

**NIUE LAWS
LEGISLATION AS AT DECEMBER 2006**

PROCEEDS OF CRIME ACT 1998

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To provide for confiscation of the proceeds of crime, and for related purposes

**PART 1
PRELIMINARY**

1 Short title

This is the Proceeds of Crime Act 1998.

2 [Spent]

3 Principal objects

The principal objects of this Act are –

- (a) To deprive persons of the proceeds of, and benefits derived from, the commission of serious offences;
- (b) To provide for the forfeiture of property used in, in connection with, or for the purpose of facilitating the commission of serious offences;
- (c) To enable law enforcement authorities to trace such proceeds, benefits and

property; and

(d) To make it an offence to engage in money laundering.

4 Interpretation

In this Act –

"Attorney-General" means the chief legal adviser to the Government of Niue;

"benefit" has the same meaning as in section 5(1);

"Commissioner" means a Commissioner of the Court;

"confiscation order" means an order made by the Court under section 19(1);

"document", in relation to an offence, means a written or printed thing and includes –

(a) a map, plan, graph or drawing;

(b) a photograph;

(c) a disk, tape, sound track or other device in which sound or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; and

(d) a film, negative, tape or other device in which one or more visual images are embodied, so as to be capable (as aforesaid) of being reproduced from it;

"foreign confiscation order" means an order made under the law of a foreign country for a person to pay to the foreign country an amount representing the value (or part of it) of the person's benefits from an offence against the law of that country;

"foreign forfeiture order" means an order, made under the law of a foreign country, for the forfeiture of property in respect of an offence against the law of that country;

"foreign restraining order" means an order, made under the law of a foreign country, restraining a particular person, or all persons, from dealing with property, being an order made in respect of an offence against the law of that country;

"foreign serious offence" means a serious offence against the law of a foreign country;

"forfeiture order" means an order made by the Court under section 11(1);

"gift caught by this Act" is to be construed in accordance with section 5(12) and (14);

"interest", in relation to property, means –

(a) a legal or equitable estate or interest in the property; or

(b) a right, power or privilege in connection with the property;

"Judge" includes a Commissioner;

"proceeds" in relation to an offence, means any property that is derived or realised, directly or indirectly, by any person from the commission of the offence;

"proceeds of crime" means –

(a) proceeds of a serious offence; or

(b) any property that is derived or realised, directly or indirectly, by any person from acts or omissions that occurred outside Niue and would, if they had occurred in Niue, have constituted a serious offence;

"production order" means an order made by the Court under section 47;

"property" includes money and all other property, real or personal, including things in action and other intangible or incorporeal property;

"property-tracking document", in relation to an offence, means –

(a) a document relevant to –

(i) identifying, locating, or quantifying property of a person who committed the offence; or

(ii) identifying or locating any document necessary for the transfer of property of a person who committed the offence; or

(b) a document relevant to –

(i) identifying, locating or quantifying tainted property in relation to the offence; or

(ii) identifying or locating any document necessary for the transfer of tainted property in relation to the offence;

"realisable property" has the same meaning as in section 5;

"relevant application period", in relation to a person's conviction of a serious offence, means the period of 12 months after –

(a) where the person is to be taken to have been convicted of the offence by reason of section 5(2) (a) –

the day on which the person was convicted of the offence;

(b) where the person is to be taken to have been convicted of the offence by

reason of section 5(2) (b) –

the day on which the person was discharged without conviction; or

(c) where the person is to be taken to have been convicted of the offence by reason of section 5(2)(c) –

the day on which the court took the offence into account in passing sentence for the other offence referred to in that section;

"relevant offence", in relation to tainted property, means an offence by reason of the commission of which the property is tainted property; "restraining order" means an order made by the Court under section 32(1);

"serious offence" means an offence the maximum penalty for which is death, or imprisonment for not less than 12 months;

"tainted property", in relation to a serious offence, means –

(a) property used in, or in connection with, the commission of the offence; or

(b) proceeds of the offence; and when used without reference to a particular offence means tainted property in relation to a serious offence;

"unlawful activity" means an act or omission that constitutes an offence against a law in force in Niue or a foreign country.

5 Definition of certain terms

(1) In this Act –

(a) "A benefit" includes any property, service or advantage, whether direct or indirect;

(b) "To benefit" has a corresponding meaning;

(c) A reference to a benefit derived or obtained by, or otherwise accruing to, a person (A) includes a reference to a benefit derived or obtained by, or otherwise accruing to, another person at A's request or direction.

(2) For the purposes of this Act, a person is taken to be convicted of a serious offence if –

(a) The person is convicted, whether summarily or on indictment, of the offence;

(b) The person is charged with, and found guilty of, the offence but is discharged without conviction; or

(c) A court, with the consent of the person, takes the offence, of which the person has not been found guilty, into account in passing sentence on the person for another offence.

(3) In this Act, "realisable property" means, subject to section 6 –

(a) Any property held by a person who has been convicted of, or charged with, a serious offence; and

(b) Any property held by a person to whom a person so convicted or charged has directly or indirectly made a gift caught by this Act.

(4) Property is not realisable property if –

(a) There is in force, in respect of that property, a forfeiture order under this Act or under another enactment; or

(b) A forfeiture order is proposed to be made against that property under this Act or another enactment.

(5) For the purposes of sections 21 and 22 the amount that might be realised at the time a confiscation order is made against a person is the total of the values at that time of all the realisable property held by the person less the total amounts payable under an obligation, where there is an obligation having priority at that time, together with the total of the values at that time of all gifts caught by this Act.

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

(a) Pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or the order was made before the confiscation order; or

(b) Pay an amount due in respect of any tax, rate, duty, excise or other impost payable under an enactment for the time being in force;

(c) Pay any other civil obligation as may be determined by the Court.

(7) Subject to subsections (8) and (9), for the purposes of this Act, the value of property (other than cash), in relation to a person holding the property, is –

(a) Where any other person holds an interest in the property –

the market value of the first-mentioned person's beneficial interest in the property, less the amount required to discharge any encumbrance on that interest; and

(b) In any other case – its market value.

(8) References in this Act to the value at any time (referred to in subsection

(9) as "the material time") of the transfer of any property are references to whichever is the greater of –

(a) The value of the property to the recipient when he or she receives it, adjusted to

take account of subsequent changes in the value of money; or

(b) Where subsection (9) applies – the value there mentioned, whichever is the greater.

(9) Where at the material time the recipient holds –

(a) The property which he or she received (not being cash); or

(b) Property which, in whole or in part, directly or indirectly represents in the recipient's hands the property which he or she received –

the value referred to in subsection (7) (b) is the value to the recipient at the material time of the property referred to in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b), so far as it represents the property which he or she received.

(10) Subject to subsection (14), a reference to the value at any time (referred to in subsection (11) as "the material time") of a gift is a reference to –

(a) The value of the gift to the recipient when he or she received it, adjusted to take account of subsequent changes in the value of money; or

(b) Where subsection (11) applies –

the value there mentioned, whichever is the greater.

(11) Subject to subsection (14), where at the material time a 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 subsection (10) (b) is the value to the person at the material time of the property mentioned in paragraph (a) or the value of the property mentioned in paragraph (b) so far as it so represents the property which the person received.

(12) A gift, including a gift made before the commencement of this Act, is caught by this Act where –

(a) It was made by the person convicted or charged at a time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate, and the Court considers it appropriate in all the circumstances to take the gift into account;

(b) It was made by the person convicted or charged at any time and was a gift of property –

(i) Received by the person in connection with the commission of a serious offence committed by the person or by another person; or

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

(13) The reference in subsection (12) to "an offence to which the proceedings for the time being relate" includes, where the proceedings have resulted in the conviction of the person, a reference to any offence that the Court takes into consideration when determining sentence.

(14) For the purposes of this Act –

(a) The circumstances in which a person must be treated as making a gift include those where the person 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 or the property transferred by the person; and

(b) In those circumstances, subsections (10), (11) and (12) shall apply as if the person 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 or the property transferred by the person.

PART 2

FORFEITURE ORDERS, CONFISCATION ORDERS AND RELATED MATTERS

General

6 Application for forfeiture order or confiscation order on conviction

(1) Subject to subsection (2), where a person is convicted of a serious offence committed after the coming into force of this Act, the Attorney-General may apply to the Court for one or both of the following orders –

(a) A forfeiture order against property that is tainted property in respect of the offence;

(b) A confiscation order against the person in respect of benefits derived by the person from the commission of the offence.

(2) The Attorney-General may not make an application after the end of the relevant application period in relation to the conviction.

(3) An application under this section may be made in respect of one or more than one serious offence.

(4) Where an application under this section is finally determined, no further application for a forfeiture order or a confiscation order may be made in respect of the offence for which the person was convicted unless the Court gives leave for the making of a new application on being satisfied –

(a) That the property or benefit to which the new application relates was identified after the previous application was determined; or

(b) That necessary evidence became available only after the previous application was determined; or

(c) That it is in the interests of justice that the new application be made.

7 Notice of application

(1) Where the Attorney-General applies for a forfeiture order against property in respect of a person's conviction of an offence –

(a) The Attorney-General must give written notice of the application to the person and to any other person who the Attorney-General has reason to believe may have an interest in the property;

(b) The person, and any other person who claims an interest in the property, may appear and adduce evidence at the hearing of the application; and

(c) The Court may, at any time before the final determination of the application, direct the Attorney-General –

(i) to give notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property; or

(ii) to publish in a newspaper published and circulating in Niue notice of the application, in the manner and containing such particulars and within the time that the Court considers appropriate.

(2) Where the Attorney-General applies for a confiscation order against a person –

(a) The Attorney-General must give the person written notice of the application; and

(b) The person may appear and adduce evidence at the hearing of the application.

8 Amendment of application

(1) The Court hearing an application under section 6(1) may, before final determination of the application, and on the application of the Attorney-General amend the application to include any other property or benefit, as the case may be, upon being satisfied that –

(a) The property or benefit was not reasonably capable of identification when the application was originally made; or

(b) Necessary evidence became available only after the application was originally made.

(2) Where the Attorney-General applies to amend an application for a forfeiture order and the amendment would have the effect of including additional property in the application for the forfeiture order the Attorney-General must give written notice of the application to amend to any person who the Attorney-General has reason to believe may have an interest in property

to be included in the application for the forfeiture order.

(3) Any person who claims an interest in the property to be included in the application for the forfeiture order may appear and adduce evidence at the hearing of the application to amend.

(4) Where the Attorney-General applies to amend an application for a confiscation order against a person and the effect of the amendment would be to include an additional benefit in the application for the confiscation order the Attorney-General must give the person written notice of the application to amend.

9 Procedure on application

(1) Where an application is made to the Court for a forfeiture order or a confiscation order in respect of a person's conviction of an offence, the Court may, in determining the application, have regard to the transcript of any proceedings against the person for the offence.

(2) Where an application is made for a forfeiture order or a confiscation order to the Court before which the person was convicted, and the Court has not, when the application is made, passed sentence on the person for the offence, the Court may, if it is satisfied that it is reasonable to do so in all the circumstances, defer passing sentence until it has determined the application for the order.

10 Application for forfeiture order where person has absconded

(1) Where a person absconds in connection with a serious offence committed, the Attorney-General may, within the period of 6 months after the person so absconds, apply to the Court for a forfeiture order under section 17 in respect of any tainted property.

(2) For the purposes of this section, a person shall be deemed to have absconded in connection with an offence if –

(a) An information has been laid alleging the commission of the offence by the person;

(b) A warrant for the arrest of the person is issued in relation to that information; and

(c) Reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period of 6 months commencing on the day the warrant was issued, and the person shall be deemed to have so absconded on the last day of that period of 6 months.

(3) Where the Attorney-General applies under this section for a forfeiture order against any tainted property the Court shall, before hearing the application –

(a) Require notice of the application to be given to any person who, in the opinion of the Court, appears to have an interest in the property; or

(b) Direct notice of the application to be published in a newspaper published and circulating in Niue containing such particulars and for so long as the Court may require.

Forfeiture Orders

11 Forfeiture order on conviction

(1) Where the Attorney-General applies to the Court for an order under this section against property in respect of a person's conviction of an offence and the Court is satisfied that the property is tainted property in respect of the offence, the Court may order that the property, or such of the property as is specified by the Court in the order, be forfeited to the Crown.

(2) In determining whether property is tainted property the Court may infer –

(a) Where the evidence establishes that the property was in the person's possession at the time of, or immediately after, the commission of the offence of which the person was convicted –

that the property was used in, or in connection with, the commission of the offence;

(b) Where the evidence establishes that property, and in particular money, was found in the person's possession or under the person's control in a building, vehicle, receptacle or place during the course of investigations conducted by the police before or after the arrest and charge of the person for the offence of which the person was convicted –

that the property was derived, obtained or realised as a result of the commission by the person of the offence of which the person was convicted;

(c) Where the evidence establishes that the value, after the commission of the offence, of all ascertainable property of a person convicted of the offence exceeds the value of all ascertainable property of that person prior to the commission of that offence, and the Court is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the increase in value –

that the value of the increase represents property which was derived, obtained or realised by the person directly or indirectly from the commission of the offence of which the person was convicted.

(3) Where the Court orders that property, other than money, be forfeited to the Crown, the Court shall specify in the order the amount that it considers to be the value of the property at the time when the order is made.

(4) In considering whether a forfeiture order should be made under subsection (1), the Court may have regard to –

(a) The rights and interests, if any, of third parties in the property;

(b) The gravity of the offence concerned;

(c) Any hardship that may reasonably be expected to be caused to any person by the operation of the order; and

(d) The use that is ordinarily made of the property, or the use to which the property was intended to be put.

(5) Where the Court makes a forfeiture order, the Court may give such directions as are necessary or convenient for giving effect to the order.

12 Effect of forfeiture order

(1) Subject to subsection (2), where the Court makes a forfeiture order against property, the property vests absolutely in the Crown by virtue of the order.

(2) Where a forfeiture order is made against registrable property –

(a) The property vests in the Crown in equity but does not vest in the Crown at law until the applicable registration requirements have been complied with;

(b) The Crown is entitled to be registered as owner of the property; and

(c) The Attorney-General has power on behalf of the Crown to do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Crown as owner, including the execution of any instrument required to be executed by a person transferring an interest in property of that kind.

(3) If a forfeiture order has been made against registrable property –

(a) The Attorney-General has the power on behalf of the Crown to do anything necessary or convenient to give notice of, or otherwise protect, the equitable interest of the Crown in the property; and

(b) Any such action by or on behalf of the Crown is not a dealing for the purposes of subsection (4)(a).

(4) Where the Court makes a forfeiture order against property –

(a) The property shall not, except with the leave of the Court and under any directions of the Court, be disposed of, or otherwise dealt with, by or on behalf of the Crown, before the relevant appeal date; and

(b) If, after the relevant appeal date, the order has not been discharged, the property may be disposed of, and the proceeds applied or otherwise dealt with in accordance with the direction of the Attorney-General.

(5) Without limiting the generality of subsection (4)(b), the directions that may be given under that paragraph include a direction that property is to be disposed of under the provisions of an enactment specified in the direction.

(6) In this section –

"registrable property" means property the title to which is passed by registration on a

register kept under any law of Niue;

"relevant appeal date", used in relation to a forfeiture order made in consequence of a person's conviction of a serious offence, means –

(a) The date on which the period allowed by the rules of court for the lodging of an appeal against a person's conviction, or for the lodging of an appeal against the making of a forfeiture order, expires without an appeal having been lodged, whichever is the later; or

(b) Where an appeal against a person's conviction or against the making of a forfeiture order is lodged – the date on which the appeal, or the later appeal, lapses in accordance with the rules of court or is finally determined.

13 Protection of third parties

(1) Where an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the Court, before the forfeiture 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 the person's interest in property and the Court is satisfied –

(a) That the applicant was not in any way involved in the commission of an offence in respect of which forfeiture of the property is sought, or the forfeiture order against the property was made; and

(b) If the applicant acquired the interest during or after the commission of the offence –

that the applicant 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 of the acquisition, tainted property, the Court shall make an order declaring the nature, extent and value (as at the time when the order is made) of the applicant's interest.

(3) Subject to subsection (4), where a forfeiture order has already been made directing the forfeiture of property, a person who claims an interest in the property may, before the end of the period of 6 months commencing on the day on which the forfeiture order is made, 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 forfeiture 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 subsection (1) or (3) must give written notice of the making of the application to the Attorney-General, who shall be a party of any proceedings in the application.

(6) An applicant or the Attorney-General may, under the rules of court, appeal to the Court of Appeal from an order made under subsection (2).

(7) The Cabinet shall, on application by any person who has obtained an order under subsection (2), and where the period allowed by the rules of court with respect to the making of appeals has expired and any appeal from that order taken under subsection (6) has been determined –

(a) Direct that the property, or the part of it to which the interest of the applicant relates, be returned to the applicant; or

(b) Direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

14 Discharge of forfeiture order on appeal and quashing of conviction

(1) Where the Court makes a forfeiture order against property in reliance on a person's conviction of an offence and the conviction is subsequently quashed, the quashing of the conviction discharges the order.

(2) Where a forfeiture order against property is discharged as provided by subsection (1) or by the Court hearing an appeal against the making of the order, any person who claims to have had an interest in the property immediately before the making of the forfeiture order may apply to the Premier, in writing, for the transfer of the interest to the person.

(3) On receipt of an application under subsection (2) from a person who had such an interest in the property, the Cabinet shall –

(a) If the interest is vested in the Crown – give directions that the property or part of it to which the interest of the applicant relates be transferred to the person; or

(b) In any other case – direct that there be payable to the person an amount equal to the value of the interest as at the time the order is made.

(4) In the exercise of powers under this section and section 13, the Attorney- General shall have the power to do, or authorise the doing of, anything necessary or convenient to effect the transfer or return of property, including the execution of any instrument and the making of an application for the registration of an interest in the property on any appropriate register.

15 Payment instead of forfeiture order

Where the Court is satisfied that a forfeiture order should be made in respect of property of a person under section 11 or section 17 but that the property or any part of it or interest in it cannot be made subject to such an order and, in particular –

- (a) Cannot, on the exercise of due diligence, be located;
- (b) Has been transferred to a third party in circumstances that do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the forfeiture of the property;
- (c) Is located outside Niue; or
- (d) Has been commingled with other property that cannot be divided without difficulty; the Court may, instead of ordering the property or part of it or interest in it to be forfeited, order the person to pay to the Crown an amount equal to the value of the property, part or interest.

16 Enforcement of order for payment instead of forfeiture

(1) An amount payable by a person to the Crown under an order under section 15 is a civil debt due by the person to the Crown.

(2) An order against a person under section 15 may be enforced as if it were an order made in civil proceedings instituted by the Crown against the person to recover a debt due by the person to the Crown and the debt arising from the order shall be taken to be a judgment debt.

17 Forfeiture order where person has absconded

(1) Subject to section 10(3), where an application is made to the Court under section 10(1) for a forfeiture order against any tainted property because a person has absconded in connection with a serious offence and the Court is satisfied that –

- (a) Any property is tainted property in respect of the offence;
- (b) Proceedings in respect of a serious offence committed in relation to that property were commenced; and
- (c) The accused charged with the offence referred to in paragraph (b) has absconded; the Court may order that the property, or such of the property as is specified by the Court in the order, be forfeited to the Crown. (2) Sections 11(2), (3), (4) and (5), 12 and 13 shall apply with such modifications as are necessary to give effect to this section.

18 Registered foreign forfeiture orders

If a foreign forfeiture order is registered in the Court under the Mutual Assistance in Criminal Matters Act 1998 sections 11 to 18 apply in relation to the order as if –

- (a) All references to an appeal against the making of an order and to the relevant appeal date were omitted; and
- (b) A period of 6 weeks were substituted for the period of 6 months provided in section 13(3).

Confiscation Orders

19 Confiscation order on conviction

(1) Subject to this section, where the Attorney-General applies to the Court for a confiscation order against a person in respect of that person's conviction of a serious offence, the Court may, if it is satisfied that the person has benefited from that offence, order the person to pay to the Crown an amount equal to the value of the person's benefits from the offence or such lesser amount as the Court certifies under section 23 to be the amount that might be realised at the time the confiscation order is made.

(2) The Court shall assess the value of the benefits derived by a person from the commission of an offence under sections 20 to 23.

(3) The Court shall not make a confiscation order under this section –

(a) Until the period allowed by the rules of court for the lodging of an appeal against conviction has expired without such an appeal having been lodged; or

(b) Where an appeal against conviction has been lodged, until the appeal lapses under the rules of court or is finally determined.

20 Rules for determining benefit and assessing value

(1) Where a person obtains property as the result of, or in connection with the commission of, a serious offence, the person's benefit is the value of the property so obtained.

(2) Where a person derives an advantage as the result of, or in connection with the commission of, a serious offence, the person's advantage shall be deemed to be a sum of money equal to the value of the advantage so derived.

(3) The Court, in determining whether a person has benefited from the commission of a serious offence or from that offence taken together with other serious offences and, if so, in assessing the value of the benefit, shall, unless the contrary is proved, deem –

(a) All property –

(i) appearing to the Court to be held by the person on the day on which the application is made; and

(ii) appearing to the Court to be held by the person at any time –

(A) within the period between the day the offence, or the earliest offence, was committed and the day on which the application is made; or

(B) within the period of 5 years immediately before the day on which the application is made, being whichever is the shorter period, to be property that came into the possession or under the control of the

person by reason of the commission of that offence or those offences;

(b) Any expenditure by the person since the beginning of that period to be expenditure met out of payments received by the person as a result of, or in connection with, the commission of that offence or those offences; and

(c) Any property received or deemed to have been received by the person at any time as a result of, or connection with, the commission by the person of that offence, or those offences, to be property received by the person free of any interests in it.

(4) Where a confiscation order has previously been made against a person, in assessing the value of any benefit derived by the person from the commission of the serious offence in respect of which the order was made, the Court shall leave out of account any of the person's benefits that are shown to the Court to have been taken into account in determining the amount to be recovered under that order.

(5) If evidence is given at the hearing of the application that the value of the person's property at any time after the commission of the serious offence exceeded the value of the person's property before the commission of the offence, then the Court shall, subject to subsection (6), treat the value of the benefits derived by the person from the commission of the offence as being not less than the amount of the excess.

(6) If, after evidence of the kind referred to in subsection (5) is given, the person satisfies the Court that the whole or part of the excess was due to causes unrelated to the commission of the offence, subsection (5) does not apply to the excess or, as the case may be, that part.

21 Statements relating to benefits from commission of serious offences

(1) Where –

(a) A person has been convicted of a serious offence and the Attorney- General tenders to the Court a statement as to any matters relevant –

(i) to determining whether the person has benefited from the offence or from any other serious offence of which the person is convicted in the same proceedings or which is taken into account in determining his sentence; or

(ii) to an assessment of the value of the person's benefit from the offence or any other serious offence of which he is so convicted in the same proceedings or which is so taken into account; and

(b) The person accepts to any extent an allegation in the statement, the Court may, for the purposes of so determining or making that assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where –

(a) A statement is tendered under subsection (1)(a); and

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

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

(3) Where the person fails in any respect to comply with a requirement under subsection (2), the person may be treated for the purposes of this section as having accepted every allegation in the statement, other than –

(a) An allegation in respect of which the person has complied with the requirement; and

(b) An allegation that the person has benefited from the serious offence or that any property or advantage was obtained by the person as a result of, or in connection with, the commission of the offence.

(4) Where –

(a) The person tenders to the Court 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 Attorney-General accepts to any extent any allegation in the statement, the Court may, for the purposes of that determination, treat the acceptance of the Attorney-General as conclusive of the matters to which it relates.

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

(a) Orally before the Court; or

(b) In writing under rules of court.

(6) An acceptance by a person under this section that he received any benefits from the commission of a serious offence is admissible in any proceedings for any offence.

22 Amount to be recovered under confiscation order

(1) Subject to subsection (2), the amount to be recovered in the person's case under a confiscation order shall be the amount which the Court assesses to be the value of the person's benefit from the offence or, if more than one, all the offences in respect of which the order may be made.

(2) Where the Court is satisfied as to any matter relevant to determining the amount which might be realised at the time the confiscation order is made (whether by an acceptance under section 21 or otherwise) the Court may issue a certificate giving the Court's opinion as to the matters concerned, and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount that the Court assesses to be the value of the person's benefit from the offence, or if more than one, all the offences in respect of which the confiscation order may be made.

23 Variation of confiscation orders

(1) Where –

- (a) The Court makes a confiscation order in relation to an offence;
- (b) In calculating the amount of the confiscation order, the Court took into account a forfeiture of property or a proposed forfeiture of property or a proposed forfeiture order in respect of property; and
- (c) An appeal against the forfeiture or forfeiture order is allowed or the proceedings for the proposed forfeiture order terminate without the proposed forfeiture order being made, the Attorney-General may apply to the Court for a variation of the confiscation order to increase the amount of the order by the value of the property and the Court may, if it considers it appropriate to do so, vary the order accordingly.

(2) Where –

- (a) The Court makes a confiscation order against a person in relation to an offence;
- (b) In calculating the amount of the confiscation order, the Court took into account under section 5(5) and (6), an amount of tax paid by the person; and
- (c) An amount is repaid or refunded to the person in respect of that tax, the Attorney-General may apply to the Court for a variation of the confiscation order to increase the amount of the order by the amount repaid or refunded and the Court may, if it considers it appropriate to do so, vary the order accordingly.

24 Court may lift corporate veil

(1) In assessing the value of benefits derived by a person from the commission of an offence or offences, the Court may treat as property of the person any property that, in the opinion of the Court, is subject to the effective control of the person whether or not the person has –

- (a) Any legal or equitable interest in the property; or
- (b) Any right, power or privilege in connection with the property.

(2) Without limiting the generality of subsection (1), the Court may have regard to –

- (a) Shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property, and for this purpose the Court may order the investigation and inspection of the books of a named company;
- (b) A trust which has a relationship to the property; and
- (c) Any relationship whatsoever between persons having an interest in the property, or in companies of the kind referred to in paragraph (a) or trusts of the kind referred to in paragraph (b), and other persons.

(3) Where the Court, for the purposes of making a confiscation order against a person, treats

particular property as the person's property under subsection (1), the Court may, on application by the Attorney-General, make an order declaring that the property is available to satisfy the order.

(4) Where the Court declares that property is available to satisfy a confiscation order –

(a) The order may be enforced against the property as if the property were property of the person against whom the order is made; and

(b) A restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.

(5) Where the Attorney-General makes an application for an order under subsection (3) that property is available to satisfy a confiscation order against a person –

(a) The Attorney-General shall give written notice of the application to the person and to any person who the Attorney-General has reason to believe may have an interest in the property; and

(b) The person and any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

25 Enforcement of confiscation orders

(1) An amount payable by a person to the Crown under a confiscation order is a civil debt due by the person to the Crown.

(2) A confiscation order against a person may be enforced as if it were an order made in civil proceedings instituted by the Crown against the person to recover a debt due by the person to the Crown and the debt arising from the order shall be taken to be a judgment debt.

(3) Where a confiscation order is made against a person and the person is, or becomes a bankrupt, the order may be enforced against the person or against any property of the person that is not vested in the person's trustee under the Niue Act 1966.

26 Amounts paid in respect of registered foreign confiscation orders

Where a foreign confiscation order is registered in the Court under the Mutual Assistance in Criminal Matters Act 1998, any amount paid, whether in Niue or elsewhere, in satisfaction of the foreign confiscation order shall be taken to have been paid in satisfaction of the debt that arises by reason of the registration of the foreign confiscation order in the Court.

PART 3 PROVISIONS FOR FACILITATING POLICE INVESTIGATIONS AND PRESERVING PROPERTY LIABLE TO FORFEITURE AND CONFISCATION ORDERS

Powers of Search and Seizure

27 Warrant to search land for tainted property

(1) A constable may apply to a Commissioner for the issue of a warrant to search land or premises for tainted property.

(2) Where an application is made under subsection (1) for a warrant to search land or premises for tainted property, the Commissioner may issue a warrant of that kind in the same manner, and subject to the same conditions, as a judge could issue a search warrant under the Niue Act 1966 and, subject to sections 27 to 30 of this Act, the warrant may be executed in the same manner as if it had been issued under that Act.

28 Police may seize other tainted property

In the course of a search under a warrant issued under section 27 a constable may seize –

(a) Any property that the constable believes, on reasonable grounds, to be tainted property in relation to any serious offence;

(b) Any thing that the constable believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence, if the constable believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or any other offence.

29 Return of property seized

(1) Where property has been seized under sections 27 to 30 (otherwise than because it may afford evidence of the commission of an offence), a person who claims an interest in the property may apply to the Court for an order that the property be returned to that person.

(2) Where a person makes an application under subsection (1) and the Court is satisfied that –

(a) The person is entitled to possession of the property;

(b) The property is not tainted property in relation to the relevant offence; and

(c) The person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property, the Court shall order the Chief of Police to return the property to the person and the Chief of Police shall arrange for the property to be returned.

(3) Where –

(a) Property has been seized under sections 27 to 30, otherwise than because it may afford evidence as to the commission of an offence;

(b) At the time when the property was seized, an information had not been laid in respect of a relevant offence; and

(c) At the end of the period of 48 hours after the time when the property was seized, an information has not been laid in respect of a relevant offence, the Chief of Police

shall, subject to subsections (5) and (6), arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

(4) Where –

(a) Property has been seized under sections 27 to 30, otherwise than because it may afford evidence as to the commission of an offence; and

(b) No forfeiture order has been made against the property within the period of 14 days after the property was seized and the property is in the possession of the Chief of Police at the end of that period; the Chief of Police shall, subject to subsections (5) and (6), arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

(5) Where –

(a) Property has been seized under sections 27 to 30, otherwise than because it may afford evidence as to the commission of an offence;

(b) But for this subsection, the Chief of Police would be required to arrange for the property to be returned to a person as soon as practicable after the end of a particular period; and

(c) Before the end of that period, a restraining order is made in relation to the property, the Chief of Police shall –

(d) If the restraining order directs the Financial Secretary to take custody and control of the property – arrange for the property to be given to the Financial Secretary in accordance with the restraining order;

(e) If the Court that made the restraining order has made an order under subsection (6) in relation to the property – arrange for the property to be kept until it is dealt with under another provision of this Act.

(6) Where –

(a) Property has been seized sections 27 to 30, other than because it may afford evidence as to the commission of an offence;

(b) A restraining order is made in relation to the property; and

(c) At the time when the restraining order is made, the property is in the possession of the Chief of Police, the Chief of Police may apply to the Court that made the restraining order for an order that the Chief of Police retain possession of the property and the Court may, if satisfied that there are reasonable grounds for believing that the property may afford evidence as to the commission of a relevant offence or any other offence, make an order that the Chief of Police may retain the property for so long as the property is so required as evidence as to the commission of that offence.

(7) Where the Chief of Police applies to the Court for an order under subsection (6), a witness shall not be required to answer a question or to produce a document if the Court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

(8) Where –

(a) Property has been seized under sections 27 to 30; and

(b) While the property is in the possession of the Chief of Police, a forfeiture order is made in respect of the property; the Chief of Police shall deal with the property as required by the order.

30 Search for and seizure of tainted property in relation to foreign offences

(1) Where a constable is authorised, under the Mutual Assistance in Criminal Matters Act 1998, to apply to a Commissioner for a search warrant under this Act in relation to tainted property in respect of a foreign serious offence, the constable may apply for the warrant accordingly and sections 27 to 30 apply to the application and to any warrant issued as a result of the application as if –

(a) References in sections 27 to 30 to tainted property were references to tainted property in relation to a foreign serious offence; and

(b) References in sections 27 to 30 to a relevant offence were references to a relevant foreign serious offence;

(c) References in sections 27 to 30 to seizure of property under sections 27 to 30 were references to seizure of property under a warrant issued under section 27 in respect of a foreign serious offence;

(d) The reference in section 29(2)(c) to the person in respect of whose conviction, charging or proposed charging the seizure of the property was made were a reference to the person who is believed or alleged to have committed the relevant foreign serious offence;

(e) The reference in section 29(4) to a period of 14 days were a reference to a period of 30 days;

(f) The references in sections 29(5) and (6) to the making of a restraining order in relation to seized property were references to –

(i) the registration in the Court under the Mutual Assistance in Criminal Matters Act 1998 of a foreign restraining order in relation to the seized property; or

(ii) the making by the Court under this Act of a restraining order in respect of the seized property in relation to the foreign serious offence;

(g) The reference in section 29(8) to the making of a forfeiture order were a reference

to the registration in the Court under the Mutual Assistance in Criminal Matters Act 1998 of a foreign forfeiture order; and

(h) Sections 28 and 29(3) were omitted.

(2) If, in the course of searching under a warrant issued under section 27, for tainted property in relation to a foreign serious offence, a constable finds –

(a) Property that the constable believes, on reasonable grounds, to be tainted property in relation to any foreign serious offence in respect of which a search warrant under section 27 is in force; or

(b) Any thing that the constable believes, on reasonable grounds –

(i) to be relevant to a criminal proceeding in the foreign country in respect of the foreign serious offence; or

(ii) will afford evidence as to the commission of a criminal offence, and the constable believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence, the warrant shall be deemed to authorise the constable to seize that property or thing.

Restraining Orders

31 Application for restraining order

(1) Where a person (in sections 31 to 46 called the "defendant") –

(a) Has been convicted of a serious offence; or

(b) Has been, or is about to be, charged with a serious offence, the Attorney-General may apply to the Court for a restraining order under subsection (2) against any realisable property held by the defendant or specified realisable property held by a person other than the defendant.

(2) An application for a restraining order may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating –

(a) Where the defendant has been convicted of a serious offence – the offence of which the defendant was convicted, the date of the conviction, the Court before which the conviction was obtained and whether an appeal has been lodged against the conviction;

(b) Where the defendant has not been convicted of a serious offence – the offence with which the defendant is, or is about to be, charged and the grounds for believing that the defendant committed the offence;

(c) Where the defendant is about to be charged with a serious offence – the grounds for believing that the defendant will be charged with a serious offence within 48

hours;

(d) A description of the property in respect of which the restraining order is sought;

(e) The name and address of the person who is believed to be in possession of the property;

(f) Where the application seeks a restraining order against property of the defendant – the grounds for the belief that the property is tainted property in relation to the offence or the defendant derived a benefit directly or indirectly from the commission of the offence; and

(g) Where the application seeks a restraining order against property of a person other than the defendant – the grounds for the belief that the property is tainted property in relation to the offence or is subject to the effective control of the defendant.

32 Restraining order

(1) Subject to this section, where the Attorney-General applies to the Court for a restraining order against property and the Court is satisfied that –

(a) The defendant has been convicted of a serious offence or has been charged with a serious offence or will be charged with a serious offence within 48 hours;

(b) Where the defendant has not been convicted of the offence – there are reasonable grounds for believing that the defendant committed the offence;

(c) Where the application seeks a restraining order against property of the defendant – there are reasonable grounds for believing that the property is tainted property in relation to the offence or that the defendant derived a benefit directly or indirectly from the commission of the offence;

(d) Where the application seeks a restraining order against property of a person other than the defendant – there are reasonable grounds for believing that the property is tainted property in relation to the offence or that the property is subject to the effective control of the defendant, the Court may make an order –

(e) Prohibiting the defendant or any person from disposing of, or otherwise dealing with, the property or such part of it or interest in it as is specified in the order, except in such manner as is specified in the order; and

(f) At the request of the Attorney-General, where the Court is satisfied that the circumstances so require – directing the Financial Secretary to take custody of the property or such part of it as is specified in the order and to manage or otherwise deal with all or any part of the property under the directions of the Court.

(2) An order under subsection (1) may be made subject to such conditions as the Court thinks fit and, without limiting the generality of this section, may make provision for meeting, out of the property or a specified part of the property, all or any of the following –

(a) The person's reasonable living expenses (including the reasonable living expenses of the person's dependants (if any)) and reasonable business expenses;

(b) The person's reasonable expenses in defending a criminal charge and any proceedings under this Act;

(c) Another specified debt incurred by the person in good faith; but the Court shall not make such provision unless it is satisfied that the person cannot meet the expense or debt concerned out of property that is not subject to a restraining order.

(3) In determining whether there are reasonable grounds for believing the property is subject to the effective control of the defendant the Court may have regard to the matters referred to in section 24(2).

(4) Where the Financial Secretary is given a direction under subsection (1)(f) in relation to property, the Financial Secretary may do anything that is reasonably necessary for preserving the property and for this purpose may exercise any power that the owner of the property could exercise and do so to the exclusion of the owner.

(5) Where the Attorney-General applies to the Court for an order under subsection (1), a witness shall not be required to answer a question or to produce a document if the Court is satisfied that answering the question or producing the document may prejudice the investigation of, or prosecution of a person for, an offence.

33 Undertakings by the Crown

(1) Before making an order under section 32, the Court may require the Crown to give such undertakings as the Court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(2) For the purposes of this section, the Attorney-General may, on behalf of the Crown, give to the Court such undertakings with respect to the payment of damages or costs, or both, as are required by the Court.

34 Notice of application for restraining order

(1) Subject to subsection (2), before making a restraining order, the Court shall require notice to be given to, and may hear, any person who, in the opinion of the Court, may have an interest in the property.

(2) If the Attorney-General so requests, the Court shall consider the application without requiring notice to be given under subsection (1) but a restraining order made under this subsection shall cease to have effect after 14 days or such lesser period as the Court specifies in the order.

(3) The Court may, on application by the Attorney-General, extend the period of operation of a restraining order made under subsection (2), but shall not consider the application without requiring notice to be given under subsection (1).

35 Service of restraining order

(1) Subject to subsection (2), a copy of a restraining order shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by rules of Court.

(2) Where the Court is satisfied that it is in the public interest to do so it may order that service under subsection (1) be delayed for a specified period.

36 Further orders

(1) Where the Court makes, or has made, a restraining order, the Court may, on application by the Attorney-General, a person whose property is the subject of the restraining order (in this section called "the owner"), the Financial Secretary (if the restraining order directs the Financial Secretary to take custody and control of property) or, with the leave of the Court, any other person, make any ancillary orders it considers appropriate.

(2) Without limiting the generality of subsection (1), an ancillary order may –

(a) Vary the property to which a restraining order relates;

(b) Vary any condition to which a restraining order is subject;

(c) Order the examination on oath before the Court of any person about the affairs of the owner or the defendant;

(d) Provide for the carrying out of any undertaking with respect to the payment of damages or costs given by the Crown in connection with the making of the restraining order;

(e) Direct the owner or the defendant to give to a specified person a statement on oath setting out such particulars of the property, or dealings with the property, as the Court thinks proper;

(f) Where the restraining order directs the Financial Secretary to take custody and control of property –

(i) regulate the performance or exercise of the Financial Secretary's functions, duties or powers under the restraining order;

(ii) determine any question relating to the property;

(iii) direct a person to do any act or thing to enable the Financial Secretary to take custody and control of the property;

(iv) where the restraining order provides that a person's reasonable expenses in defending a criminal charge be met out of the property, direct that such expenses be taxed as provided in the order before being met; and

(v) make provision for the payment to the Financial Secretary out of the property of the costs, charges and expenses incurred in connection with the

performance or exercise by the Financial Secretary of functions, duties or powers under the restraining order.

(3) Where a person who has an interest in property in respect of which a restraining order was made applies to the Court for a variation of the order to exclude the person's interest from the order, the Court shall grant the application if the Court is satisfied –

(a) That the interest is not tainted property and that it cannot be required to satisfy a confiscation order; or

(b) That the applicant was not in any way involved in the commission of the offence in respect of which the restraining order was made and, where the applicant acquired the interest at the time of or after the commission (or alleged commission) of the offence, that the applicant 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 tainted property; or

(c) in any case – it is in the public interest to do so having regard to all the circumstances, including any financial hardship or other consequence of the interest remaining subject to the order.

(4) An application under subsection (1) shall not be heard by the Court unless the applicant has given to each other person who is entitled to make an application under subsection (1) in relation to the restraining order notice in writing of the application.

(5) The Court may require notice of the application to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property.

(6) Where a person is required, under an order under subsection (2)(c) or (e), to make or give a statement on oath, the person is not excused from making or giving the statement on the ground that the statement, or part of the statement, might tend to incriminate the person or make the person liable to forfeiture or a penalty but such a statement, and any information, document or thing obtained as a direct or indirect consequence of the statement, is not admissible against the person in any criminal proceedings except a proceeding in respect of the falsity of the statement.

37 Financial Secretary to satisfy confiscation order

(1) Where –

(a) A confiscation order is made against a defendant in reliance on the defendant's conviction of an offence; and

(b) A restraining order is made against property of the defendant, or property of another person in relation to which an order under section 24(3) is in force, in reliance on the defendant's conviction, or alleged commission, of the offence, the Court may, upon the making of the later of the orders or, on application by the Attorney-General,

at any time after it while the restraining order remains in force, direct the Financial Secretary to satisfy the confiscation order by a payment to the Crown out of the property.

(2) For the purposes of enabling the Financial Secretary to comply with a direction under subsection (1), the Court may –

(a) Direct the Financial Secretary to sell or otherwise dispose of such of the property as the Court specifies; and

(b) Order that the Financial Secretary may execute, and do anything necessary to give validity and operation to, any deed or instrument in the name of a person who owns or has an interest in the property, and, where the Court makes such an order, the execution of the deed or instrument by the Financial Secretary has the same force and validity as if the deed or instrument had been executed by the person.

(3) The Financial Secretary shall refrain from taking action to sell property under a direction under subsection (1) –

(a) Until the relevant appeal date; or

(b) If proceedings in bankruptcy against the owner of the property are in progress or the owner is bankrupt.

(4) In this section "relevant appeal date", used in relation to a confiscation order made in consequence of a person's conviction of a serious offence, means –

(a) The date on which the period allowed by the rules of Court for the lodging of an appeal against a person's conviction, or for the lodging of an appeal against the making of a confiscation order, expires without an appeal having been lodged, whichever is the later; or

(b) Where an appeal against a person's conviction or against the making of a confiscation order is lodged –

the date on which the appeal, or the later appeal, lapses in accordance with the rules of court or is finally determined.

38 Registration of restraining order

Where a restraining order applies to property of a particular kind and the provisions of any law of Niue provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering those provisions may, on application by the Attorney-General, record on the register kept under those provisions the particulars of the restraining order and, if those particulars are so recorded, a person who subsequently deals with the property shall, for the purposes of section 39, be deemed to have notice of the restraining order at the time of the dealing.

39 Contravention of restraining orders

(1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order commits an indictable offence punishable, on conviction, by –

(a) In the case of a natural person –

a fine not exceeding 300 penalty units or imprisonment for a period not exceeding 5 years, or both; or

(b) In the case of a body corporate –

a fine not exceeding 1500 penalty units.

(2) Where a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith the Attorney-General may apply to the Court that made the restraining order for an order that the disposition or dealing be set aside.

(3) Where the Attorney-General makes an application under subsection (2) in relation to a disposition or dealing, the Court may –

(a) Set aside the disposition or dealing as from the day on which the disposition or dealing took place; or

(b) Set aside the disposition or dealing as from the day of the order under this subsection and declare the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order under this subsection.

40 Court may revoke restraining orders

(1) Where the Court has made a restraining order against a person's property, the Court may, on application by the person, revoke the order if the applicant –

(a) Where the applicant is a defendant –

gives security satisfactory to the Court for the satisfaction of any confiscation order that may be made against the person under this Act; or

(b) Gives undertakings satisfactory to the Court concerning the person's property.

(2) An applicant under subsection (1) shall give written notice of the application to the Attorney-General and, if the restraining order directed the Financial Secretary to take control of property, to the Financial Secretary.

41 When restraining order ceases to be in force

(1) Subject to subsection (2), a restraining order made in reliance on a person's conviction, or alleged commission, of a serious offence ceases to be in force, in whole or in part, as the case

requires –

- (a) Where the order is made in reliance on the proposed charging of the person with the offence and the person is not so charged within the period of 48 hours after the making of the order – at the end of that period;
- (b) When the charge against the person is withdrawn or the person is acquitted of the charge;
- (c) When property subject to the order is used to satisfy a confiscation order which was made in reliance on the person's conviction of the offence;
- (d) When the Court refuses an application for a confiscation order in reliance on the person's conviction of the offence;
- (e) When property subject to the order is forfeited under section 11 or 17.

(2) In spite of anything in subsection (1), a restraining order ceases to be in force at the end of 6 months after the day when the restraining order was made but the Court may within that period, on application by the Attorney-General, order that the restraining order shall continue in force until a specified time or event, if the Court is satisfied that a forfeiture order may still be made in respect of the property or that the property may be required to satisfy a confiscation order which has not yet been made.

(3) The Attorney-General shall give a person written notice of an application under subsection (2) in relation to a restraining order in respect of property of the person.

42 Interim restraining order may be made in respect of foreign offence

(1) Where the Attorney-General is authorised, under the Mutual Assistance in Criminal Matters Act 1998, to apply for a restraining order under this Act against any property of a person in respect of a foreign serious offence, the Attorney-General may apply for the order accordingly and sections 31 to 46 apply to the application and to any restraining order made as a result of the application as if –

- (a) Reference in sections 31 to 46 to a serious offence were a reference to the foreign serious offence;
- (b) A reference in sections 31 to 46 to a person charged or about to be charged with a serious offence were a reference to a person against whom a criminal proceeding in respect of a foreign serious offence has commenced, or is reasonably believed to be about to commence, in a foreign country;
- (c) There were substituted for the words of section 31(2) (b) the following words –

"where the defendant has not been convicted of a foreign serious offence – the offence which the defendant is believed to have committed and the grounds for that belief";

(d) There were substituted for the words of section 32(1) (a) the

following words –

"the defendant has been convicted of a foreign serious offence, or a criminal proceeding in respect of a foreign serious offence has commenced, or is reasonably believed to be about to commence, against the defendant in a foreign country";

(e) The reference in section 32(2) (b) to a person's reasonable expenses in defending a criminal charge includes a reference to the person's reasonable expenses in being represented in a criminal proceeding in a foreign country; and

(f) Sections 31(2) (c) and (f), 32(1) (c), 36(3) (a), 37, 40 and 41 were omitted.

(2) Subject to subsections (3) and (4), a restraining order made in respect of a foreign serious offence ceases to have effect at the end of the period of 30 days commencing on the day on which the order is made.

(3) Where the Court makes a restraining order in respect of a foreign serious offence, it may, on application made by the Attorney-General before the end of the period referred to in subsection (2), extend the period of operation of the restraining order.

(4) Where –

(a) A restraining order against property is made in respect of a foreign serious offence; and

(b) Before the end of the period referred to in subsection (2) (including that period as extended under subsection (3)) a foreign restraining order against the property is registered in the Court under the Mutual Assistance in Criminal Matters Act 1998, the restraining order referred to in paragraph (a) ceases to have effect upon the registration of the foreign restraining order referred to in paragraph (b).

43 Registered foreign restraining orders – general

Where a foreign restraining order is registered in the Court under the Mutual Assistance in Criminal Matters Act 1998, sections 31 to 46 apply in relation to the order as if –

(a) Sections 36, 37(3) and (4), 40 and 41 were omitted;

(b) A reference in section 35, 37, 38 or 39 to a restraining order included a reference to an order under section 44; and

(c) The reference in section 37(1) to the making of a restraining order were a reference to the registration by the Court of a foreign restraining order under the Mutual Assistance in Criminal Matters Act 1998 and the making of an order under section 44.

44 Registered foreign restraining orders – Court may direct Financial Secretary to take custody and control of property

(1) Where a foreign restraining order against property is registered in the Court under the Mutual Assistance in Criminal Matters Act 1998, the Court may, if satisfied, upon application by the Attorney-General, that the circumstances so require, by order direct the Financial Secretary to take custody and control of the property, or of such part of it as is specified in the Court order and to manage or otherwise deal with all or any part of the property under the directions of the Court.

(2) Before making an order under subsection (1), the Court shall require notice to be given to, and may hear, any person who, in the opinion of the Court, may have an interest in the property.

(3) Where the Financial Secretary is given an order under subsection (1) in relation to property, the Financial Secretary may do anything that is reasonably necessary for preserving the property and for this purpose may exercise any power that the owner of the property could exercise and do so to the exclusion of the owner.

(4) Where an order is made under subsection (1) in respect of property of a person (in this subsection called the "respondent"), the Court may, at the time when it makes the order or at any later time, make any one or more of the following orders –

(a) Directing the respondent to give the Financial Secretary a statement on oath setting out such particulars of the property, or dealings with the property, as the Court thinks proper;

(b) Regulating the performance or exercise of the Financial Secretary's functions, duties or powers under the restraining order;

(c) Determining any question relating to the property;

(d) Where the registered foreign restraining order provides that a person's reasonable expenses in defending a criminal charge be met out of the property – directing that such expenses be taxed as provided in the order before being met; and

(e) Making provision for the payment to the Financial Secretary out of the property of the costs, charges and expenses incurred in connection with the performance or exercise by the Financial Secretary of functions, duties or powers under the restraining order.

45 Registered foreign restraining orders – undertakings

Where –

(a) A foreign restraining order against property is registered in the Court under the Mutual Assistance in Criminal Matters Act 1998; or

(b) The Court makes an order under section 44 in respect of property, the Court may, upon application by a person claiming an interest in the property, make an order as to the giving, or carrying out, of an undertaking by the Attorney-General, on behalf of the Crown, with respect to the payment of damages or costs in relation to the registration, making or operation of the order.

46 Registered foreign restraining orders – time when order ceases to be in force

A foreign restraining order registered in the Court under the Mutual Assistance in Criminal Matters 1998 ceases to be in force when the registration is cancelled under that Act.

Production Orders, and Other Information Gathering Powers

47 Production and inspection orders

(1) Where –

(a) A person has been convicted of a serious offence and a constable has reasonable grounds for suspecting that a person has possession or control of a property-tracking document or property-tracking documents in relation to the offence; or

(b) A constable has reasonable grounds for suspecting that a person has committed a serious offence and that a person has possession or control of a property-tracking document or property-tracking documents in relation to the offence; the constable may apply to a Judge in Chambers under subsection (2) for an order under subsection (5) against the person suspected of having possession or control of the document or documents.

(2) An application under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit.

(3) Where a constable applies for an order under subsection (5) in respect of an offence and includes in the affidavit a statement to the effect that the constable has reasonable grounds to believe that –

(a) The person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and

(b) Property specified in the affidavit is subject to the effective control of the person referred to in paragraph (a), the Judge may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in relation to the offence for the purposes of this section.

(4) In determining whether to treat a document, under subsection (3), as a property-tracking document in relation to an offence, the Judge may have regard to the matters referred to in section 24(2).

(5) Subject to subsection (6), but notwithstanding any enactment which prohibits disclosure of information of a particular type, where an application is made under subsection (1) for an order against a person, the Judge may, if satisfied that there are reasonable grounds for doing so, make an order requiring the person to –

(a) Produce to a constable, at a specified time and place, any documents of the kind referred to in subsection (1) that are in the person's possession or control; or

(b) Make available to a constable for inspection, at a specified time or times, any documents of that kind that are in the person's possession or control.

(6) An order under subsection (5)(a) shall not be made in respect of accounting records used in the ordinary business of banking, including ledgers, day-books, cash books and account books.

48 Scope of police powers under production order

(1) Where a document is produced to a constable, or made available to a constable for inspection pursuant to an order under section 47, the constable may –

(a) Inspect the document;

(b) Take extracts from the document;

(c) Make copies of the document;

(d) In the case of an order under section 47(5)(a) – retain the document if, and for so long as, retention of the document is reasonably necessary for the purposes of this Act.

(2) Where a constable retains a document pursuant to an order under section 47, the constable shall –

(a) Give the person to whom the order was addressed a copy of the document certified by the constable in writing to be a true copy of the document retained; and

(b) Unless the person has received a copy of the document under paragraph (a) – permit the person to –

(i) inspect the document;

(ii) take extracts from the document; or

(iii) make copies of the document.

49 Evidential value of information

(1) Where a person produces or makes available a document pursuant to an order under section 47, the production or making available of the document, or any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document, is not admissible against the person in any criminal proceedings except a proceeding for an offence against section 51.

(2) For the purposes of subsection (1), proceedings on an application for a restraining order, a forfeiture order or a confiscation order are not criminal proceedings.

(3) A person is not excused from producing or making available a document when required to

do so by an order under section 47 on the ground that –

- (a) The production or making available of the document might tend to incriminate the person or make the person liable to penalty; or
- (b) The production or making available of the document would be in breach of an obligation (whether imposed by enactment or otherwise) of the person not to disclose the existence or contents of the document.

50 Variation of production order

Where a Judge makes a production order requiring a person to produce a document to a constable, the person may apply to the Judge or another Judge for a variation of the order and if the Judge hearing the application is satisfied that the document is essential to the business activities of the person, the Judge may vary the production order so that it requires the person to make the document available to a constable for inspection.

51 Failure to comply with production order

(1) Where a person is required by a production order to produce a document to a constable or make a document available to a constable for inspection, the person commits an offence against this subsection if the person –

- (a) Contravenes the order without reasonable excuse; or
- (b) In purported compliance with the order produces or makes available a document known to the person to be false or misleading in a material particular without –
 - (i) indicating to the constable to whom the document is produced or made available that the document is false or misleading and the respect in which the document is false or misleading; and
 - (ii) providing correct information to the constable if the person is in possession of, or can reasonably acquire, the correct information.

(2) An offence against subsection (1) is punishable, on conviction, by –

- (a) If the offender is a natural person –
 - a fine not exceeding 300 penalty units or imprisonment for a period not exceeding 5 years, or both; or
- (b) If the offender is a body corporate –
 - a fine not exceeding 1500 penalty units.

52 Search warrant to facilitate investigation

(1) Where –

(a) A person is convicted of a serious offence and a constable has reasonable grounds for suspecting that there is in any premises a property-tracking document in relation to the offence; or

(b) A constable has reasonable grounds for suspecting that a person has committed a serious offence and there is in any premises a property-tracking document in relation to the offence; the constable may apply to a Judge for a warrant under subsection (4) to search the premises for the document.

(2) Where a constable applies for a warrant under subsection (4) in respect of an offence and includes in the affidavit a statement to the effect that the officer has reasonable grounds to believe that –

(a) The person who was convicted of the offence, or who is believed to have committed the offence, derived a benefit, directly or indirectly, from the commission of the offence; and

(b) Property specified in the affidavit is subject to the effective control of the person referred to in paragraph (a), the Judge may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in relation to the offence for the purposes of this section.

(3) In determining whether to treat a document, under subsection (2), as a property-tracking document in relation to an offence, the Judge may have regard to the matters referred to in section 24(2).

(4) Subject to subsection (5), but notwithstanding any enactment which prohibits disclosure of information of a particular type, where an application is made under subsection (1) for a warrant to search premises for a property-tracking document, the Judge may, if satisfied that there are reasonable grounds for doing so, issue a warrant of that kind in the same manner, and subject to the same conditions, as a Judge could issue a search warrant under the Niue Act 1966 and, subject to sections 47 to 53, the warrant may be executed in the same manner as if it had been issued under that Act.

(5) A Judge shall not issue a search warrant under subsection (4) unless the Judge is satisfied that –

(a) It would not be appropriate to make a production order in respect of the document; or

(b) The investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the constable does not gain immediate access to the document without notice to any person.

(6) Where a constable enters premises in execution of a warrant issued under this section, the police officer may seize and retain –

(a) Any document which is likely to be of substantial value (whether by itself or together with other documents) to the investigation for the purpose of which the warrant was issued; and

(b) Any thing that the constable believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence.

(7) In this section "premises" includes any place and in particular any building, receptacle, vehicle, vessel or aircraft.

53 Production orders and search warrants in relation to foreign offences

(1) Where a constable is authorised, under the Mutual Assistance in Criminal Matters Act 1998, to –

(a) Apply to a Judge of the Court for a production order under this Act in respect of a foreign serious offence; or

(b) Apply to the Court for a search warrant under this Act in relation to a property-tracking document in respect of a foreign serious offence; the constable may apply for the order or warrant accordingly and sections 47 to 53 apply to the application and to any order or warrant issued as a result of the application as if a reference in those sections to a serious offence were a reference to the foreign serious offence.

(2) Where a constable takes possession of a document under a production order made, or a warrant issued, in respect of a foreign serious offence, the constable may retain the document for a period not exceeding one month pending a written direction from the Attorney-General as to the manner in which the document is to be dealt with (which may include a direction that the document is to be sent to an authority of the foreign country that requested the issue of the warrant).

Monitoring Orders

54 Monitoring orders

(1) A constable may apply to a Judge in Chambers under subsection (2) for an order (in sections 54 and 55 called a "monitoring order") directing a financial institution to give information to a constable.

(2) An application under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit.

(3) A monitoring order shall direct a financial institution to give information obtained by the institution about transactions conducted through an account held by a particular person with the institution.

(4) A monitoring order shall apply in relation to transactions conducted during the period specified in the order, being a period commencing not earlier than the day on which notice of the order is given to the financial institution and ending not later than 3 months after the date of the order.

(5) A Judge shall not make a monitoring order unless the Judge is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information

is sought –

- (a) Has committed, or is about to commit, a serious offence;
- (b) Was involved in the commission, or is about to be involved in the commission, of a serious offence; or
- (c) Has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a serious offence.

(6) A monitoring order shall specify –

- (a) The name or names in which the account is believed to be held;
- (b) The class of information that the institution is required to give; and
- (c) The name of the constable to whom the information is to be given, and the manner in which the information is to be given.

(7) Where a financial institution is, or has been, subject to a monitoring order, the fact that the monitoring order has been made shall be disregarded for the purposes of the application of sections 64 and 65 in relation to the institution.

(8) Where a financial institution that has been given notice of a monitoring order knowingly –

- (a) Contravenes the order; or
 - (b) Provides false or misleading information in purported compliance with the order;
- the institution is guilty of an offence against this subsection punishable, on conviction, by a fine not exceeding 3000 penalty units.

(9) A reference in this section to a transaction conducted through an account includes a reference to –

- (a) The making of a fixed term deposit; and
- (b) In relation to a fixed term deposit – the transfer of the amount deposited, or any part of it, at the end of the term; and
- (c) The opening, existence or use of a deposit box held by the institution.

55 Monitoring orders not to be disclosed

(1) A financial institution that is, or has been, subject to a monitoring order shall not disclose the existence or the operation of the order to any person except –

- (a) The Chief of Police or a constable authorised in writing by the Chief of Police to receive the information;

(b) An officer or agent of the institution, for the purpose of ensuring that the order is complied with; or

(c) A legal practitioner or adviser, for the purpose of obtaining legal advice or representation in relation to the order.

(2) A person of a kind referred to in subsection (1)(a), (b) or (c) to whom a disclosure of the existence or operation of a monitoring order has been made (whether under subsection (1) or a previous application of this subsection or otherwise) shall not –

(a) Disclose the existence or operation of the order except to another person of a kind referred to in subsection (1)(a), (b) or (c) for the purposes of –

(i) if the disclosure is made by the Chief of Police or a constable – the performance of that officer’s duties;

(ii) if the disclosure is made by an officer or agent of the institution – ensuring that the order is complied with or obtaining legal advice or representation in relation to the order; or

(iii) if the disclosure is made by a legal practitioner – giving legal advice or making representations in relation to the order; or

(b) When the person is no longer a person of a kind referred to in subsection (1)(a), (b) or (c) – make a record of, or disclose, the existence or the operation of the order in any circumstances. (3) Nothing in subsection (2) prevents the disclosure by a person of a kind referred to in subsection (1)(a) of the existence or operation of a monitoring order –

(a) For the purposes of, or in connection with, legal proceedings; or

(b) In the course of proceedings before a court.

(4) A person of a kind referred to in subsection (1)(a) shall not be required to disclose to any court the existence or operation of a monitoring order.

(5) A person who contravenes subsection (1) or (2) is guilty of an offence punishable, on conviction by –

(a) If the person is a natural person – a fine not exceeding 600 penalty units or imprisonment for a period not exceeding 10 years, or both; or

(b) If the person is a body corporate – a fine not exceeding 3000 penalty units.

(6) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the monitoring order.

Obligations of financial institutions

56 Retention of records by financial institutions

(1) Subject to this section and to section 57, a financial institution shall retain, in its original form, for the minimum retention period applicable to the document, a document that relates to a financial transaction carried out by the institution in its capacity as a financial institution, including, without limiting the generality of this, a document that relates to –

- (a) The opening or closing by a person of an account with the institution;
- (b) The operation by a person of an account with the institution;
- (c) The opening or use by a person of a deposit box held by the institution;
- (d) The telegraphic or electronic transfer of funds by the institution on behalf of a person to another person;
- (e) The transmission of funds between Niue and a foreign country or between foreign countries on behalf of a person; or
- (f) An application by a person for a loan from the institution, where a loan is made to the person under the application.

(2) Subsection (1) does not apply to –

- (a) A document of a type referred to in subsection (1)(b) that relates to a single deposit, credit, withdrawal, debit or transfer of an amount of money that does not exceed \$2,000 or such higher amount as is prescribed for the purposes of this paragraph; or
- (b) A document –
 - (i) that is not a document given to the institution by or on behalf of a customer, and
 - (ii) whose retention is not necessary in order to preserve a record of the financial transaction concerned.

(3) A financial institution required to retain documents under this section shall retain them on microfilm or in another way that makes retrieval of the documents, or of the information contained in the documents, reasonably practicable.

(4) A financial institution that contravenes subsection (1) or (3) is guilty of an offence against this section punishable, on conviction, by a fine not exceeding 300 penalty units.

(5) This section does not limit any other obligation of a financial institution to retain documents.

57 Register of original documents

(1) Where a financial institution is required by law to release an original of a document before the end of the minimum retention period applicable to the document, the institution shall retain a complete copy of the document until the period has ended or the original document is returned, whichever occurs first.

(2) The financial institution shall maintain a register of documents released under subsection (1).

(3) A financial institution that contravenes subsection (1) or (2) is guilty of an offence against this section punishable, on conviction, by a fine not exceeding 300 penalty units.

58 Communication of information to law enforcement authorities

(1) Where a financial institution is a party to a transaction and the institution has reasonable grounds to suspect that information that the institution has concerning the transaction –

(a) May be relevant to an investigation of, or the prosecution of, a person for an offence; or

(b) May be of assistance in the enforcement of this Act or any regulations made under it; the institution may give the information to a constable or the Attorney-General.

(2) An action, suit or proceedings does not lie against –

(a) A financial institution; or

(b) An officer, employee or agent of a financial institution acting in the course of the person's employment or agency, in relation to an action taken by the institution or person under subsection (1).

(3) Where a financial institution gives information to a constable or the Attorney-General, under subsection (1), about the institution's suspicion in relation to a transaction to which the institution is a party, the institution, or an officer, employee or agent of the institution, must not, unless required to do so under this Act or any other Act, disclose to anyone else –

(a) That the institution has formed the suspicion; or

(b) That information has been given; or

(c) Any other information from which the person to whom the information is disclosed could reasonably be expected to infer that the suspicion had been formed or that the first-mentioned information had been given.

(4) A financial institution, or an officer, employee or agent of the institution, who contravenes subsection (3) is guilty of an offence punishable, on conviction by –

(a) If the offender is a natural person – a fine not exceeding 120 penalty units, or imprisonment for a term not exceeding 2 years, or both; or

(b) If the offender is a body corporate – a fine not exceeding 600 penalty units.

59 Protection for financial institutions

Where a financial institution, or a person who is an officer, employee or agent of the institution, gives the information under section 58(1) as soon as practicable after forming the belief referred to in that subsection, the institution shall be taken for the purposes of sections 64 and 65 not to have been in possession of that information at any time.

60 Interpretation

For the purposes of sections 56 to 60 –

"customer", in relation to a financial institution, means a person by or on behalf of whom a financial transaction of a type referred to in section 56(1) is carried out by the institution;

"financial institution" means –

- (a) A bank;
- (b) A building society;
- (c) A credit union;
- (d) A trust company;
- (e) A finance company; or
- (f) A deposit taking company, designated as such by the Minister responsible for finance;

"minimum retention period" means –

- (a) If the document relates to the opening of an account with the institution – the period of 7 years after the day on which the account is closed;
- (b) If the document relates to the opening by a person of a deposit box held by the institution – the period of 7 years after the day on which the deposit box ceases to be used by the person; or
- (c) In any other case – the period of 7 years after the day on which the transaction takes place.

Disclosure of Information Held by Government Departments

61 Direction to disclose information

Notwithstanding any provision in any other law, the Attorney-General may direct the person in charge of any Government department or statutory body to disclose a document or information which is in the possession or under the control of that person or to which that

person may reasonably have access (not being a document readily available to the public), if the Attorney-General is satisfied that the information is relevant to –

- (a) Establishing whether a serious offence has been, or is being, committed; or
- (b) The making, or proposed or possible making, of an order under Part 2 or 3, and, where the Attorney-General directs disclosure of information under this subsection, the person shall disclose the information to the Attorney-General or a constable nominated by the Attorney-General.

62 Further disclosure of information and documents

(1) No person to whom information has been disclosed under section 61 shall further disclose the information except for the purposes of –

- (a) The investigation of, or the prosecution, or proposed or possible prosecution, of a person for a serious offence; or
- (b) An investigation relating to proceedings, or proposed or possible proceedings, for the making of an order under this Act or an investigation relating to the making, or proposed or possible making, of such an order.

(2) A person to whom information has been disclosed under subsection (1) or this subsection shall not disclose the information to another person except for the purposes referred to in subsection (1)(a) and (b).

(3) Where information is communicated to a person under section 61 or subsection (1) or (2), the person –

- (a) Shall not voluntarily give the information in evidence in a proceeding before the Court other than a proceeding referred to in subsection (1)(a) or (b); and
- (b) Shall not be required to communicate the information to the Court.

(4) A person who discloses information in contravention of this section is guilty of an offence punishable, on conviction, by a fine not exceeding 120 penalty units or imprisonment for a period not exceeding 2 years, or both.

63 Evidential value of copies

Where any document is examined or provided pursuant to a direction under section 61, the person by whom it is examined or to whom it is provided, or any officer or person authorised for the purpose by the person in charge of the relevant Government department or statutory body, may make or cause to be made one or more copies of it and any copy purporting to be certified by the person in charge of the relevant Government department or statutory body to be a copy made under this section is evidence of the nature and content of the original document and has the same probative force as the original document would have had if it had been proved in the ordinary way.

PART 4

OFFENCES

64 Money laundering

(1) In this section "transaction" includes the receiving or making of a gift.

(2) A person who engages in money laundering is guilty of an offence punishable, on conviction, by –

(a) If the offender is a natural person – a fine not exceeding 1,200 penalty units or imprisonment for period not exceeding 20 years, or both; or

(b) If the offender is a body corporate – a fine not exceeding 10,000 penalty units.

(3) A person shall be taken to engage in money laundering if, and only if –

(a) The person engages, directly or indirectly, in a transaction that involves money, or other property, that is proceeds of crime; or

(b) The person receives, possesses, conceals, disposes of or brings into Niue any money, or other property that is proceeds of crime, and the person knows, or ought reasonably to know, that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity.

65 Possession of property suspected of being proceeds of crime

(1) A person who receives, possesses, conceals, disposes of or brings into Niue any money, or other property, that may reasonably be suspected of being proceeds of crime is guilty of an offence punishable, on conviction, by –

(a) If the offender is a natural person – a fine not exceeding 200 penalty units or imprisonment for a period not exceeding 2 years, or both; or

(b) If the offender is a body corporate – a fine not exceeding 1000 penalty units.

(2) It is a defence to a charge for an offence against this section, if the person satisfies the Court that the person had no reasonable grounds for suspecting that the property referred to in the charge was derived or realised, directly or indirectly, from some form of unlawful activity.

66 Conduct by directors, servants or agents

(1) Where it is necessary, for the purposes of this Act, to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate –

(a) By a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or

(b) By any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant, or agent, shall be deemed, for the purposes of this Act, to have been engaged in by the body corporate.

(3) Where it is necessary, for the purposes of this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (4) to have been engaged in by the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(4) Conduct engaged in on behalf of a person other than a body corporate –

(a) By a servant or agent of the person within the scope of his or her actual or apparent authority; or

(b) By any other person at the direction or with the consent or agreement (whether expressed or implied) of a servant or agent of the first mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent, shall be deemed, for the purposes of this Act, to have been engaged in by the first mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.

PART 5 MISCELLANEOUS

67 Standard of proof

Save as otherwise provided in this Act, any question of fact to be decided by the Court in proceedings under this Act is to be decided on the balance of probabilities.

68 Costs

Where –

(a) A person brings, or appears at, proceedings under this Act before a Court in order –

(i) to prevent a forfeiture, confiscation or restraining order from being made against property of the person; or

(ii) to have property of the person excluded from a forfeiture, confiscation or restraining order;

(b) The person is successful in those proceedings; and

(c) The Court is satisfied that the person was not involved in any way in the commission of the offence in respect of which the forfeiture, confiscation or restraining order was sought or made, the Court may order the Crown to pay all costs reasonably incurred by the person in connection with the proceedings or such part of those costs as is determined by the Court.

69 Non-liability of Financial Secretary

The Financial Secretary shall not be personally liable for any act done, or omitted to be done, by him or her in the course of the performance of the Financial Secretary's functions under this Act.

70 Operation of other laws not affected

Nothing in this Act prejudices, limits or restricts –

(a) The operation of any other law which provides for the forfeiture of property or the imposition of penalties or fines; or

(b) The remedies available to the Crown, apart from this Act, for the enforcement of its rights and the protection of its interests; or

(c) Any power of search or any power to seize or detain property which is exercisable by a constable apart from this Act.

71 Regulations

The Cabinet may make regulations prescribing matters –

(a) Required or permitted by this Act to be prescribed; or

(b) Necessary or convenient to be prescribed for carrying out or giving effect to this Act.