers conferred on the Supreme Court by sections 11 to 15, or on a receiver appointed under section 11 or 14 or pursuant to a charging order.

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

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

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

(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 is to be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

### **Variation of confiscation order**

17. (1) If, on an application by the defendant in respect of a confiscation order, the Supreme Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order, the Supreme Court must issue a certificate to that effect giving the Supreme Court's reasons.

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

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

(3) If a certificate has been issued under subsection (1), the defendant may apply to the Supreme Court for the amount to be recovered under the order to be reduced.

(4) The Supreme Court must, on an application under subsection (3)—

- (a) substitute for the amount to be recovered under the order any lesser amount the Supreme Court thinks just in all the circumstances of the case; and
- (b) substitute, if necessary, the appropriate term of imprisonment in accordance with section 8 of this Ordinance.

### **Bankruptcy of defendant, etc.**

18. (1) If a person who holds realisable property is adjudged bankrupt—

- (a) property for the time being subject to a restraint order made before adjudging the person bankrupt; and
- (b) any proceeds of property realised by virtue of section 11(7) or 14(5) or (6) for the time being in the hands of a receiver appointed under section 11 or 14,

are excluded from the property of the bankrupt.

(2) If a person has been adjudged bankrupt, the powers conferred on the Supreme Court by sections 11 to 15 or on a receiver so appointed must not be exercised on—

- (a) property of the bankrupt for the time being; and
- (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed in the bankruptcy.

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

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

(4) If a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Ordinance—

- (a) no order may be made in any bankruptcy proceedings in respect of the making of the gift at any time when proceedings for a drug trafficking offence have been instituted against the person and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or a charging order; and
- (b) any order made in bankruptcy proceedings after the conclusion of the proceedings must take into account any realisation under this Ordinance of property held by the person to whom the gift was made.

### **Winding up of company holding realisable property**

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

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property realised by virtue of section 11(7) or 14(5) or (6) for the time being in the hands of a receiver appointed under section 11 or 14.

(2) If, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Supreme Court by sections 10 to 14 or on a receiver so appointed must not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—

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

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

(4) In this section—

“**company**” means any company which can be wound up under any law for the time being in force in St Helena;

“**relevant time**” means—

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

### **Receivers and liquidators dealing with property subject to restraint order**

**20. (1)** Without affecting any other written law in St Helena, if—

- (a) any person acting as a receiver or liquidator seizes or disposes of any property in relation to which the person’s functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal the person believes, and has reasonable grounds for believing, that he or she is entitled (whether pursuant to an order of the Supreme Court or otherwise) to seize or dispose of that property,

the person is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by the person’s negligence in so acting.

**(1A)** In the circumstances described in subsection (1), the person acting as receiver or liquidator has a lien on the property or the proceeds of its sale for any of the person’s expenses incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of the person’s remuneration as may reasonably be assigned for the person’s acting in connection with those proceedings.

**(2)** A person who, acting as a receiver or liquidator incurs expenses—

- (a) in respect of property as mentioned in paragraph (1)(a) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
- (b) other than in respect of property as so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,

is entitled (whether or not the person has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 15.

### **Receivers: supplementary provisions**

**21. (1)** If a receiver appointed under section 11 or 14 or pursuant to a charging order takes any action—

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

the receiver is not liable to any person in respect of any loss or damage resulting from the

receiver's action except in so far as the loss or damage is caused by the receiver's negligence.

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed must be paid by the prosecutor or, in a case where proceedings for a drug trafficking offence are not instituted, by the person on whose application the receiver was appointed.

### **Compensation**

22. (1) If proceedings are instituted against a person for a drug trafficking offence or offences and either—

- (a) the proceedings do not result in the persons' conviction for any drug trafficking offence; or
- (b) the person is convicted of one or more drug trafficking offences, but—
  - (i) the conviction or convictions concerned are quashed; or
  - (ii) the person is pardoned by the Governor in respect of the conviction or convictions,

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

(2) The Supreme Court must not order compensation to be paid in any case unless it is satisfied that—

- (a) there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned; and
- (b) the applicant has suffered substantial loss in consequence of anything done in relation to the property by or pursuant to an order of the Supreme Court under sections 11 to 14.

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

(4) The amount of compensation to be paid under this section is to be such as the Supreme Court thinks just in all the circumstances of the case.

### **Assisting another to retain the benefit of drug trafficking**

23. (1) Subject to subsection (3), it is an offence for a person to enter into or is otherwise be concerned in an arrangement whereby—

- (a) the retention or control by or on behalf of another person ('A') of A's proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
- (b) A's proceeds of drug trafficking are used—
  - (i) to secure that funds are placed at A's disposal; or
  - (ii) for A's benefit to acquire property by way of investment,

knowing or suspecting that A is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking.

Penalty: (a) on summary conviction – a fine of £2,000 or imprisonment for 18 months, or both;

- (b) on conviction on indictment – an unlimited fine and imprisonment for 14 years, or both.

A fine, or imprisonment for 14 years, or both.

(2) In this section, references to any person’s proceeds of drug trafficking include a reference to any property which in whole or in part directly or indirectly represented in the person’s hands the proceeds of drug trafficking.

(3) If a person discloses to the Relevant Authority a suspicion or belief that any funds or investments are derived from or used in connection with drug trafficking or any matter on which such a suspicion or belief is based—

- (a) the disclosure are not to be treated as a breach of any restriction upon the disclosure of information imposed by contract; and
- (b) if the person does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, the person does not commit an offence under this section if the disclosure is made in accordance with this paragraph, that is, it is made—
  - (i) before the person does the act concerned, being an act done with the consent of the Relevant Authority, or
  - (ii) after the person does the act, but on the person’s initiative and as soon as it is reasonable for the person to make it.

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

- (a) did not know or suspect that the arrangement related to any person’s proceeds of drug trafficking;
- (b) did not know or suspect that by the arrangement, the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1); or
- (c) (i) intended to disclose to the Relevant Authority such a suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement; but—
  - (ii) there is reasonable excuse for the person’s failure to make disclosure in accordance with paragraph (3)(b).

(5) *Omitted*

(6) No member of the Relevant Authority or other person commits an offence under this section in respect of anything done by the member or person in the course of acting in connection with the enforcement, or intended enforcement, of this Ordinance.

### **Enforcement of other external orders**

24. (1) The Governor in Council may by Order—

- (a) direct in relation to a country or territory outside of St Helena designated by the order (a “**designated country**”) that, subject to any modifications specified, this Ordinance applies 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 provision—
  - (i) in connection with the taking of action in the designated country with a view to satisfying a confiscation order,
  - (ii) as to evidence or proof of any matter for the purposes of this section and section 25, and
  - (iii) for incidental, consequential and transitional matters, that appears to the Governor in Council to be expedient; and
- (c) without limiting this subsection, direct that in specified circumstances, proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order are to be treated as reducing the amount payable under the order to a specified extent.

(2) In this section—

“**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; and

“**modifications**” includes additions, alterations and omissions.

(3) An order of the Governor in Council under this section may make different provision for different cases or classes of cases.

(4) The power to make an order under this section includes power to modify this Ordinance in such a way as to confer power on a person to exercise a discretion.

### **Registration of external confiscation orders**

25. (1) On an application made by or on behalf of the Government of a designated country, the Supreme Court may register an external confiscation order made there if the court is—

- (a) satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) satisfied, if the person against whom the order is made did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable the person to defend them; and
- (c) of the opinion that enforcing the order in St Helena would not be contrary to the interests of justice.

(2) In subsection (1), “**appeal**” includes—

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial or a stay of execution.

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

### **Orders to make material available**

26. (1) A police officer may, for the purpose of an investigation into drug trafficking, apply to the Supreme Court for an order under subsection (2) in relation to

particular material or material of a particular description.

**(2)** Subject to section 28(1), if on such an application the Supreme Court is satisfied that the conditions in subsection (4) are fulfilled, the Supreme Court may make an order that the person who appears to the Supreme Court to be in possession of the material to which the application relates must—

- (a) produce it to a police officer for him or her to take away; or
- (b) give a police officer access to it, within a period the order specifies.

**(3)** The period to be specified in an order under subsection (2) is 7 days, unless it appears to the Supreme 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 there are reasonable grounds —

- (a) for suspecting that a specified person has carried on or has benefited from drug trafficking;
- (b) 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 or excluded material; and
- (c) for believing that it is in the public interest, having regard—
  - (i) to the benefit likely to accrue to the investigation if the material is obtained, and
  - (ii) to the circumstances under which the person in possession of the material holds it,
 that the material should be produced or that access to it should be given.

**(5)** If the Supreme Court makes an order under paragraph (2)(b) in relation to material on any premises, the Supreme Court may, on the application of a police officer, order any person who appears to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material.

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

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

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

- (a) an order under paragraph (2)(a) has 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 (2)(b) has 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) does not confer any right to production of, or access to, items subject to legal privilege or excluded material within the meaning of Part III of the Police and Criminal Evidence Ordinance, 2003;

- (b) has effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by written law or otherwise; and
- (c) may be made in relation to material in the possession of a government department.

### **Authority for search**

**27. (1)** A police officer may, for the purpose of an investigation into drug trafficking, apply to the Supreme Court for a warrant under this section in relation to specified premises.

**(2)** On an application under subsection (1), the Supreme Court may issue a warrant authorising a police officer to enter and search the premises if the Supreme Court is satisfied that—

- (a) an order under section 26 in relation to material on the premises has not been complied with; and
- (b) the conditions in either subsection (3) or (4) are fulfilled.

**(3)** The conditions referred to in paragraph (2)(b) 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 section 26(4)(b) and (c) are fulfilled in relation to any material on the premises; and
- (c) it would not be appropriate to make an order under that section in relation to the material because—
  - (i) it is not practicable to communicate with any person entitled to produce the material,
  - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
  - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the material.

**(4)** The conditions referred to in paragraph (2)(c) 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 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 practicable to communicate with any person entitled to grant entry to the premises;
  - (ii) entry to the premises will not be granted unless a warrant is produced, or
  - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a police officer arriving at the premises could secure immediate entry to them.

**(5)** A police officer who has entered premises in the execution of a warrant issued

under this section may seize and retain any material, other than items subject to legal privilege and excluded material, within the meaning of Part III of the Police and Criminal Evidence Ordinance, 2003, 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.

#### **Meaning of “items subject to legal privilege”**

28. *Omitted*

#### **Meaning of “excluded material”**

29. *Omitted*

#### **Meaning of “personal records”**

30. *Omitted*

#### **Meaning of “journalistic material”**

31. *Omitted*

#### **Disclosure of information held by government departments**

32. (1) Subject to subsection (4), the Supreme Court may on an application by the prosecutor order any material mentioned in subsection (3) which is in the possession of a government department to be produced to the Supreme Court within a period the Supreme Court specifies.

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

- (a) the powers conferred on the Supreme Court by sections 11(1) and 12(1) are exercisable by virtue of section 10(1); or
- (b) those powers are exercisable by virtue of section 10(2) and the Supreme Court has made a restraint or charging order which has not been discharged,

but if the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b), section 10(3) applies for the purposes of this section as it applies for the purposes of sections 11 and 12.

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

- (a) has been submitted to an officer of a government department by the defendant or by a person who has at any time held property which was realisable property;
- (b) has been made by an officer of a government department in relation to the defendant or such a person; or
- (c) is correspondence which passed between an officer of a government department and the defendant or such a person,

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

(4) An order under subsection (1) must not require the production of any material

that is likely to contain information that would facilitate the exercise of the powers conferred on the Supreme Court by sections 12 to 14 or on a receiver appointed under section 11 or 14 or pursuant to a charging order.

(5) The Supreme Court may, by order, authorise the disclosure to such a receiver of any material produced under subsection (1) or any part of such material, but the Supreme Court must not make an order under this subsection unless a reasonable opportunity has been given for an officer of the department to make representations to the Supreme Court.

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

(7) The Supreme Court may, by order, authorise the disclosure to a police officer of any material produced under subsection (1) or any part of such material, but the Supreme Court must not make an order under this subsection unless—

- (a) a reasonable opportunity has been given for an officer of the department to make representations to the Supreme Court; and
- (b) it appears to the Supreme Court that the material is likely to be of substantial value in exercising functions relating to drug trafficking.

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

(9) Material may be produced or disclosed pursuant to this section regardless of any obligation as to secrecy or other restriction upon the disclosure of information imposed by written law or otherwise.

(10) An order under subsection (1) and, in the case of material in the possession of a government department, an order under section 26(2) may require any officer of the department (whether named in the order or not) who is for the time being in possession of the material concerned to comply with the order, and such an order must be served as if the proceedings were civil proceedings against the department.

(11) The person on whom such an order is served must—

- (a) take all reasonable steps to bring it to the attention of the officer concerned; and
- (b) if the order is not brought to that officer's attention within the period referred to in subsection (1), report the reasons for the failure to the Supreme Court;

and any other officer of the department in receipt of the order must also take such the steps mentioned in paragraph (a).

### **Offence of prejudicing investigation**

33. (1) If in relation to an investigation into drug trafficking –

- (a) an order under section 26 has been made or has been applied for and not been refused; or
- (b) a warrant under section 27 has been issued,

any person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation commits an offence.

Penalty: A fine, or imprisonment for 5 years.

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

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

(3) *Omitted*

**Repeal**

34. *Omitted*

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