

No. S 12

CONSTITUTION OF BRUNEI DARUSSALAM

(Order under section 83(3))

EMERGENCY (DRUG TRAFFICKING) (RECOVERY OF PROCEEDS) ORDER, 1996

In exercise of the power conferred by subsection (3) of section 83 of the Constitution of Brunei Darussalam, His Majesty The Sultan and Yang Di-Pertuan hereby makes the following Order –

1. (1) The long title of this Order is "An Order to make provision for the recovery of the proceeds of drug trafficking and other provision in connection with drug trafficking". Long title
and citation.

(2) This Order may be cited as the Emergency (Drug Trafficking) (Recovery of Proceeds) Order, 1996.

2. (1) In this Order – Interpretation.

"Bureau" means the Narcotics Control Bureau ;

"charging order" means an order made under subsection (1) of section 12 ;

"confiscation order" means an order made under section 3 ;

"corresponding law" has the same meaning as in the Misuse of Drugs Act ; Chapter 27.

"defendant" means a person against whom proceedings have been instituted for a drug trafficking offence (whether or not he has been convicted) ;

"drug trafficking" means doing or being concerned in any of the following, whether in Brunei Darussalam or elsewhere –

(a) trafficking a controlled drug, where the trafficking contravenes section 3 of the Misuse of Drugs Act or a corresponding law ; Chapter 27.

(b) possession of a controlled drug, for the purpose of trafficking, where possession for that purpose contravenes section 3A of that Act or a corresponding law ;

(c) manufacturing a controlled drug where the manufacture of the drug contravenes section 4 of that Act or a corresponding law ;

- (d) importing or exporting a controlled drug where the importation or exportation is prohibited by section 5 of that Act or a corresponding law ;
- (e) the cultivation of any plant of the genus cannabis, or any plant of the species papaver somniferum or any plant of the genus erythroxylon, where the cultivation contravenes section 8 of that Act or a corresponding law ;

and includes a person doing the following, whether in Brunei Darussalam or elsewhere, that is entering into or being otherwise concerned in an arrangement whereby –

- (i) the retention or control by or on behalf of another person of the other person's proceeds of drug trafficking is facilitated ; or
- (ii) the proceeds of drug trafficking by another person are used to secure funds that are placed at the other person's disposal or are used for the other person's benefit ;

"drug trafficking offence" means any of the following –

- Chapter 27. (a) an offence under sections 3, 3A, 4, 5 or 11 of the Misuse of Drugs Act ;
- Chapter 36. (b) an offence under section 126 of the Customs Act in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 5 of the Misuse of Drugs Act ;
- (c) an offence under sections 20 or 22 of this Order ;
- Chapter 22. (d) an offence under section 120A of the Penal Code of criminal conspiracy to commit any of the offences in paragraphs (a) and (b) ;
- (e) an offence of attempting to commit any of those offences ;
- (f) an offence at common law of inciting another to commit any of those offences ;
- (g) abetting the commission of any of those offences ;

"interest", in relation to property, includes right ;

"material" includes any book, document or other record in any form whatsoever, and any container or article relating thereto ;

“officer of the Bureau” means the Director, Deputy Director and any officer of the Bureau ;

“property” includes money and all other property, movable or immoveable, including things in action and other intangible or incorporeal property ;

“realisable property” means –

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

Provided that property is not realisable property if an order under section 25 of the Misuse of Drugs Act is in force in respect of the property ; Chapter 27.

“restraint order” means an order made under subsection (1) of section 11.

(2) For the purposes of sections 3 and 7, the amount that might be recovered at a 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 in pursuance of such obligations,

together with the total of the values at that time of all gifts caught by this Order.

(3) Subject to subsections (4) to (8), for the purpose of this Order the value of property (other than cash) in relation to any person holding the property –

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

(4) Subject to subsection (8), a reference in this Order to the value at any time (referred to in subsection (5) as “the material time”) of a gift caught by this Order of any payment or reward is a reference to –

- (a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money ; or
- (b) where subsection (5) applies, the value there mentioned,

whichever is the greater.

(5) Subject to subsection (8), if at the material time the recipient holds –

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

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

(6) For the purpose of subsection (2), an obligation has priority at any time if it is an obligation of the defendant to pay –

- (a) an amount due in respect of a fine or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order ; or
- (b) any sum which, if the defendant had been adjudged bankrupt or was being wound up, would be among the preferential debts, which expression –

Chapter 67.

- (i) in relation to bankruptcy, means the debts to be paid in priority under section 38 of the Bankruptcy Act (assuming the date of the confiscation order to be the date of the receiving order) ; and

Chapter 39.

- (ii) in relation to winding up, means the preferential debts referred to in subsection (1) of section 250 of the Companies Act (assuming the date of the confiscation order to be the relevant date for the purpose of that section).

(7) A gift (including a gift made before the commencement of this Order) is caught by this Order if –

- (a) it was made by the defendant at any time since the beginning of the period of six years ending when the proceedings for a

drug trafficking offence were instituted against him or, where no such proceedings have been instituted, when an application under section 3 for a confiscation order was made against him ; or

(b) it was made by the defendant at any time and was a gift of property –

(i) received by the defendant in connection with drug trafficking carried on by him or another ; or

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

(8) For the purpose of this Order –

(a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant ; and

(b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

(9) This Order applies to property whether it is situated in Brunei Darussalam or elsewhere.

(10) A reference in this Order to an offence includes a reference to an offence committed before the commencement of this Order.

(11) A reference in this Order to anything received in connection with drug trafficking includes a reference to anything received both in that connection and in some other connection.

(12) The following provisions shall have effect for the interpretation of this Order –

(a) property is held by any person if he holds any interest in it ;

(b) a reference to an interest in property held by a person beneficially includes, where the property is vested in his trustee in bankruptcy or in a liquidator, a reference to an interest which would be held by him beneficially if the property were not so vested ;

- (c) property is transferred by one person to another if the first person transfers or grants to the other any interest in it ;
- (d) proceedings in Brunei Darussalam for a drug trafficking offence are instituted –
 - (i) when a summons or warrant of arrest has been issued in respect of the offence ; or
 - (ii) when a person is charged with the offence after being taken into custody without a warrant,

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

- (e) proceedings in Brunei Darussalam for a drug trafficking offence are concluded –
 - (i) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings ; or
 - (ii) 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) ;
- (f) an order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

Confiscation of proceeds of drug trafficking

Confiscation orders.

3. (1) Subject to section 30, where 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 his conviction for the offence or, as the case may be, any of the offences concerned), the court shall act in accordance with this section.

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

(3) For the purpose of this Order, a person who has at any time (whether before or after the commencement of this Order) received in any way whatsoever any payment or other reward in connection with drug

trafficking carried on by him or another has benefited from drug trafficking.

{4} If the court determines that he has so benefited, the court shall, before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 7 the amount to be recovered in his case by virtue of this section.

{5} The court shall then, in respect of the offence or offences concerned –

- (a) order him to pay that amount ;
- (b) take account of the order before –
 - (i) imposing any fine on him ;
 - (ii) making any order involving any payment by him ; or
 - (iii) making any order under section 25 of the Misuse of Drugs Act ; and
- (c) subject to paragraph (b), leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

Chapter 27.

{6} No written law restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall 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.

4. (1) If, on an application by the defendant in respect of a confiscation order, the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order the court shall issue a certificate to that effect, giving its reasons.

Variation of
confiscation
orders.

{2} For the purpose 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 court shall take into account the extent to which any property held by him may be distributed among creditors ; and
- (b) the court may disregard any inadequacy in the realisable property which appears to it 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 Order from any risk of realisation under this Order.

(3) Where a certificate has been issued under subsection (1), the defendant may apply to the court which made the confiscation order for the amount to be recovered thereunder to be reduced.

(4) The court shall, on an application under subsection (3), substitute for the amount to be recovered under the order such lesser amount as it thinks just in all the circumstances of the case.

Assessing
proceeds of drug
trafficking.

5. (1) Subject to section 32, for the purposes of this Order –

- (a) any payment or other reward received by a person at any time (whether before or after the commencement of this Order) in connection with drug trafficking carried on by him or another is his proceeds of drug trafficking ; and
- (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payment or other rewards.

(2) The court may, for the purpose of determining whether the defendant has benefited from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking, make the following assumptions, 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 –
 - (i) to have been held by him at any time since his conviction ; or
 - (ii) to have been transferred to him at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him,

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

- (b) any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him ; and
- (c) for the purpose of valuing any property received or assumed to have been received by him at any time as such

a reward, he received the property free of any other interests in it.

(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 sections 20 or 22.

(5) For the purpose of assessing the value of the defendant's proceeds of drug trafficking in a case where a confiscation order has previously been made against him, the court shall leave out of account any of this 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.

6. (1) Where –

- (a) there is tendered to the court by the prosecution 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 his proceeds of drug trafficking ; and
- (b) the defendant accepts to any extent any allegation in the statement,

Statements
relating to
drug trafficking.

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

(2) Where –

- (a) a statement is tendered under paragraph (a) of subsection (1) ; and
- (b) the court is satisfied that a copy of that statement has been served on the defendant,

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

(3) If the defendant fails in any respect to comply with a requirement under subsection (2), he may be treated for the purpose of this section as accepting every allegation in the statement apart from –

- (a) any allegation in respect of which he has complied with the requirement ; and
- (b) any allegation that he has benefited from drug trafficking or that any payment or other reward was received by him in

connection with drug trafficking carried on by him or another.

(4) Where –

- (a) there is tendered to the court by the defendant a statement as to any matter relevant to determining the amount that might be realised at the time the confiscation order is made ; and
- (b) the prosecution accepts to any extent any allegation in the statement,

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

(5) An allegation may be accepted or a matter indicated for the purpose of this section either –

- (a) orally before the court ; or
- (b) in writing in accordance with any rules of court.

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

Amount to be recovered under confiscation order.

7. (1) Subject to subsection (3), the amount to be recovered in the defendant's case under the confiscation order shall be the amount the court assesses to be the value of his proceeds of drug trafficking.

(2) If the court is satisfied as to any matter relevant for determining the amount that might be recovered at the time the confiscation order is made (whether by an acceptance under section 6 or otherwise), the court may issue a certificate giving its opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3).

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

Protection of rights of third parties.

8. (1) Where an application has been made for a confiscation order, any person who asserts an interest in the property may apply to the court, before the confiscation order is made, for an order under subsection (2).

(2) If a person applies to the court for an order under this subsection

in respect of his interest in the property and the court is satisfied –

- (a) that he was not in any way involved in the defendant's drug trafficking ; and
- (a) that he acquired the interest –
 - (i) for sufficient consideration ; and
 - (ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time he acquired it, property that was involved in drug trafficking,

the court shall make an order declaring the nature, extent and value (as at the time the order is made) of his interest.

(3) Subject to subsection (4), where a confiscation order has already been made, a person who asserts an interest in the property may apply under this subsection to the court for an order under subsection (2).

- (4) A person who –
 - (a) had knowledge of the application for the confiscation order before the order was made ; or
 - (b) appeared at the hearing of that application,

shall not be permitted to make an application under subsection (3), except with the leave of the court.

(5) A person who makes an application under subsections (1) or (3) shall give not less than 7 days written notice of the making of the application to the Public Prosecutor who shall be a party to any proceedings on the application.

Enforcement etc. of confiscation orders

9. (1) Subject to subsection (4), where the court has ordered the defendant to pay any amount under section 3 of this Order, section 253 of the Criminal Procedure Code shall have effect as if that amount were a fine imposed on him by the court.

Application of
procedure for
enforcing
fines.
Chapter 7.

- (2) Where –
 - (a) a warrant of commitment has been issued for a default in payment of an amount so ordered to be paid in respect of an offence or offences ; and

- (b) at the time the warrant was issued, the defendant is liable to serve a term of imprisonment in respect of the offence or offences,

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

(3) For the purpose of paragraph (b) of subsection (2) –

- (a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term ; and
- (b) there shall be disregarded any term of imprisonment fixed under section 254 of the Criminal Procedure Code for which a warrant of commitment has not been issued at that time.

Chapter 7.

(4) Where a defendant has been convicted of a drug trafficking offence and sentenced to death, any amount which the court has ordered him to pay under section 3 may, on an application by the prosecution to the High Court, be realised by the High Court exercising the powers conferred by subsections (3) to (7) of section 13.

Cases in which restraint orders and charging orders may be made.

10. (1) The powers conferred on the High Court by subsection (1) of section 11 to make a restraint order and by subsection (1) of section 12 to make a charging order are exercisable where –

- (a) proceedings have been instituted, whether in Brunei Darussalam or elsewhere, against the defendant for a drug trafficking offence ;
- (b) the proceedings have not been concluded ; and
- (c) the court is satisfied that there is reasonable cause to believe that the defendant has benefited from drug trafficking.

(2) Those powers are also exercisable where the High Court is satisfied that –

- (a) investigation for a drug trafficking offence has been commenced against any person who is within the jurisdiction ;
or
- (b) investigation for a drug trafficking offence having been commenced against a person, he has died, cannot be found or is outside the jurisdiction,

and that there is reasonable cause to believe that he 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) a reference in this Order to the defendant shall be construed as a reference to the person referred to in subsection (2) ;
- (b) a reference in this Order to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to subsection (2) for a drug trafficking offence.

(4) Where the court has made an order under subsection (1) of section 11 or under subsection (1) of section 12 by virtue of subsection (2) of this section, the court shall discharge the order if proceedings in respect of the offence are not instituted within such time as it considers reasonable.

11. (1) The High Court may by a restraint order prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

Restraint orders.

(2) A restraint order may apply –

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

(3) This section shall 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 prosecution ;
- (b) may be made on an ex parte application to a Judge in chambers ; and
- (c) shall provide for notice to be given to persons affected by the order.

(5) A restraint order –

- (a) may be discharged or varied in relation to any property ; and
- (b) shall be discharged 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) Where the High Court has made a restraint order, the court may at any time appoint a receiver –

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

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

(8) For the purpose of this section, dealing with property held by any person includes (without prejudice to the generality of the expression) –

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

(9) Where a restraint order has been made a police officer or an officer of the Bureau may, for the purpose of preventing any realisable property being removed from Brunei Darussalam, seize the property.

(10) Property seized under subsection (9) shall be dealt with in accordance with the directions of the High Court.

Charging orders
in respect of
land and
securities.

12. (1) The High Court may make a charging order imposing on such realisable property as may be specified therein a charge for securing the payment of money to the Government –

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

(2) A charging order –

- (a) may be made only on an application by the prosecution ;
- (b) may be made on an ex parte application to a Judge in chambers ;

- (c) shall provide for notice to be given to persons affected by the order ; and
- (d) may be made subject to such conditions as the court thinks fit and, without prejudice to the generality of this paragraph, to such conditions as it thinks fit as to the time when the charge is to become effective.

(3) Subject to subsection (5), a charge may be imposed by a charging order only on –

- (a) an interest in realisable property, being an interest held beneficially by the defendant or by a person to whom he has directly or indirectly made a gift caught by this Order –
 - (i) in an asset of a kind mentioned in subsection (4) ; or
 - (ii) under any trust ; or
- (b) an 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.

(4) The assets referred to in subsection (3) are –

- (a) land in Brunei Darussalam ; or
- (b) stock or shares in any limited company or other body registered under the Companies Act.

Chapter 39.

(5) In any case where a charge is imposed by a charging order on an interest in an asset of a kind mentioned in paragraph (b) of subsection (4), the court may provide for the charge to extend to any interest or dividend payable in respect of that asset.

(6) The court may make an order discharging or varying the charging order and shall 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 court.

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

(8) Subject to any provision made under section 13 or by any rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

Realisation
of property.

13. (1) Where –

- (a) in proceedings instituted for a drug trafficking offence, a confiscation order is made ;
- (b) the order is not subject to appeal ; and
- (c) the proceedings have not been concluded, the High Court may, on an application by the prosecution, exercise the powers conferred by subsections (3) to (7).

(2) The High Court may, on the application of the prosecution, also exercise the powers conferred by subsections (3) to (7) where –

- (a) a confiscation order has been made against a person who, by reason of section 30, has been taken to have been convicted of a drug trafficking offence ;
- (b) the order is not subject to appeal ; and
- (c) the order has not been satisfied, whether by payment of the amount due under the order or by the defendant serving imprisonment by default.

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

(4) The court may empower a receiver appointed under subsection (3), under section 11 or in pursuance of 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 ; and
- (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 such conditions and exceptions as may be specified by the court.

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

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

(7) The court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a

gift caught by this Order as it may direct and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(8) Subsections (5) to (7) do not apply to property for the time being subject to a charge under section 12.

(9) The court shall not in respect of any property exercise the powers conferred by paragraph (a) of subsection (4) or by subsections (6) or (7) unless a reasonable opportunity has been given for any person holding any interest in the property to make representations to it.

14. (1) Subject to subsection (2), the following sums in the hands of a receiver appointed under sections 11 or 13 in pursuance of a charging order –

Application of
proceeds of
realisation
and other sums.

- (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 sections 11 or 13 ; and
- (c) any other sums, being property held by the defendant,

shall, after such payments (if any) as the High Court may direct 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 such a receiver, the receiver shall distribute those sums –

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

as the High Court may direct after giving a reasonable opportunity for such persons to make representations to it.

(3) The receipt of any sum by the High Court on account of an amount payable under a confiscation order shall reduce the amount so payable, but it shall apply the money received for the purposes specified in this section and in the order so specified.

(4) If the money was paid to the High Court by a receiver appointed under sections 11 or 13 or in pursuance of a charging order, the High Court shall next pay –

- (a) the receiver's remuneration and expenses ; and
- (b) the expenses incurred by the police and the Bureau in the preservation and maintenance of the property.

(5) After making, in a case to which subsection (4) applies, any payment required by that subsection, the High Court shall reimburse any amount paid under subsection (2) of section 16.

(6) Any balance in the hands of the High Court after it has made all payments received by the foregoing provisions of this section shall be treated for the purpose of this Order as if it were a fine imposed by it.

Exercise of powers by High Court or receiver.

15. (1) The following provisions apply to the powers conferred on the High Court by sections 11 to 14, on a receiver appointed under sections 11 or 13 or in pursuance of a charging order.

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the 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 Order, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

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

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

(6) In exercising those powers, no account shall 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.

Receivers : supplementary provisions.

16. (1) Where a receiver appointed under sections 11 or 13 or in pursuance of a charging order takes any action –

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

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed and the expenses incurred by the police and the Bureau in the preservation and maintenance of the property shall, if no sum is available to be applied in payment of it under section 14, be paid by the prosecution or, in a case where proceedings for a drug trafficking offence are not instituted, by the person on whose application the receiver was appointed.

17. (1) Where a person who holds realisable property is adjudged bankrupt –

Bankruptcy of
defendant, etc.

- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt ; and
- (b) any proceeds of property realised by virtue of subsection (7) of section 11 or of subsections (6) or (7) of section 13 for the time being in the hands of a receiver appointed under sections 11 or 13,

is excluded from the property of the bankrupt for the purpose of the Bankruptcy Act.

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(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 11 to 14 or on a receiver so appointed shall not be exercised in relation to –

- (a) property for the time being comprised in the bankrupt's estate for the purpose of the Bankruptcy Act ; and
- (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under subsection (3) of section 30 of that Act.

Chapter 67.

(3) Nothing in the Bankruptcy Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

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(4) 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 him bankrupt was made.

(5) Where, in the case of a debtor, an interim receiver has been appointed under section 13 of the Bankruptcy Act or, where a receiving

Chapter 67.

order has been made, a receiver has been constituted under section 12 of that Act, and any property of the debtor is subject to a restraint order, the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the restraint order.

(6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Order –

Chapter 67.

- (a) no order shall be made under sections 31 or 47 of the Bankruptcy Act in respect of the making of the gift at any time when proceedings for a drug trafficking offence have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or charging order ; and
- (b) any order made under either of those sections after the conclusion of the proceedings shall take into account any realisation under this Order of property held by the person to whom the gift was made.

Winding up
of company
holding
realisable
property.

18. (1) Where realisable property is held by a company and an order for the winding up of the company has been made or resolution 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) shall not be exercisable in relation to –

- (a) property for the time being subject to a restraint order made before the relevant time ; and
- (b) any proceeds of property realised by virtue of subsection (7) of section 11 or of subsections (6) or (7) of section 13.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by sections 11 to 14 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable so as to –

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

Chapter 39.

(3) Nothing in the Companies Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

{4} 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.

{5} In this section –

“company” means any company which may be wound up under the Companies Act ; and

Chapter 39.

“relevant time” means –

- (a) where an order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up ;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution ; and
- (c) in any other case where such an order has been made, the time of the making of the order.

19. (1) If the proceedings are instituted against a person for a drug trafficking offence or offences and either –

Compensation.

- (a) the proceedings do not result in his conviction for any drug trafficking offence ; or
- (b) where he is convicted of one or more drug trafficking offences –
 - (i) the conviction or convictions concerned are quashed ; or
 - (ii) he is granted a pardon by His Majesty The Sultan and Yang Di-Pertuan in respect of the conviction or convictions concerned,

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

{2} The High Court shall not order compensation to be paid in any case unless the court 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 loss in consequence of anything done in relation to the property by or in pursuance of an order under sections 11 to 13.

(3) The High Court shall not order compensation to be paid in any case where it appears to it 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 shall be such as the High Court thinks just in all the circumstances of the case.

Offence of assisting drug traffickers

Assisting another to retain the benefits of drug trafficking.

20. (1) Subject to subsection (2), if a person enters into or is otherwise concerned in an arrangement whereby –

- (a) the retention or control by or on behalf of another (call him "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 –
 - (i) are used to secure funds that are placed at A's disposal ; or
 - (ii) are otherwise used for A's benefit,

knowing or having reasonable grounds to believe that A is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking, he is guilty of an offence.

(2) Where a person discloses to a police officer or to an officer of the Bureau a suspicion or belief that any funds or investment 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 shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by rules of professional conduct ; and
- (b) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if the disclosure is made in accordance with this paragraph, that is –
 - (i) it is made before he does the act concerned, being an act done with the consent of the police officer or officer of the Bureau ; or

(ii) it is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it ;

(c) he shall not be liable in damages for any loss arising out of –

(i) the disclosure ;

(ii) any act done or omitted to be done in relation to the funds or investment in consequence of the disclosure.

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

(a) he did not know or have reason to suspect that the arrangement related to any person's proceeds of drug trafficking ;

(b) he did not know or have reason to 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) he intended to disclose to a police officer or to an officer of the Bureau such a suspicion, belief or matter as is mentioned in subsection (2) in relation to the arrangement but there was reasonable excuse for his failure to make disclosure in accordance with paragraph (b) of that subsection.

(4) A person guilty of an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years, to a fine or both.

(5) In this section, a reference to any person's proceeds of drug trafficking includes a reference to any property which in whole or in part directly or indirectly represents in his hands his proceeds of drug trafficking.

21. (1) Subject to subsection (2), no witness in any civil or criminal proceedings shall be obliged –

(a) to reveal that a disclosure was made under subsection (2) of section 20 ;

(b) to reveal the identity of any person as the person making the disclosure ;

(c) to answer any question if the answer would lead, or would tend to lead, to the revealing of any fact or matter referred to in paragraphs (a) or (b).

Restriction on revealing disclosure under section 20.

- (2) Subsection (1) does not apply in proceedings –
- (a) for an offence under section 20 or under this section ; or
 - (b) where the court is of the opinion that justice cannot fully be done between the parties without revealing the disclosure or the identity of any person as the person making the disclosure.
- (3) Subject to subsections (4) and (5), no person shall publish or broadcast any information so as to reveal or suggest –
- (a) that a disclosure was made under subsection (2) of section 20 ;
 - (b) the identity of any person as the person making the disclosure.

In this subsection, "information" includes a report of any civil or criminal proceeding but does not include information published for statistical purposes by, or under the authority of, the Government.

- (4) Subsection (3) does not apply in proceedings –
- (a) against the person making the disclosure for an offence under section 20 ;
 - (b) for an offence under this section.
- (5) The Court may, if satisfied that it is in the interests of justice to do so, by order dispense with the requirements of subsection (3) to such extent as may be specified in the order.
- (6) If information is published or broadcast in contravention of subsection (3), each of the following persons –
- (a) in the case of publication as part of a newspaper or periodical publication, any proprietor, editor, publisher and distributor thereof ;
 - (b) in the case of a publication otherwise than as part of a newspaper or periodical publication, any person who publishes it and any person who distributes it ;
 - (c) in the case of a broadcast, any person who broadcasts the information and, if the information is contained in a programme, any person who transmits or provides the programme and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical publication,

is guilty of an offence and liable on conviction to imprisonment for a term not exceeding one year and a fine not exceeding \$25,000.

(7) In this section –

“broadcast” includes broadcast by radio, film, videotape or television ;

“publish” means publish in writing.

22. (1) Any person who –

(a) conceals or disguises any property which is, or in whole or in part directly or indirectly represent, his proceeds of drug trafficking ; or

(b) converts or transfers that property or removes it from Brunei Darussalam,

Concealing,
transferring
etc. proceeds
of drug
trafficking.

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

(2) Any person who, knowing that any property is, or in whole or in part directly or indirectly represents, another person’s proceeds of drug trafficking –

(a) is in possession of that property ;

(b) conceals or disguises that property ; or

(c) converts or transfers that property or removes it from Brunei Darussalam,

is guilty of an offence.

(3) Any person who, knowing that any property is, or in whole or in part directly or indirectly represents, another person’s proceeds of drug trafficking, acquires that property for no, or for inadequate, consideration is guilty of an offence.

(4) In paragraph (a) of subsection (1) and paragraph (b) of subsection (2), a reference to concealing or disguising any property includes a reference to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(5) For the purpose of subsection (3), consideration given for any property is inadequate if its value is significantly less than the market value of that property, and there shall not be treated as consideration the provision for any person of services or goods which are of assistance to him in drug trafficking.

(6) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding 14 years, to a fine or both.

Enforcement
and registration
of external
confiscation
orders.

23. (1) The Minister, with the approval of His Majesty The Sultan and Yang Di-Pertuan, may by order –

(a) direct in relation to a designated country that, subject to such modifications (which includes additions, alterations and omissions) as may be specified, this Order shall apply to external confiscation orders and to proceedings which have been or are to be instituted in such 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 a designated country with a view to satisfying a confiscation order ;

(ii) such provision as to evidence or proof of any matter for the purpose of this section ; 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 a designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.

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

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

(4) On an application made by or on behalf of the Government of a designated country, the High Court may register an external confiscation order made there if –

(a) it is satisfied that at the time of registration the order is in force and not subject to appeal ;

- (b) it is 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) it is of the opinion that enforcing the order in Brunei Darussalam would not be contrary to the interests of justice.

(5) The High 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 or by the person against whom it was made serving imprisonment in default of payment or by any other means.

(6) In this section –

“appeal” includes –

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

“designated country” means a country or territory outside Brunei Darussalam designated by an order made under subsection (1) ;

“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.

Investigations into drug trafficking

24. (1) A police officer or an officer of the Bureau may, for the purpose of an investigation, within Brunei Darussalam or elsewhere, into drug trafficking, apply to a magistrate for an order under subsection (2) in relation to particular material or material of a particular description.

Order to make material available.

(2) Subject to subsection (10) of section 27, if on such an application the magistrate is satisfied that the conditions in subsection (4) are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall –

- (a) produce it to a police officer or to an officer of the Bureau for him to take away ; or
- (b) give a police officer or an officer of the Bureau 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 7 days, unless it appears to the magistrate 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 for suspecting that –

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

(5) Where the magistrate makes an order under paragraph (b) of subsection (2) in relation to material on any premises he may, on the application of a police officer or an officer of the Bureau, order any person who appears to him to be entitled to grant entry to the premises to allow a police officer or an officer of the Bureau 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) 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 imposed by any written law or otherwise ; and
- (c) may be made in relation to material in the possession of a Government department.

(9) Any person who, knowing or having reason to believe that an application for an order under subsection (2) has been or may be made, causes the disappearance or destruction of or damage to any material to which the application relates or is likely to relate is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 5 years, to a fine or both.

(10) In this section –

“items subject to legal privilege” means –

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client ;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purpose of such proceedings ; and
- (c) items enclosed with or referred to in such communications and made –
 - (i) in connection with the giving of legal advice ; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purpose of such proceedings,

when they are in the possession of a person who is entitled to possession of them :

Provided that items held with the intention of furthering a criminal purpose are not items subject to legal privilege ;

“premises” includes any place and, in particular, includes –

- (a) a vehicle, vessel, aircraft and hovercraft ;

(b) an installation which is maintained, or is intended to be established, for underwater exploitation or exploration ;

(c) a tent or other movable structure.

Failure to
comply with
order made
under s. 24(2).

25. (1) Where an order has been made under subsection (2) of section 24, the person against whom it is made is guilty of an offence if he –

(a) contravenes the order without reasonable excuse ; or

(b) in purported compliance with the order, produces or makes available any material known to him to be false or misleading in a material particular without –

(i) indicating to the police officer or the officer of the Bureau to whom the material is produced or made available that it is false or misleading, and the respect in which it is false or misleading ; and

(ii) providing correct information to the police officer or the officer of the Bureau if he is in possession of, or can reasonably acquire, the correct information.

(2) A person guilty of an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years, to a fine or both.

Authority for
search.

26. (1) A police officer or an officer of the Bureau may, for the purpose of an investigation into drug trafficking, apply to a magistrate for a warrant under this section in relation to specified premises, which latter word has in this section the same meaning as it has in section 24.

(2) On such application, the magistrate may issue a warrant authorising a police officer or an officer of the Bureau to enter and search such premises if he is satisfied that –

(a) an order made under section 24 in relation to material on the premises has not been complied with ;

(b) the conditions in subsection (3) have been fulfilled ; or

(c) the conditions in subsection (4) have been 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 subsection (4) of section 24 have been fulfilled in relation to any material on such premises ; and
 - (c) it would not be appropriate to make an order under that section in relation to such 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 purpose of which the application is made might be seriously prejudiced unless a police officer or an officer of the Bureau 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 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 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
 - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a police officer or an officer of the Bureau arriving at the premises could secure immediate entry to them.
- (5) Where a police officer or an officer of the Bureau has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than any items subject to legal privilege as defined in subsection (10) of section 24, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose for which the warrant was issued.

- (6) Any person who –
- (a) obstructs any police officer or officer of the Bureau in the exercise of any power under this section ;
 - (b) fails to comply with any lawful requirement of any police officer or officer of the Bureau in the execution of his duty under this section ;
 - (c) fails, without reasonable excuse, to furnish such information in his possession as may be required by a police officer or officer of the Bureau in the exercise of any power or the execution of his duty under this section ; or
 - (d) furnishes to any police officer or officer of the Bureau, in the exercise of any power or the execution of his duty under this section, any information which he knows or has reason to believe to be false,

is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 3 years, to a fine not exceeding \$5,000 or both.

Disclosure of
information
held by
public bodies.

27. (1) Subject to subsection (4), the High Court may on an application by the prosecution order any material mentioned in subsection (3) which is in the possession of public body to be produced to the court within such period as it may specify.

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

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

but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b), subsection (3) of section 10 applies for the purpose 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 public body 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 public body in relation to the defendant or such a person ; or

- (c) is correspondence which passed between an officer of a public body 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 public body concerned.

(4) An order under subsection (1) shall not require the production of any material unless it appears to the High Court that the material is likely to contain information that would facilitate the exercise of the powers conferred on it by sections 11 to 13, on a receiver appointed under sections 11 or 13 or in pursuance of a charging order.

(5) The High 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 court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the public body to make representations to it.

(6) Material disclosed in pursuance of 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 Order of the receiver or of any court.

(7) The High Court may by order authorise the disclosure to a person mentioned in subsection (8) of any material produced under subsection (1) or any part of such material ; but it shall not make an order under this subsection unless –

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

(8) The persons referred to in subsection (7) are –

- (a) a police officer ;
- (b) an officer of the Bureau ;
- (c) the Public Prosecutor ;
- (d) a Deputy Public Prosecutor ; and
- (e) an officer of customs, as defined in subsection (1) of section 2 of the Customs Act.

Chapter 36.

(9) 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.

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

(11) An order made under subsection (1) and, in the case of material in the possession of a public body, an order made under subsection (2) of section 24 may require an officer of the public body (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the public body.

(12) The person on whom such an order is served –

- (a) shall 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), shall report the reasons for the failure to the court,

and it shall also be the duty of any other officer of the public body in receipt of the order to take such steps as are mentioned in paragraph (a).

(13) The Minister may by notification published in the *Gazette* specify any body to be a public body for the purpose of this section.

(14) In this section, "public body" means –

- (a) any Ministry or Government department ; and
- (b) any body specified by the Minister under subsection (13) to be a public body.

Surrender of
travel
documents.

28. (1) A magistrate may, on the application of a police officer not below the rank of Superintendent or of the Director or Deputy Director of the Bureau by written notice require any person against whom an investigation for a drug trafficking offence has been commenced to surrender to the Director or Deputy Director of the Bureau any travel documents in his possession.

(2) A notice under subsection (1) shall be served personally on the person to whom it is addressed.

(3) A person on whom a notice under subsection (1) has been served shall comply with such notice forthwith.

(4) If a person on whom a notice under subsection (1) has been served fails to comply with the notice forthwith, he may thereupon be

arrested by any police officer or officer of the Bureau and taken before a magistrate.

{5} Where a person is taken before a magistrate under subsection {4}, the magistrate shall, unless such person thereupon complies with the notice under subsection (1) or satisfies the magistrate that he does not possess any travel documents, by warrant commit him to prison –

- (a) for a period of 28 days ; or
- (b) until he earlier complies with the notice and a magistrate has ordered and directed the Director of Prisons to discharge him from prison (which order shall be sufficient warrant for the Director of Prisons to do so).

{6} Any travel document which is surrendered under this section may be detained for 6 months from the date on which it was surrendered and may thereafter be detained for a further 3 months if a magistrate, on the application of a police officer not below the rank of Superintendent or of the Director or Deputy Director of the Bureau, is satisfied that the investigation could not reasonably have been completed before the date of such application and has authorised such further detention.

{7} All proceedings before a magistrate under this section shall be conducted in chambers.

{8} In this section, "travel document" means a passport or other document establishing the identity or nationality of the holder.

29. (1) Where, in relation to an investigation into drug trafficking, an order under section 24 has been made or has been applied for and has not been refused or a warrant under section 26 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.

Offence of
prejudicing
investigation.

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

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

(3) A person guilty of an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years, to a fine or both.

Application to absconded persons

Absconded persons.

30. (1) For the purpose of this Order, a person shall be taken to be convicted of a drug trafficking offence if he absconds in connection with that drug trafficking offence, and any reference in sections 3 to 8 to a defendant shall be deemed to include a reference to such person.

(2) For the purpose of subsection (1), a person shall be taken to abscond in connection with a drug trafficking offence if (whether before or after the commencement of this Order) –

- (a) investigations for a drug trafficking offence have been commenced against him ; and
- (b) (i) he dies before proceedings in respect of the offence were instituted, or if such proceedings were instituted, he dies before he is convicted ; or
(ii) at the end of a period of 6 months from the date on which the investigations referred to in paragraph (a) were commenced, he cannot be found or he is not amenable to extradition proceedings.

Confiscation order where person has absconded.

31. Where a person is, by reason of section 30, to be taken to have been convicted of a drug trafficking offence, a court shall not make a confiscation order in reliance on such conviction unless it is satisfied –

- (a) on the evidence adduced before it that, on the balance of probabilities, he has absconded ; and
- (b) having regard to all the evidence before it, that such evidence if rebutted would warrant his conviction for the offence.

Effect of death on proceedings.

32. (1) Proceedings under this Order shall be instituted or continued against the personal representative of a deceased defendant or, if there is no personal representative, such beneficiary of the estate as may be specified by the court upon the application of the Public Prosecutor.

(2) Where the power to make a confiscation order is to be exercised in relation to a deceased defendant, the order shall be made against the estate of the deceased defendant, except that nothing in this Order shall subject the personal representative or any beneficiary to any imprisonment by reason only of the fact that the estate is inadequate for the payment of any amount to be recovered under the confiscation order.

(3) Section 5 does not apply to a deceased defendant.

(4) For the purpose of sections 3 to 8, the following provisions apply in determining whether a deceased defendant had derived benefits from

drug trafficking or in determining those benefits or the value of those benefits –

- (a) a deceased defendant shall, until the contrary is proved, be presumed to have derived benefits from drug trafficking if he had at any time (whether before or after the commencement of this Order) since the beginning of a period of 6 years ending at the date of his death, held any property disproportionate to his known sources of income, the holding of which cannot be explained to the satisfaction of the court ;
 - (b) the benefits derived by a deceased defendant from drug trafficking shall be any property held by him during the period mentioned in paragraph (a), being property disproportionate to his known sources of income, and the holding of which cannot be explained to the satisfaction of the court ; and
 - (c) the value of the benefits derived by a deceased defendant from drug trafficking shall be the aggregate of the values of those properties, less the value of any such benefits that are shown to have been taken into account by any court in determining the amount to be recovered under any confiscation order previously made against the deceased defendant.
- (5) In this section, "deceased defendant" means a person who dies –
- (a) after investigations for a drug trafficking offence have been commenced against him ; and
 - (b) (i) before proceedings in respect of the offence have been instituted against him ; or
 - (ii) if such proceedings have been instituted, before he is convicted of the offence.

33. Where a document is required under this Order to be served on a person who cannot be found, or who is outside Brunei Darussalam and cannot be compelled to attend before a court in respect of proceedings under this Order, the court may dispense with service of the document and the proceedings may be continued to their final conclusion in his absence.

Service of documents on absconders.

Supplemental

34: Section 32 of the Bankruptcy Act is amended, in paragraph (a) of subsection (1), by inserting "nor from any amount payable under a confiscation order made under section 3 of the Emergency (Drug Trafficking) (Recovery of Proceeds) Order, 1995" immediately after "offence" in the seventh line.

Amendment of Chapter 67.

- Preservation of secrecy.** 35. (1) Except for the purpose of the performance of his duties or the exercise of his functions or when required to do so by any court or under the provisions of any written law, no police officer or officer of the Bureau shall disclose any information or matter which has been obtained by him in the exercise of any power or the execution of his duty under this Order.
- (2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to imprisonment for a term not exceeding one year, to a fine or both.
- Consent of Public Prosecutor or a Deputy Public Prosecutor.** 36. When any person has been charged before a court with an offence under this Order or any regulations made thereunder, no further proceedings in respect thereof shall be taken against him without the consent in writing of the Public Prosecutor or a Deputy Public Prosecutor, except such as the court may think necessary by remand, whether in custody or otherwise, to secure his due appearance.
- Standard of proof.** 37. (1) Any question of fact to be decided by a court in any proceedings for an offence under this Order or any regulations made thereunder shall be decided on the balance of probabilities.
- (2) Subsection (1) does not apply in relation to any question of fact that is for the prosecution to prove.
- Assistance re foreign offences.** 38. The Minister, with the approval of His Majesty The Sultan and Yang Di-Pertuan, may make regulations regarding the provision of assistance under this Order to a country or territory outside Brunei Darussalam in respect of any offence punishable under a corresponding law, and without prejudice to the generality of this provision may make regulations enabling –
- (a) an order to be made under section 24 in relation to such an offence ;
 - (b) evidence to be taken before proceedings have been commenced in that country or territory, which expression "proceedings" shall for the purpose of this paragraph be deemed to include proceedings of a preliminary nature to determine whether a person should be tried for such an offence ;
 - (c) a warrant to be issued and executed under section 26 in relation to such an offence ;
 - (d) the seizure and retention of any material found following the execution of a warrant under section 26 in relation to such an offence ;

- (e) arrangements to be made for the immunity from prosecution, detention, punishment or from any other restriction on his liberty of any person who, whilst in Brunei Darussalam for that purpose, has come to Brunei Darussalam to give evidence or assist in an investigation in response to a request from Brunei Darussalam.

Made this 10th day of Zulkaedah, 1416 Hijrah, corresponding to 30th. day of March, 1996 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM