

VIRGIN ISLANDS
CRIMINAL JUSTICE
(INTERNATIONAL CO-OPERATION) ACT, 1993

ARRANGEMENT OF SECTIONS

Section

1. Short title and date of commencement.

PART I

CRIMINAL PROCEEDINGS AND INVESTIGATIONS

Mutual service of process

2. Service of overseas process in the Virgin Islands.
3. Service of Virgin Islands process overseas.

Mutual provision of evidence

4. Overseas evidence for use in Virgin Islands.
5. Virgin Islands evidence for use overseas.

Additional co-operation powers

6. Search etc. for material relevant to overseas investigation.
7. Enforcement of overseas forfeiture orders.

Supplementary

8. Rules of court.

PART II

THE VIENNA CONVENTION

Substances useful for manufacture of controlled drugs

9. Manufacture and supply of scheduled substances.
10. Regulations about scheduled substances.

Proceeds of drug trafficking

11. Concealing or transferring proceeds of drug trafficking.
12. Interest on sums unpaid under confiscation orders.
13. Increase in realisable property.

Offences at sea

14. Offences on Virgin Islands ships.
15. Ships used for illicit traffic.
16. Enforcement powers.
17. Jurisdiction and prosecutions.

Supplementary

18. Extradition.
19. Application of ancillary provisions of Drugs (Prevention of Misuse) Act (Cap. 178).
20. Interpretation of Part II.

PART III

GENERAL

21. Expenses and receipts.
22. Consequential amendments to the Drug Trafficking Offences Act 1992.

23. Certain provisions of Repatriation of Prisoners Act (Cap. 123) to apply for transfer of prisoners.

SCHEDULE 1

SCHEDULE 2

SCHEDULE 3

SCHEDULE 4

No. 8 of 1993

**Criminal Justice
(International Co-operation)
Act, 1993**

**Virgin
Islands**

**I Assent
Peter A. Penfold
Governor
7th October, 1993**

VIRGIN ISLANDS

No. 8 of 1993

An Act to enable the Virgin Islands to co-operate with other countries in criminal proceedings and investigations; and to enable the Virgin Islands to join with other countries in implementing the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

[Gazetted 28th October, 1993]

ENACTED by the Legislature of the Virgin Islands as follows -

1. This Act may be cited as the Criminal Justice (International Co-operation) Act, 1993, and shall come into operation on such day as the Governor may by proclamation published in the Gazette appoint.

PART I

CRIMINAL PROCEEDINGS AND INVESTIGATIONS

Mutual service of process

2. (1) This section has effect where the Attorney General receives from the government of, or other authority in, a country or territory outside the Virgin islands -

- (a) a summons or other process requiring a person to appear as defendant or attend as a witness in criminal proceedings in that country or territory; or
- (b) a document issued by a court exercising criminal jurisdiction in that country or territory and recording a decision of the court made in the exercise of that jurisdiction,

together with a request for it to be served on a person in the Virgin Islands.

(2) The Attorney General may cause the process or document to be served by post or, if the request is for personal service, direct the Commissioner of Police to cause it to be personally served on him.

(3) Service by virtue of this section of any such process as is mentioned in subsection (1) (a) shall not impose any obligation under the law of the Virgin Islands to comply with it.

(4) Any such process served by virtue of this section shall be accompanied by a notice -

- (a) stating the effect of subsection (3);
- (b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of his failing to comply with the process under the law of the country or territory where it was issued; and
- (c) indicating that under that law he may not, as a witness, be accorded the same rights and privileges as would be accorded to him in criminal proceedings in the Virgin Islands.

(5) Where the Commissioner of Police is directed under this section to cause any process or document to be served he shall after it has been served forthwith inform in writing the Attorney General when and how it was served and, if possible, furnish him with a receipt signed by the person on whom it was served; and if the Commissioner of Police has been unable to cause the process or document to be served he shall forthwith inform the Attorney General of that fact and of the reason.

3. (1) Process of the following descriptions, that is to say -

- (a) a summons requiring a person charged with an offence to appear before a court in the Virgin Islands; and
- (b) a summons or order requiring a person to attend before a court in the Virgin Islands for the purpose of giving evidence in criminal proceedings,

may be issued or made notwithstanding that the person in question is outside the Virgin Islands and may be served outside the Virgin Islands in accordance with arrangements made by the Attorney General.

Service of
Virgin
Islands
process
overseas.

(2) Service of any process outside the Virgin Islands by virtue of this section shall not impose any obligation under the law of any part of the Virgin Islands to comply with it and accordingly failure to do so shall not constitute contempt of any court or be a ground for issuing a warrant to secure the attendance of the person in question or for imposing any penalty.

(3) Subsection (2) is without prejudice to the service of any process (with usual consequences for non-compliance) on the person in question if subsequently effected in the Virgin Islands.

Mutual provision of evidence

4. (1) Where on an application made in accordance with subsection (2) it appears to a judge -

- (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed; and
- (b) that proceedings in respect of the offence have been instituted or that the offence is being investigated,

he may issue a letter ("a letter of request") requesting assistance in obtaining outside the Virgin Islands such evidence as is specified in the letter for use in the proceedings or investigation.

(2) An application under subsection (1) may be made by the Attorney General or, if proceedings have been instituted, by the person charged in those proceedings.

(3) The Attorney General may issue a letter or request if -

- (a) he is satisfied as to the matters mentioned in subsection (1) (a); and
- (b) the offence in question is being investigated or the authority has instituted proceedings in respect of it.

(4) Subject to subsection (5), a letter of request shall be sent to the Governor for transmission either -

- (a) to a court or tribunal specified in the letter and exercising jurisdiction in the place where the evidence is to be obtained; or
- (b) to any authority recognised by the government of the

Overseas
evidence for
use in the
Virgin
Islands.

country or territory in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.

(5) In cases of urgency a letter of request may be sent direct to such a court or tribunal as is mentioned in section (4) (a).

(6) In this section "evidence" includes documents and other articles.

(7) Evidence obtained by virtue of a letter of request shall not without the consent of such an authority as is mentioned in subsection (4) (b) be used for any purpose other than that specified in the letter; and when any document or other article obtained pursuant to a letter of request is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to such an authority unless that authority indicates that the document or article need not be returned.

Virgin Islands
evidence for
use overseas.

5. (1) This section has effect where the Governor receives -

- (a) from a court or tribunal exercising criminal jurisdiction in a country or territory outside the Virgin Islands or a prosecuting authority in such a country or territory; or
- (b) from any other authority in such a country or territory which appears to him to have the function of making requests of the kind to which this section applies,

a request for assistance in obtaining evidence in the Virgin Islands in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in that country or territory.

(2) If the Governor, after consultation with the Attorney General, is satisfied -

- (a) that an offence under the law of the country or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed; and
- (b) that proceedings in respect of that offence have been instituted in that country or territory or that an investigation into that offence is being carried on there,

he may, after consultation with the High Court Judge, by a notice in writing nominate, a court in the Virgin Islands, to receive such of the evidence to which the request relates as may appear to the court to be appropriate for the purpose of giving effect to the request.

(3) Where it appears to the Governor that the request relates to a fiscal offence in respect of which proceedings have not yet been instituted he shall not exercise his powers under subsection (2) unless -

- (a) the request is from a country or territory which is a member of the Commonwealth or is made pursuant to a treaty to which the United Kingdom is a party, and such treaty has been made applicable to the Virgin Islands; or
- (b) he is satisfied that the conduct constituting the offence would constitute an offence of the same or a similar nature if it had occurred in the Virgin Islands.

(4) For the purpose of satisfying himself as to the matters mentioned in subsections (2) (a) and (b) the Governor shall regard as conclusive a certificate issued by such authority in the country or territory in question as appears to him to be appropriate.

(5) In this section "evidence" includes documents and other articles.

(6) Schedule 1 to this Act shall have effect with respect to the proceedings before a nominated court in pursuance of a notice under subsection (2).

Schedule 1.

Additional co-operation powers

6. (1) If, on an application made by a police officer, a Judge, or a Magistrate is satisfied -

Search etc. for material relevant to overseas investigation.

- (a) that criminal proceedings have been instituted against a person in a country or territory outside the Virgin Islands or that a person has been arrested in the course of a criminal investigation carried on there;
- (b) that the conduct constituting the offence which is the subject of the proceedings or investigation would constitute an offence if it had occurred in any part of the Virgin Islands; and
- (c) that there are reasonable grounds for suspecting that

there is on premises in the Virgin Islands occupied or controlled by that person evidence relating to the offence other than items subject to legal privilege,

he may issue a warrant authorising a police officer to enter and search those premises and to seize any such evidence found there.

(2) The power to search conferred by subsection (1) is only a power to search to the extent that is reasonably require for the purpose of discovering such evidence as is there mentioned.

(3) No application for a warrant or order shall be made by virtue of subsection (1) except in pursuance of a direction given by the Attorney General in response to a request received -

- (a) from a court or tribunal exercising criminal jurisdiction in the overseas country or territory in question or a prosecuting authority in that country or territory; or
- (b) from any other authority in that country or territory which appears to him to have the function of making requests for the purposes of this section,

and any evidence seized by a police officer by virtue of this section shall be furnished by him to the Attorney General for transmission to that court, tribunal or authority.

(4) If in order to comply with the request it is necessary for any such evidence to be accompanied by any certificate, affidavit or other verifying document the police officer shall also furnish for transmission such document of that nature as may be specified in the direction given by the Attorney General.

(5) Where the evidence consists of a document the original or copy shall be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

(6) The Attorney General may by order direct that any powers which by virtue of this section are exercisable by a police officer shall also be exercisable by, or by any person acting under the direction of, the Comptroller of Customs; and the Attorney General may by order direct that any of those powers shall also be exercisable by a person of any other description specified in the order.

(7) An order under subsection (6) shall be made by statutory instrument subject to annulment by the Secretary of State in pursuance of a resolution of the Legislative Council.

(8) For the purposes of this section "legal privilege" has the meaning assigned to it under the Drug Trafficking Offences Act, 1992.

No. 5 of
1992.

7. (1) The Governor in Council may by statutory instrument published in the Gazette provide for the enforcement in the Virgin Islands of any order which -

Enforce-
ment of
overseas
forfeiture
orders.

(a) is made by a court in a country or territory outside the Virgin Islands designated for the purposes of this section by such instrument;

(b) is for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which an offence to which this section applies has been committed for which was used in connection with the commission of such an offence.

(2) Without prejudice to the generality of subsection (1) a statutory instrument under this section may provide for the registration by a court in the Virgin Islands of any order as a condition of its enforcement and prescribe requirements to be satisfied before an order can be registered.

(3) A statutory instrument under this section may include such supplementary and incidental provisions as appear to be necessary or expedient and may apply for the purposes of the order, with such modifications as appear to the Governor in Council to be appropriate, any provisions relating to confiscation or forfeiture orders under any other enactment.

(4) A statutory instrument under this section may make different provision for different cases.

(5) No statutory instrument shall be made under this section unless a draft of it has been laid before and approved by a resolution of the Legislative Council.

(6) This section applies to any offence which corresponds to or is similar to an offence under the Drugs (Prevention of Misuse) Act, or a drug trafficking offence as defined in section 2 (1) of the Drug Trafficking Offences Act, 1992.

Cap. 178.
No. 5 of
1992.

Supplementary

Rules of
court.

8. (1) Provision may be made by rules of court for any purpose for which it appears to the authority having power to make the rules that it is necessary or expedient that provision should be made in connection with any of the provisions of this Part of this Act.

Schedule 1.

(2) Rules made for the purposes of Schedule 1 to this Act may, in particular, make provision with respect to the persons entitled to appear or take part in the proceedings to which that Schedule applies for excluding the public from any such proceedings.

(3) A statutory instrument under section 7 may authorise the making of rules of court for any purpose specified in the order.

(4) This section is without prejudice to the generality of any existing powers to make rules.

PART 11

THE VIENNA CONVENTION

Substances useful for manufacture of controlled drugs

Manufacture
and supply of
scheduled
substances.

9. (1) It is an offence for a person -

- (a) to manufacture a scheduled substance; or
- (b) to supply a substance to another person,

knowing or suspecting that the substance is to be used in or for the unlawful production of a controlled drug.

(2) A person guilty of an offence under subsection (1) is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding twelve months or a fine not exceeding five thousand dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine not exceeding fifty thousand dollars or both.

(3) In this section "a controlled drug" has the same meaning as in the Drugs (Prevention of Misuse) Act, and "unlawful production of a controlled drug" means the production of such a drug which is unlawful by virtue of section 6 (1) (a) of that Act.

Cap. 178.

(4) In this section and elsewhere in this Part of this Act "a scheduled substance" means a substance for the time being specified in Schedule 2 to this Act.

Schedule 2.

(5) The Governor in Council may by order amend that Schedule (whether by addition, deletion or transfer from one Table to the other) but -

(a) no such order shall add any substance unless -

(i) it appears to the Governor in Council to be frequently used in or for the unlawful production of a controlled drug; or

(ii) it has been added to the Annex to the Vienna Convention under article 12 of that Convention; and

(b) no such order shall be made unless a draft of it has been laid before and approved by a resolution of the Legislative Council.

10. (1) The Governor in Council may by regulations make provision -

Regulations about scheduled substances,

(a) imposing requirements as to the documentation of transactions involving scheduled substances;

(b) requiring the keeping of records and the furnishing of information with respect to such substances;

(c) for the inspection of records kept pursuant to the regulations;

(d) for the labelling of consignments of scheduled substances.

(2) Regulations made by virtue of subsection (1) (b) may, in particular, require -

(a) the notification of the proposed exportation of substances specified in Table I in Schedule 2 to this Act to such countries as may be specified in the regulations; and

Schedule 2.

(b) the production, in such circumstances as may be so specified, or evidence that the required notification has been given,

and for the purposes of section 10 of the Customs Ordinance, (offences relating to exportation or prohibited or restricted

Cap. 104,

goods) any such substance shall be deemed to be exported contrary to a restriction for the time being in force with respect to it under this Act if it is exported without the requisite notification having been given.

Schedule 2.

(3) Regulations under this section may make different provision in relation to the substances specified in Table I and Table II in Schedule 2 to this Act respectively and in relation to different cases or circumstances.

(4) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Legislative Council.

(5) Any person who fails to comply with any requirement imposed by the regulations or, in purported compliance with any such requirement, furnishes information which he knows to be false in a material particular or recklessly furnished information which is false in a material particular is guilty of an offence and liable -

(a) on summary conviction, to imprisonment for a term not exceeding twelve months or a fine not exceeding five thousand dollars or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine not exceeding fifty thousand dollars or both.

No. 5 of 1992.

(6) No information obtained pursuant to the regulations shall be disclosed except for the purposes of criminal proceedings or of proceedings under the provisions of the Drug Trafficking Offences Act, 1992, relating to the confiscation of the proceeds of drug trafficking.

Proceeds of drug trafficking

Concealing or transferring proceeds of drug trafficking.

11. (1) A person is guilty of an offence if he -

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

(b) converts or transfers that property or removes it from the jurisdiction,

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

(2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he -

(a) conceals or disguises the property; or

(b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or the making or enforcement of a confiscation order.

(3) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he acquires that property for no, or for inadequate, consideration.

(4) In subsections (1) (a) and (2) (a) the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

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

(6) A person guilty of an offence under this section is liable -

(a) on summary conviction, to imprisonment for a term not exceeding twelve months or a fine not exceeding five thousand dollars or both;

(b) on conviction on indictment to imprisonment for a term not exceeding fourteen years or a fine not exceeding fifty thousand dollars or both.

12. (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of the order or at a time specified under such order) that person shall be liable to pay interest on that sum for the period for which it remains unpaid and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.

Interest on sums unpaid under confiscation orders.

No. 5 of
1992.

(2) The High Court may on the application of the prosecutor increase the term of imprisonment or detention fixed in respect of the confiscation order under section 5 of the Drug Trafficking Offences Act, 1992.

Cap. 35.

(3) The rate of interest under subsection (1) shall be that for the time being applying to a civil judgment debt under section 7 of the Judgments Act.

Increase in
realizable
property.

No. 5 of
1992.

13. (1) This section has effect where by virtue of section 8 (3) of the Drug Trafficking Offences Act, 1992 (insufficient realisable property) the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of drug trafficking.

(2) If, on an application made either by the prosecutor or by a receiver appointed under the said Act of 1992 to increase the amount in relation to the realisable property of the person in question, the High Court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased) the court may -

- (a) substitute for that amount such amount (not exceeding the amount assessed as the value referred to in subsection (1)) as appears to the court to be appropriate having regard to the amount now shown to be realisable; and
- (b) increase the term of imprisonment or detention fixed in respect of the confiscation order under section 9 of the said Act (imprisonment in default of payment) if the effect of the substitution is to increase the maximum period applicable in relation to the order under subsection (2) of that section.

Offences at sea

Offences on
Virgin Islands
ships.

14. Anything which would constitute a drug trafficking offence if done on land in any part of the Virgin Islands shall constitute that offence if done on a Virgin Islands ship.

ships used
for illicit
traffic.

15. (1) This section applies to a Virgin Islands ship, a ship registered in a State, British Dependent Territory or Colony other than the Virgin Islands which is a party to the Vienna Convention (a "Convention state") and a ship not registered in any country or territory.

(2) A person is guilty of an offence if on a ship to which this section applies wherever it may be if he -

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

knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to section 5 (1) of the Drugs (Prevention or Misuse) Act, or the law of any State, British Dependent Territory or Colony other than the Virgin Islands.

Cap. 178.

(3) A certificate purporting to be issued by or on behalf of the government of any State, British Dependent Territory or Colony to the effect that the importation or exportation of a controlled drug is prohibited by law of that State, British Dependent Territory or Colony shall be evidence of the matters stated.

(4) A person guilty of an offence under this section is liable -

(a) in a case where the controlled drug is a Class A drug -

- (i) on summary conviction, to imprisonment for a term not exceeding twelve months or a fine not exceeding five thousand dollars or both;
- (ii) on conviction on indictment, to imprisonment for life or a fine not exceeding fifty thousand dollars or both;

(b) in a case where the controlled drug is a Class B drug -

- (i) on summary conviction, to imprisonment for a term not exceeding twelve months or a fine not exceeding five thousand dollars or both;
- (ii) on conviction on indictment, to imprisonment for fourteen years or a fine not exceeding fifty thousand dollars or both;

(c) in a case where the controlled drug is a Class C drug -

- (i) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding five thousand dollars or both;
- (ii) on conviction on indictment, to imprisonment

for five years or a fine not exceeding fifty thousand dollars or both.

Cap. 178.

(5) In this section "a controlled drug" and the references to controlled drugs of a specified class have the same meaning as in the said Act; and an offence under this section shall be included in the offences to which section 31 of that Act (defences) applies.

Enforcement
Powers.
Schedule 3.

16. (1) The powers conferred on an enforcement officer by Schedule 3 to this Act shall be exercisable in relation to any ship to which section 14 or 15 applies for the purpose of detecting and the taking of appropriate action in respect of the offences mentioned in those sections.

(2) Those powers shall not be exercised outside the landward limits of the territorial sea of the Virgin Islands in relation to a ship registered in a Convention state except with the authority of the Attorney General; and he shall not give his authority unless that state has in relation to that ship -

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

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

Schedule 3.

(4) The Attorney General may either of his own motion or in response to a request from a Convention state, authorise a Convention state to exercise, in relation to a Virgin Islands ship, powers corresponding to those conferred on enforcement officers by Schedule 3 to this Act but subject to such conditions or limitations, if any, as he may impose.

(5) Subsection (4) is without prejudice to any agreement made, or which may be made, on behalf of the Virgin Islands whereby the Virgin Islands undertakes not to object to the exercise by any other state in relation to a British ship or powers corresponding to those conferred by that Schedule.

(6) The powers conferred by that Schedule shall not be exercised in the territorial sea of any state other than the Virgin Islands without the authority of the Attorney General and he shall not give his authority unless that state has consented to the exercise of those powers.

17. (1) Proceedings under this Part of this Act or Schedule 3 in respect of an offence on a ship may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the Virgin Islands.

Jurisdiction and prosecutions.

(2) No such proceedings shall be instituted except by or with the consent of the Attorney General.

(3) Without prejudice to subsection (2) no proceedings for an offence under section 15 alleged to have been committed outside the landward limits of the territorial sea of the Virgin Islands on a ship registered in a Convention state shall be instituted except in pursuance of the exercise with the authority of the Governor of the powers conferred by Schedule 3 to this Act.

Schedule 3.

Supplementary

18. The offences to which an Order in Council under section 2 of the Extradition Act 1870 (UK) can apply shall include drug trafficking offences.

Extradition.

19. The Drugs (Prevention of Misuse) Act shall be amended as follows -

- (a) in subsection (1) of section 14 by the substitution for the words "an offence under this Act" the words "an offence under this Act or an offence under section 9 or 10 of the Criminal Justice (International Co-operation) Act, 1993";
- (b) in section 22 by the substitution for the words "where an offence under this Act" the words "where any offence under this Act or Part II of the Criminal Justice (International Co-operation) Act, 1993"; and
- (c) in section 24 by the insertion after subsection (10) thereof, the following subsection -

Application of ancillary provisions of Drugs (Prevention of Misuse) Act, Cap. 178. No. 8 of 1993.

"(11) The powers conferred by subsection (1) shall be exercisable also for the purposes of the execution of Part II of the Criminal Justice (International Co-operation) Act, 1993 and subsection (7) (excluding paragraph (a)) shall apply also to offences under section 9 or 10 of that Act, taking references in those provisions to controlled drugs as references to scheduled substances within the meaning of that Part."

20. (1) In this Part of this Act -

"Convention state" has the meaning given in section 15 (1);

Interpretation of Part II.

"scheduled substance" has the meaning given in section 9 (4);

"ship" includes any vessel used in navigation;

"the Vienna Convention" means the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed in Vienna on 20th December, 1988;

"Virgin Islands ship" means a ship registered in the Virgin Islands.

(2) Any expression used in the Part of this Act which is also used in the Drug Trafficking Offences Act, 1992 has the same meaning as in that Act.

(3) If in any proceedings under this Part of this Act any question arises whether any country or territory is a state or is a party to the Vienna Convention, a certificate issued by or under the authority of the Secretary of State shall be conclusive evidence on that question.

PART 111

GENERAL

21. Any expenses incurred by the Governor and the Attorney General under this Act shall be defrayed out of money provided by the Legislative Council.

22. The Drug Trafficking Offences Act, 1992 shall have effect with the amendments there specified, in Schedule 4 to this Act being amendments consequential on or otherwise relating to the provisions of this Act.

23. The provisions relating to the transfer of a prisoner out of the Virgin Islands or for the transfer of a prisoner into the Virgin Islands under the Repatriation of Prisoners Act, shall mutatis mutandis apply in relation to the transfer of a Virgin Islands prisoner to give evidence or assist in investigations overseas, or for transfer of an overseas prisoner to give evidence or assist in investigations in the Virgin Islands, under this Act.

No. 5 of 1992.

Expenses and receipts.

Consequential amendments to the Drug Trafficking Offences Act, No. 5 of 1992. Schedule 4.

Certain provisions of the Repatriation of Prisoners Act (Cap. 123) to apply for transfer of prisoners.

**VIRGIN ISLANDS EVIDENCE FOR USE OVERSEAS:
PROCEEDINGS OF COURT**

Securing attendance of witness

1. The court shall have the like powers for securing the attendance of a witness for the purpose of the proceedings before the court.

Power to administer oaths

2. The court may in the proceedings take evidence on oath.

Privilege of witnesses

3. (1) A person shall not be compelled to give in the proceedings any evidence which he could not be compelled to give -

(a) in criminal proceedings in the Virgin Islands in which the nominated court exercises jurisdiction; or

(b) subject to sub-paragraph (2) in criminal proceedings in the country or territory from which the request for the evidence has come.

(2) Sub-paragraph (1) (b) shall not apply unless the claim of the person questioned to be exempt from giving the evidence is conceded by the court, tribunal or authority which made the request.

(3) Where such a claim made by any person is not conceded as aforesaid he may (subject to the other provision of this paragraph) be required to give the evidence to which the claim relates but the evidence shall not be transmitted to the court, tribunal or authority which requested it if a court in the country or territory in question, on the matter being referred to it, upholds the claim.

(4) Without prejudice to sub-paragraph (1) a person shall not be compelled under this Schedule to give any evidence if his doing so would be prejudicial to the security of the United Kingdom or the Virgin Islands, and a certificate signed by or on behalf of the Governor to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

(5) Without prejudice to sub-paragraph (1) a person shall not be compelled under this Schedule to give any evidence in his capacity as an officer or servant of the Crown.

(6) In this paragraph references to giving evidence include references to answering any question and to producing any document or other article and the references in subparagraph (3) above to the transmission of evidence given by a person shall be construed accordingly.

Transmission of evidence

4. (1) The evidence received by the court shall be furnished to the Attorney General for transmission to the court, tribunal or authority that made the request.

(2) If in order to comply with the request it is necessary for the evidence to be accompanied by any certificate, affidavit or other verifying documents, the court shall also furnish for transmission such document of that nature as may be specified in the notice nominating the court.

(3) Where the evidence consists of a document the original or a copy shall be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the requests.

Supplementary

5. For the avoidance of doubt it is hereby declared that the Bankers Books (Evidence) Act applies to other proceedings before the court.

6. No order for costs shall be made in the proceedings.

SCHEDULE 2

**Sections 9
and 10.**

**SUBSTANCES USEFUL FOR MANUFACTURING
CONTROLLED DRUGS**

TABLE I

EPHEDRINE
ERGOMETRINE
EROGOTAMINE
LYSERGIC ACID
1-PHENYL-2-PROPANONE
PSEUDOEPHEDRINE

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

TABLE II

ACETIC ANHYDRIDE
ACETONE
ANTHRANILIC ACID
ETHYL ETHER
PHENYLACETIC ACID
PIPERIDINE

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

SCHEDULE 3

Section 16.

ENFORCEMENT POWERS IN RESPECT OF SHIPS

Preliminary

- 1.** (1) In this Schedule "an enforcement officer" means -
- (a) a police officer or a customs officer;
 - (b) a Captain of any ship belonging to the Royal Navy or any person acting under the command of such Captain; and
 - (c) any other person of a description specified in an order made for the purposes of this Schedule by the Governor.
- (2) The power to make an order under sub-paragraph (1) (b) shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Legislative Council.
- (3) In this Schedule "the ship" means the ship in relation to which the powers conferred by this Schedule are exercised.

Power to stop, board, divert and detain

- 2.** (1) An enforcement officer may stop the ship, board it and, if he thinks it necessary for the exercise of his functions, require it to be taken to a port in the Virgin Islands and detain it there.
- (2) Where an enforcement officer is exercising his powers with the authority of the Attorney General given under section 16 (2) of this Act the officer may require the ship to be taken to a port in the Convention state in question or, if that state has so requested, in any other country or territory willing to receive it.
- (3) For any of those purposes he may require the member of the crew to take such action as may be necessary.
- (4) If an enforcement officer detains a vessel he shall serve on the master a notice in writing stating that it is to be detained until the notice is withdrawn by the service on him of a further notice in writing signed by an enforcement officer.

Power to search and obtain information

3. (1) An enforcement officer may search the ship, anyone on it and anything on it including its cargo.

(2) An enforcement officer may require any person on the ship to give information concerning himself or anything on the ship.

(3) Without prejudice to the generality of those powers an enforcement officer may -

- (a) open any containers;
- (b) make tests and take samples of anything on the ship;
- (c) require the production of documents, books or records relating to the ship or anything on it;
- (d) make photographs or copies of anything whose production he has power to require.

Powers in respect of suspected offence

4. If an enforcement officer has reasonable grounds to suspect that an offence mentioned in section 14 or 15 of this Act has been committed on a ship to which that section applies he may -

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

Assistants

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

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

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

Use of reasonable force

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

Evidence of authority

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

Protection of officers

8. An enforcement officer shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under this Schedule if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

Offences

9. (1) A person is guilty of an offence if he -

- (a) intentionally obstructs an enforcement officer in the performance of any of his functions under this Schedule;
- (b) fails without reasonable excuse to comply with a requirement made by an enforcement officer in the performance of those functions; or
- (c) in purporting to give information required by an officer for the performance of those functions -
 - (i) makes a statement which he knows to be false in a material particular or recklessly makes a statement which he knows to be false in a material particular; or
 - (ii) intentionally fails to disclose any material particular.

(2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding five thousand dollars.

CONSEQUENTIAL AMENDMENTS

The Drug Trafficking Offences Act, 1992

1. The Drug Trafficking Offences Act, 1992 is amended as follows -

(1) In the definition of "drug trafficking" in section 2 (1) after paragraph (d) there shall be inserted -

"(e) manufacturing or supplying a scheduled substance within the meaning of section 9 of the Criminal Justice (International Co-operation) Act, 1993 where the manufacture or supply is an offence under that section;"

(2) In the definition of "drug trafficking offence" in section 2 (1) after paragraph (c) there shall be inserted -

"(cc) an offence under section 9, 11 or 15 of the Criminal Justice (International Co-operation) Act, 1993;"

and in paragraphs (d) and (e) for "(c)" there shall be substituted "(cc)".

(3) In section 6 (4) after the words "section 23" there shall be inserted the words "or section 11 of the Criminal Justice (International Co-operation) Act, 1993".

Passed the Legislative Council this 27th day of September, 1993.

K.L. FLAX,
Speaker.

HUGH A. HODGE,
Clerk of the Legislative Council.