Proceeds of Crime Act 2015

Principal Act

Act. No. 2015-22	*Commencement (LN.2016/014)*	28.1.2016[1]
	Assent	6.8.2015

Amending enactments	Relevant current provisions	Commencement date
LN. 2016/148	s. 33(3)	7.7.2016
2016/182	Sch. 2	15.9.2016
2016/256	Part IA, 2(10), 3A	22.12.2016
2017/119	ss. 1ZA, 1A, 1B(3)-(5), 1C, (a), (d), 1ZDA, 1DA(1)(a), 1DB(2)(d), (e), 1F(3), 1G, 1GA, 1H, 1I(1), 1IA-1IC, 1J, 1JA, 1K(1)(a), (5), 1S, 2(9), (10), 3B, 5(2A), (5)-(8), (14), 6, 6A, 7(1), (1A)-(1C), 8, 9(1)(i)(i)(C)-(E), (k)-(l), (o), 9A, 9B, 10, (b), (c), 10A, 11(1)(ba), (c)-(f), (2), (3)(b), (5), 12(2), 13(4), (4A)-(4C), 16, 17, 17A, 18, (b), 19, 20, (1)(a), (2), 20A-20B, 21(1), (2), (2A), 22(1)-(3), (3A)-(3B), (4), 23(1), (1A)-(1B), (2), (c)(iii), (d)(iii), (iv), (4), 23A, 25(2), (4), (10)-(12), 25ZA, 25A, 26(1), (f), (g), (1A)-(1C), (2)(c), (2A), (4), (5), (5A), (6), 26A, 27-28, 30(3)-(6), 30A-30C, 34A, 179(4)(b), 182(1), 183(1), (5A), (7), Sch. 1, 6-7	26.6.2017
Act. 2017-07	ss. 1C(d), 2, 3, 4, 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H, 6B, 35(1), 35A, 35B, 36(1) & (3), 37(5), 58(1)(c), (3A), 59(1), (3), (7A), (7B), (7C), 59A, 60(1), (8A), (8B), (8C), 117(2), (3)(a), (4) & (5)(b), 120(1), (4), (9), 122(2), (4), 123(1), (5), (6), 124(1)(c), 128(2), (3), 130(1), 131(1), 133(1), & 134(1), 145(1), 161(3), 164(2)(b), 167(3)(a), 182(1), (1A), (2A), (5) (za), (zb)	20.7.2017
LN. 2017/205	Sch. 2	1.11.2017
2018/013	s. 26(1A)	18.1.2018
Act. 2018-01	ss. 1B(2)(a), 1C(d), 1L(1)-(3), 70(2A), 70A-70B, 145, 146(6)	8.2.2018
LN. 2018/064	s. 9(1)(p)	16.3.2018
2018/124	ss. 5(7)(d), 34A(4)	25.5.2018
2018/194	s. 9(1)(oa)	13.9.2018
Act. 2018-25	s. 1C(a)	21.2.2019
2019-05	ss. 1E(1), 1F(2), 1G(1), 1GA(1)-(2), 1H, 1IA(2), 1IB, 1IC(2), (7)-(8), 1T(3), 4F(8), 7(1B)-(1C), 8(2)-(3),	

[1] *Amended by Notice of Corrigendum LN. 2016/018*

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	11(1), (6), 19, 26(2A), 33(1), 184(3), 184A-184D, Sch2	21.3.2019
2018-25	ss. 5(9)(b), 7(2)(b)	21.3.2019
LN. 2019/116	ss. 27(3)-(4), 30(1A)	13.6.2019
2020/110	Long Title, ss. 1DAA, 1DB(1), 1DC(1), 1E(2)-(3), 1GA(2), 1IB, 1IC(4)-(5), (9), 1K(1)(a), (5), 1T(2), 5(5), 6A(2)(b), (e)-(f), 7(1), (1A)(a)(ii), (b), 8(3), 9(1)(h), (ha), 10(a)-(b), 11(2), (4A), 17(1)(a), (3), (6)-(8), 17A(1)-(2), 21(4), 22(3A), 23(2), 25(2)(a), (5)(b), (6)(b), 30(1A)(b), (5), Sch. 2, 6, 7, 8	13.3.2020
Act.2021-08	ss. 1ZA, 1ZB, 1A, 1C(a), 1D(b), 1DB(2)(e), 1E(1), 1JA, 1K(1)(a), (5), 1N(1), 4F(1), (3)(a), 5(9)(b), 6B, 7(1), (1ZA), (1A)-(1B), (2)(b), 9(1)(hb), 9A-9B, 10, 11(1)(c), (2), (3)(b), (4B), (5)(b), (5A), 12(2), 13(3)(b), 15(1)(b), 16(1)(a)-(c), (3), (5), 17(1)(c)(i)-(iii), (2), (4), (4A), 17A, 19, (1), (ba), (c), (e), (ea), (2), 20(1), (b), 21(1)-(2), 22(2), 23(1), (1B)-(1C), 23A(b), 24(1), 25(2)(a)-(b), (2A), (3)(a)(i), (5), (a)-(b), (6), (a)-(b), (6A), (11), 25ZA(3), 25A(1), 26(1), (f), (1ZA)-(1ZB), (1A)-(1B), (1BB), (1C), (2), (a)(iii), (b)-(c), (d)(ii)-(iii), (e), (2A), (3), (5A)-(5B), (6), 27(1)(a)(i), (b), (3), 28(1), (3), 30(1), 30A, 30C(3), 33, 34A(2), (4)-(5), (b), 184ZA, Sch. 2, 9	9.2.2021
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2023/262	s. 9(1)(r)	7.9.2023
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LN.2024/151	ss. 180A-180B	8.8.2024
Act.2024-15	ss. 166A-166Y, 181A, 183(3)(za), (6), (7A)-(7B), Sch.10	31.10.2024[2]
2024-34	ss. 10(ca), 156(3)(c), (5)(b), 157(5)(a), (c)	23.12.2024

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LN.2025/254	s. 9(l)(xiii), (q), (1A)	27.10.2025
Act.2026-11	s. 184ZB	25.6.2026[3]
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Act.2026-19	s. 1M	9.9.2026

Transposing:
Directive 91/308/EEC
Directive (EU) 2015/849
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[3] *Notice of Commencement (LN.2026/129)*

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AN ACT TO PROVIDE FOR MONEY LAUNDERING AND OTHER OFFENCES; TO PROVIDE FOR MEASURES TO PREVENT THE ABUSE OF THE FINANCIAL SYSTEM; TO PROVIDE FOR MONEY LAUNDERING AND TERRORIST FINANCING; TO PROVIDE FOR THE CONFISCATION OF THE PROCEEDS OF CRIMINAL CONDUCT AND ITS VALUE; TO PROVIDE FOR THE CIVIL RECOVERY OF THE PROCEEDS OF UNLAWFUL CONDUCT; TO PROVIDE FOR INVESTIGATORY POWERS; TO TRANSPOSE, IN PART, DIRECTIVE (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 20 MAY 2015 ON THE PREVENTION OF THE USE OF THE FINANCIAL SYSTEM FOR THE PURPOSES OF MONEY LAUNDERING OR TERRORIST FINANCING, AMENDING REGULATION (EU) NO 648/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, AND REPEALING DIRECTIVE 2005/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AND COMMISSION DIRECTIVE 2006/70/EC, AND AS AMENDED BY DIRECTIVE (EU) 2018/843 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 30 MAY 2018 AND FOR CONNECTED PURPOSES.

PART I.
PRELIMINARY

Short title and commencement.

1.(1) This Act may be cited as the Proceeds of Crime Act 2015.

(2) This Act comes into operation on the day appointed by the Minister by notice in the Gazette, and different days may be appointed for different provisions.

Terrorist financing: interpretation.

1ZA.(1) In this Act "terrorist financing" means–

(a) the use of funds or other assets, or the making available of funds or assets, by any means, directly or indirectly for the purposes of terrorism or offences listed in Schedule 1 of the Terrorism Act 2018;

(b) the acquisition, possession, concealment, conversion or transfer of funds that are (directly or indirectly) to be used or made available for those purposes;

(c) any act which constitutes an offence under section 35, 36, 37 or 39 of the Terrorism Act 2018; or

(d) any act which constitutes an offence under any other enactment that applies in Gibraltar and that offence relates to terrorism or the financing terrorism,

and cognate expressions shall be construed accordingly.

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(2) In this section, "terrorism" has the same meaning as in section 4 of the Terrorism Act 2018.

Proliferation financing: interpretation.

1ZB.(1) In this Act "proliferation financing" has the same meaning as in section 38A of the Terrorism Act 2018.

References to euros.

1ZC. In this Act—

(a) references to an amount in euros includes reference to an equivalent amount in any currency;

(b) the equivalent in sterling (or any other currency) on a particular day of a sum expressed in euros is determined by converting the sum in euros into its equivalent in sterling or that other currency using the London closing exchange rate for the euro and the relevant currency for the previous working day.

PART IA
GIBRALTAR FINANCIAL INTELLIGENCE UNIT

Interpretation of Part.

1A. In this Part, unless the context indicates otherwise–

"criminal conduct" has the meaning given to it in section 182;

"Directive" means Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, as it may be amended from time to time;

"EEA State" means a State party to the European Economic Area Agreement;

"FIU" means a foreign body responsible for receiving (and to the extent permitted, requesting), analysing and disseminating to the competent authorities, disclosures of information which concern potential money laundering, potential terrorist financing, potential proliferation financing or are otherwise required by its national legislation;

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"Gibraltar Financial Intelligence Unit" and "GFIU" mean the financial intelligence unit established under section 1B;

"Head" means the Head of the Gibraltar Financial Intelligence Unit as provided for in section 1B(2);

"Minister'' means the Minister responsible for Justice;

"Member State" means a Member State of the European Union and includes an EEA State;

"regulatory standards" includes any rules, codes or guidance issued or promulgated by a supervisory body listed in Part I of Schedule 2;

"relevant financial business" has the meaning given to it in section 9;

"transaction'' means a transaction concluded between a client and a relevant financial business in accordance with the type of business carried on by that institution.

Establishment of GFIU.

1B.(1) There is established the Gibraltar Financial Intelligence Unit.

(2) The GFIU shall consist of-

(a) a Head, who shall be either a senior police officer, senior customs officer or such other suitably qualified person as appointed by the Attorney General;

(b) such other police officers, customs officers or other personnel as may be made available to it.

(3) The Head of the GFIU is responsible for the attainment of the functions set out in section 1C.

(4) The GFIU is operationally independent and autonomous, and has the authority and capacity to carry out its functions freely, including the ability to take autonomous decisions to analyse, request and disseminate specific information independently of the Royal Gibraltar Police and HM Customs in the discharge of its duties for the attainment of its functions under section 1C.

(5) The GFIU shall have access, directly or indirectly, in a timely manner, to the financial, administrative and law enforcement information that the GFIU requires in order to fulfil the duties and functions set out in this Act properly.

Functions.

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1C. The main functions of the GFIU are–

(a) to gather, store, analyse and disseminate intelligence related to criminal conduct, (including but not limited to money laundering, terrorist financing and proliferation financing), transacted or attempted to be transacted through relevant financial businesses.

(b) to act as the recipient for disclosures of suspicious transactions under the relevant applicable legislation;

(c) to exchange information regarding criminal conduct with FIUs and other similar bodies and law enforcement agencies within and outside of Gibraltar;

(d) to consent or deny consent to suspicious transactions of which it has been notified, in accordance with section 4A and section 4B.

Analysis Function.

1D. The GFIU's analysis function shall consist principally of the following–

(a) an operational analysis which focuses on individual cases and specific targets or on appropriate selected information, depending on the type and volume of the disclosures received and the expected use of the information after dissemination; and

(b) a strategic analysis addressing money laundering, terrorist financing and proliferation financing trends and patterns.

Information gathering powers

Reporter to provide additional information.

1ZDA. Where a person makes a report (including, but not limited to, a disclosure or suspicious activity report in accordance with this or any other enactment) that person must provide the GFIU with such additional information relating to that disclosure as that officer may reasonably request in such form and within such reasonable period as the GFIU may require.

Information gathering.

1DA.(1) This section applies where–

(a) the GFIU receives a report (including, but not limited to, a disclosure or suspicious activity report in accordance with this or any other enactment) from a person listed in subsection (2)(a) (the "reporter"); and

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(b) the GFIU reasonably considers that, for the proper fulfilment of any of its functions, it is necessary or expedient to seek additional information from any relevant person ("A") who is not the reporter but who–

(i) is mentioned in or otherwise identifiable from the report, or

(ii) to the reasonable knowledge or belief of the GFIU, holds information that is relevant to analysis of the report.

(2) The persons mentioned in subsection (1)(a) are–

(a) a relevant person;

(b) the Financial Services Commission;

(c) a financial intelligence unit outside Gibraltar;

(d) the Commissioner for Income Tax;

(e) a police officer; and

(f) a customs officer.

(3) Where this section applies the GFIU may make a request to A, in accordance with the criteria in section 1DB, for the provision of additional information.

(4) Upon receipt of a request duly made, A must provide the additional information in such form and by such date or within such reasonable period as the GFIU may require.

(5) In this section a "relevant person" means a person carrying on a relevant financial business within the meaning given by section 9.

Information Request.

1DAA.(1) This section applies where the GFIU reasonably considers that, for the proper fulfilment of any of its functions, it is necessary or expedient to seek information from any relevant person ("A") who to the reasonable knowledge or belief of the GFIU, holds information that is relevant to the fulfilment of those functions.

(2) Where this section applies the GFIU may make a request to A, in accordance with the criteria in section 1DB, for the provision of information.

(3) Upon receipt of a request duly made, A must provide the information in such form and by such date or within such reasonable period as the GFIU may require.

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(4) In this section a "relevant person" means a person carrying on a relevant financial business within the meaning given by section 9.

Criteria for making request.

1DB.(1) A request is duly made for the purposes of section 1DA or 1DAA if–

(a) it is made reasonably;

(b) it relates to information falling within a category described in subsection (2);

(c) it specifies the nature of the information sought;

(d) it specifies a reasonable date by which, or period within which, the information must be provided; and

(e) it is made in writing.

(2) The categories of information which may lawfully be sought are–

(a) information which may be obtained as a result of the application of customer due diligence measures, as defined section 10, by a relevant person;

(b) information in relation to which record-keeping requirements, or reporting and disclosure requirements under Part III, are imposed on a relevant person;

(c) any other information which is necessary to determine whether a person is a holder or beneficial owner of one or more accounts of whatever nature;

(d) the particulars of specified accounts, or of operations which have been carried out during a specified period;

(e) the information is motivated by concerns relating to money laundering, an associated predicate offence, proliferation financing, or terrorist financing.

Offence and penalty etc.

1DC.(1) A person failing to comply with the obligation imposed by section 1DA(4) or 1DAA(3) is guilty of an offence.

(2) It is a defence for a person who is charged with an offence under subsection (1) to prove–

(a) that the information requested was not within the person's possession; or

(b) that it was not reasonably practicable for the person to comply with the request.

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(3) A person guilty of an offence under subsection (1) shall be liable-

(a) on summary conviction to a term of imprisonment not exceeding 1 year, to a fine up to level 5 on the standard scale, or to both;

(b) on conviction on indictment to a term of imprisonment not exceeding 2 years, to a fine or to both.

(4) Where an offence committed by a corporate body is proved to have been committed with the consent or connivance of-

(a) any director, manager, secretary or other similar officer of the body corporate; or

(b) a person who was purporting to act in any such capacity,

that person as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

(5) Where the affairs of a body corporate are managed by its members, subsection (4) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(6) Information provided by A under this Part shall not be admissible in evidence in criminal proceedings against A or any of A's employees, except in proceedings in relation to an offence under this Part.

Cooperation

Cooperation with other FIUs.

1E.(1) The GFIU shall exchange with other FIUs, spontaneously or upon request, any information that may be relevant for the processing or analysis of information related to money laundering, terrorist financing, proliferation financing or other criminal conduct.

(2) The information referred to in subsection (1) shall–

(a) include, where available, the name of the natural or legal person involved; and

(b) be exchanged regardless of the type of associated predicate offences and even if the type of associated predicate offence that may be involved is not identified at the time of the exchange.

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(3) The Head shall designate at least one contact person at the GFIU responsible for receiving requests from other FIUs and in the absence of a designation the Head shall be the contact person.

Contents of requests and mechanisms of exchange.

1F.(1) A request shall contain the–

(a) relevant facts;

(b) relevant background information;

(c) reasons for the request; and

(d) an explanation of how the information sought will be used.

(2) Different exchange mechanisms may apply if so agreed between the GFIU and other FIUs.

(3) In exchanging information the GFIU must ensure that the confidentiality of requests is ensured and to that end must use secure channels of communication.

Forwarding of disclosures.

1G.(1) Where the GFIU receives a disclosure pursuant to section 1ZDA, 2, 3 or 4 of this or any other Act, which concerns a State or territory outside Gibraltar it shall promptly forward it to the FIU of that State or territory..

(2) *Omitted*.

Requests from FIU's.

1GA.(1) Where the GFIU receives a request from an FIU it shall use the whole range of its available powers which it would normally use domestically for receiving and analysing information and must respond to any such request in a timely manner.

(2) When an FIU seeks to obtain additional information from a relevant financial business established in Gibraltar which operates on its territory, the request shall be addressed to the GFIU, which shall obtain information in accordance with any of its information gathering powers under this Act and transfer the answers promptly.

Obtaining further information.

1H. When the GFIU seeks to obtain additional information from an entity established in a State or territory outside Gibraltar which operates on the territory of that State or territory, the

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request shall be addressed to the FIU of the State or territory in whose territory the entity is established.

Refusals.

1I.(1) Where there are objective grounds for assuming that the provision of information would have a negative impact on ongoing investigations or analyses, or, in exceptional circumstances, where disclosure of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or irrelevant with regard to the purposes for which it has been requested, the GFIU shall be under no obligation to comply with the request for information.

(2) A refusal under subsection (1) must be recorded in the GFIU's records and include the reasons for the refusal.

Restrictions and conditions for use.

1IA.(1)When exchanging information and documents pursuant to sections 1E to 1I, the GFIU may impose restrictions and conditions for the use of that information.

(2) Where the GFIU is the recipient of information and documents from an FIU which is subject to restrictions and conditions for the use of that information, the GFIU shall comply with those restrictions and conditions.

(3) Information and documents received pursuant to section 1E to section 1I shall be used by the GFIU for the fulfilment tasks as laid down in the Directive.

Tax crimes and other criminal conduct.

1IB. The GFIU's ability to exchange information or provide assistance to an FIU concerning-

(a) an offence in connection with taxes or duties, customs and exchange; or

(b) any criminal conduct,

shall not be impeded on the ground that Gibraltar law does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the State or territory where the FIU is located or where the offence took place, or otherwise on the ground that there are differences between Gibraltar law definitions of predicate offences or criminal conduct and the law of the State or territory where the FIU is located or where the criminal conduct took place.

Use of exchanged information.

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1IC.(1) When the GFIU receives information or a document pursuant to sections 1E to 1I, the GFIU shall only use such information or document for the purpose for which it was sought or provided.

(2) The GFIU must seek prior consent from the FIU from which it received the information or document referred to in subsection (1) prior to disseminating it to a competent authority, agency or department for a purpose beyond that originally approved by the FIU providing the information or document.

(3) A competent authority, agency or department in Gibraltar that receives information or a document from the GFIU shall not use that information or document for a purpose beyond that for which such information or document was originally supplied.

(4) *Omitted*.

(5) *Omitted*.

(6) *Omitted*.

(7) Where the GFIU receives a request for the dissemination of information or a document exchanged pursuant to sections 1E to 1I for a purpose beyond that originally approved, it may, on a case by case basis, grant consent to the dissemination of information or document by the FIU to a competent authority, agency or department within the State or Territory of the FIU subject to such restrictions and conditions for the use of that information or document as the GFIU deems appropriate and reasonable.

(8) Where under subsection (7) the GFIU refuses to consent to the dissemination of information or documents exchanged under sections 1E to 1I, the GFIU must appropriately explain its decision to the FIU which sent the request for dissemination of such information or documents.

(9) In deciding whether to refuse consent under subsection (7), the GFIU must have particular regard to the need for as unfettered an exchange of relevant information in response to such requests as possible in order for the FIU concerned to carry out its functions efficiently and effectively.

Internal cooperation.

1J.(1) Nothing in this Part shall preclude or prevent the exchange of intelligence between the GFIU and the Royal Gibraltar Police and HM Customs or with the supervisory bodies listed in Part 1 of Schedule 2.

(2) The Royal Gibraltar Police, HM Customs and supervisory authorities must provide the GFIU with information about the use made of the information provided to them by the GFIU

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and about the outcome of the investigations or inspections performed on the basis of that information.

Feedback.

1JA. Where practicable, the GFIU must ensure that timely feedback on the effectiveness of and follow-up to reports of suspected money laundering, terrorist financing or proliferation financing is provided to relevant financial businesses.

Access to information

Access to information held by GFIU.

1K.(1) No person is entitled to information held by the GFIU, except–

(a) the Collector of Customs, the Commissioner of Police, the Commissioner of Income Tax the authority designated by the Government to coordinate Gibraltar's response to the risks of money laundering, terrorist financing and proliferation financing pursuant to Article 7(2) of the Directive, or a supervisory body listed in Part I of Schedule 2, and, in each case, only if the Head reasonably believes such information is required to investigate suspected criminal conduct;

(b) an entity outside Gibraltar performing similar functions to those of the GFIU, which may, at the initiative of the GFIU or on written request, obtain information which the Head reasonably believes is relevant to the identification of the proceeds of criminal activities or the combating of money laundering activities or similar offences in the country in which that entity is established;

(ba) a competent authority, agency or department outside Gibraltar whose functions are connected with or related to−

(i) the prevention of abuse of financial systems or the prevention of money laundering, terrorist financing or proliferation financing;

(ii) the prevention, investigation, detection or prosecution of criminal conduct; or

(iii) the safeguarding against, and the prevention of, threats to national security,

which may, at the initiative of the GFIU or on written request, obtain information which the Head reasonably believes is relevant to the fulfilment of those functions, or any of them.

(c) any person who may, at the initiative of the GFIU or on written request, be provided with information regarding the steps taken by the GFIU in connection

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with transactions reported by such person, unless the Head reasonably believes that disclosure to such person of the information requested could–

(i) inhibit the achievement of the GFIU's objectives, the performance of its functions, or the achievement of the objectives or the performance of the functions of a law enforcement or Government body; or

(ii) prejudice the rights of any person;

(d) in terms of an order of a court; or

(e) in terms of other legislation.

(2) A request for information contemplated in subsection (1) shall be in writing and shall specify the desired information and the purpose for which the information is required.

(3) The Head may make such reasonable procedural arrangements and impose such reasonable safeguards regarding the furnishing of information referred to in subsection (1) as the Head considers appropriate to maintain the confidentiality of that information.

(4) A person who obtains information from the GFIU may use that information only within the scope of that person's powers and duties and only for the purpose specified in subsection (2).

(5) The processing of personal data on the basis of Part II, this Part or the Money Laundering Directive for the purposes of the prevention of money laundering, terrorist financing and proliferation financing shall be considered to be a matter of public interest under the Data Protection Act 2004 and the Gibraltar GDPR.

Protection of confidential information.

1L.(1) No person may disclose confidential information held by or obtained from the GFIU except–

(a) for the purpose of carrying out the provisions of this Part;

(b) with the permission of the GFIU; or

(c) under compulsion of a court order.

(2) A person who contravenes subsection (1) commits an offence.

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

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(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

Referral of suspected offences.

1M. If the GFIU in the performance of its functions has reasonable grounds to suspect that a relevant financial business, or any other person, has engaged in conduct which is prohibited by law or contravenes any regulatory standards, the GFIU, if it considers it appropriate to do so, may refer the matter to the Royal Gibraltar Police, HM Customs, the Income Tax Office, the sanctions civil enforcement authority under sections 51A to 51D of the Sanctions Act 2019 or a supervisory body listed in Part I of Schedule 2, as appropriate.

Duty to inform.

1N.(1) If the Commissioner of Police, the Collector of Customs, the Commissioner for the Income Tax or a supervisory body listed in Part I of Schedule 2 in the performance of its functions has reasonable grounds to suspect that a relevant financial business, or any other person, has engaged in money laundering, terrorist financing or proliferation financing, it shall inform the GFIU promptly.

(2) Subsection (1) applies to any person working for or under the supervision or direction of a person or body referred to in that subsection.

Miscellaneous

Reports.

1O. The Chief Minister or the Minister for Justice may require the Head to submit a report on such matters–

(a) connected with the exercise of the GFIU's functions, or

(b) otherwise connected with any of the GFIU's activities,

as may be specified in the requirement.

Terms and conditions of employment unaffected.

1P. Nothing in this Part shall be construed as altering the terms and conditions of employment of a police or customs officer whilst that officer is seconded to the GFIU, and for the avoidance of doubt, the period of that officer's service with the GFIU shall be calculated as part of and

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continuous with that officer's employment with the Crown, for purposes of leave, pension and any other condition of service.

Preservation of powers.

1Q. Nothing in this Part shall act as a limitation of any powers, duties or responsibilities vested in an officer of the Royal Gibraltar Police or HM Customs under any other enactment.

Personal liability.

1R. No personal liability shall attach to the Head or such other person seconded to the GFIU in respect of anything done or omitted to be done, in good faith, under the provisions of this Part.

References in enactments.

1S. In this and any other enactment the words "Gibraltar Financial Intelligence Unit" and "GFIU" are to be construed in accordance with this Part.

PART II
MONEY LAUNDERING AND OTHER OFFENCES

Interpretation of Part II and Part III.

1T.(1) In this Part–

"authorised disclosure" means a disclosure made in accordance with section 4G;

"confiscation order" has the meaning given to it by section 35;

"criminal conduct" has the meaning given to it in section 182;

"criminal property" has the meaning given in section 182;

"property" has the meaning given to it by section 183.

(2) In this Part and in Part III–

"the Money Laundering Directive" means Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, as amended by Directive (EU)

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2018/843 of the European Parliament and of the Council of 30 May 2018, and as the same may from time to time be further amended.

(3) For the avoidance of doubt, "independent legal professional" includes, but is not limited to, a barrister, solicitor or other lawyer.

Arrangements.

2.(1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

(2) But a person does not commit such an offence if-

(a) he makes an authorised disclosure under section 4G and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) A person guilty of an offence under this section is liable–

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both; or

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

Acquisition, possession or use of criminal property.

3.(1) A person commits an offence if he-

(a) acquires criminal property;

(b) uses criminal property;

(c) has possession of criminal property.

(2) But a person does not commit such an offence if-

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(a) he makes an authorised disclosure under section 4G and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) he acquired or used or had possession of the property for adequate consideration;

(d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) For the purposes of this section-

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;

(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession;

(c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.

(4) For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it.

(5) A person guilty of an offence under this section is liable–

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both, or

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

Concealing, transferring etc. proceeds of criminal conduct.

4.(1) A person commits an offence if he-

(a) conceals criminal property;

(b) disguises criminal property;

(c) converts criminal property;

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(d) transfers criminal property;

(e) removes criminal property from Gibraltar.

(2) But a person does not commit such an offence if-

(a) he makes an authorised disclosure under section 4G and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

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

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both; or

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

Deemed consent of the GFIU to do a prohibited act.

4A.(1) Appropriate consent in sections 2(2)(a), 3(2)(a) and 4(2)(a) is the consent of the GFIU to do a prohibited act.

(2) The GFIU must notify its consent or refusal of consent to the doing of a prospective prohibited act before the end of 14 working days (starting with the first working day after the person makes the disclosure).

(3) A person must be treated as having acted with consent to do the prospective prohibited act if that person makes a disclosure to the GFIU and the condition in subsection (4) or the condition in subsection (5) is satisfied.

(4) The condition is that the GFIU does not respond to a disclosure before the end of 14 working days (starting with the first working day after the person makes the disclosure).

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(5) The condition is that the GFIU refused consent to do the prospective prohibited act pursuant to subsection (2) and 60 working days, known as the moratorium period, have expired (starting with the first working day after the GFIU notifies its refusal of consent).

(6) Subsection (5) is subject to –

(a) section 4B, which enables the moratorium period to be extended by court order in accordance with that section; and

(b) section 4D, which provides for an automatic extension of the moratorium period in certain cases (period extended if it would otherwise end before determination of application or appeal proceedings etc).

(7) A working day is a day other than a Saturday, a Sunday, or a day which is a bank or public holiday pursuant to an order made under the Banking and Financial Dealings Act or the Interpretation and General Clauses Act.

(8) References to a prohibited act are to an act mentioned in section 2(1), 3(1) or 4(1).

Power of a court to extend the moratorium period.

4B.(1) The court may, on an application under this section, grant an extension of a moratorium period if satisfied that –

(a) an investigation is being carried out in relation to a relevant disclosure (but has not been completed);

(b) the investigation is being conducted diligently and expeditiously;

(c) further time is needed for conducting the investigation; and

(d) it is reasonable in all the circumstances for the moratorium period to be extended.

(2) An application under this section may be made only by the Head of GFIU.

(3) The application must be made before the moratorium period would otherwise end.

(4) An extension of a moratorium period must end no later than 60 working days beginning with the day after the day on which the period would otherwise end.

(5) Where a moratorium period is extended by the court under this section, it may be further extended by the court (on one or more occasions) on the making of another application.

(6) A moratorium period extended in accordance with subsection (2) or (4) of section 4D may also be further extended by the court on the making of an application under this section.

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(7) But the court may not grant a further extension of a moratorium period if the effect would be to extend the period by more than 436 working days (in total) beginning with the day after the end of the 60 working day period mentioned in section 4A(5).

(8) Subsections (1) to (4) apply to any further extension of a moratorium period as they apply to the first extension of the period under this section.

Proceedings under section 4B: supplementary.

4C.(1) This section applies to proceedings on an application under section 4B.

(2) The court must determine the proceedings as soon as reasonably practicable.

(3) The court may exclude from any part of the hearing –

(a) an interested person;

(b) anyone representing that person.

(4) The person who made the application may apply to the court for an order that specified information upon which he or she intends to rely be withheld from–

(a) an interested person;

(b) anyone representing that person.

(5) The court may make such an order only if satisfied that there are reasonable grounds to believe that if the specified information were disclosed–

(a) evidence of an offence would be interfered with or harmed;

(b) the gathering of information about the possible commission of an offence would be interfered with;

(c) a person would be interfered with or physically injured;

(d) the recovery of property under this Act would be hindered; or

(e) national security would be put at risk.

(6) The court must direct that the following be excluded from the hearing of an application under subsection (4)–

(a) the interested person to whom that application relates;

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(b) anyone representing that person.

(7) Subject to this section, rules of court may make provision as to the practice and procedure to be followed in connection with proceedings in relation to applications under section 4B.

(8) An appeal lies to the Court of Appeal on a point of law arising from a decision made by the Supreme Court and the Court of Appeal on hearing an appeal may make any order that it considers appropriate (subject to the restriction mentioned in section 4B(7).

Extension of moratorium period pending determination of proceedings etc.

4D.(1) A moratorium period is extended in accordance with subsection (2) where–

(a) an application is made to the court under section 4B for the extension (or further extension) of the moratorium period; and

(b) the period would (apart from that subsection) end before the court determines the application or it is otherwise disposed of.

(2) The moratorium period is extended from the time when it would otherwise end until the court determines the application or it is otherwise disposed of.

(3) A moratorium period is extended in accordance with subsection (4) where–

(a) proceedings on an appeal in respect of a decision on an application under section 4B have been brought; and

(b) the period would (apart from that subsection) end before the proceedings are finally determined or otherwise disposed of.

(4) The moratorium period is extended from the time when it would otherwise end until the proceedings are finally determined or otherwise disposed of.

(5) But the maximum period by which the moratorium period is extended by virtue of subsection (2) or (4) is 60 working days beginning with the day after the day on which the period would otherwise have ended.

(6) A moratorium period is extended in accordance with subsection (7) where—

(a) an application is made to the court under section 4B for an extension of the period;

(b) the court refuses to grant the application; and

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(c) the period would (apart from that subsection) end before the end of the 5 day period.

(7) The moratorium period is extended from the time when it would otherwise end until—

(a) the end of the 5 day period; or

(b) if proceedings on an appeal against the decision are brought before the end of the 5 day period, the time when those proceedings are brought.

(8) The "5 day period" is the period of 5 working days beginning with the day on which the court refuses to grant the application.

(9) This restriction on the overall extension of a moratorium period mentioned in section 4B(7) applies to an extension of a moratorium period in accordance with any provision of this section as it applies to an extension under an order of the court.

Sections 4B to 4D: interpretation.

4E.(1) In this section and in sections 4B to 4D-

"the court" means the Supreme Court of Gibraltar;

"GFIU" and "Head" have the meaning given in section 1A;

"interested person" means—

(a) the person who made the relevant disclosure, and

(b) any other person who appears to the person making the application under section 4B to have an interest in the relevant property;

"moratorium period" means the period of 60 working days mentioned in section 4A(5) or any such period as extended or further extended by virtue of an order under section 4B or in accordance with any provision of section 4D;

"relevant disclosure" means where the application under section 4B relates to the moratorium period mentioned in section 4A(5), the authorised disclosure mentioned in section 4A(3);

"relevant property" means any property that would be the subject of the prohibited act (within the meaning of section 2(1), 3(1) or 4(1)) in relation to which the moratorium period in question applies;

"working day" has the same meaning is in section 4A(7).

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Suspension of a transaction.

4F.(1) Where there is a suspicion that a transaction is related to money laundering, terrorist financing or proliferation financing, the GFIU may take urgent action in the form of a suspension order to suspend or withhold consent to a transaction that is proceeding.

(2) The GFIU may issue a suspension order, including the information in subsection (3), on a relevant financial business for up to 14 working days in order to analyse the transaction, confirm the suspicion and disseminate the results of the analysis to a competent authority.

(3) A suspension order must specify the following information-

(a) the person or recipient suspected of money laundering, terrorist financing or proliferation financing;

(b) the transaction that is to be suspended; or

(c) the property involved in the transaction that is to be suspended; and

(d) the number of days for which the suspension order is valid.

(4) A relevant financial business must comply with the suspension order issued under subsection (2).

(5) If a relevant financial business fails to comply with the suspension order issued under subsection (2) its respective supervisory authority may remove its license or where no supervisory authority exists the magistrates' court may, following an application by GFIU, remove the relevant financial business's license.

(6) A person is guilty of an offence if-

(a) he discloses the fact that a suspension order has been issued under this section; or

(b) he takes or fails to take any action which results in the transaction not being suspended.

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

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine, or to both.

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(8) An FIU may make a request to the GFIU to suspend a transaction in accordance with subsection (1).

(9) In this section-

"supervisory authority" means each of the bodies listed in Part I of Schedule 2.

Authorised disclosures.

4G.(1) For the purposes of this Part a disclosure is authorised if-

(a) it is a disclosure to the GFIU, a police officer, a customs officer or a nominated officer by the alleged offender that property is criminal property; and

(b) the first, second or third condition set out below is satisfied.

(2) The first condition is that the disclosure is made before the alleged offender does the prohibited act.

(3) The second condition is that-

(a) the disclosure is made while the alleged offender is doing the prohibited act;

(b) he began to do the act at a time when, because he did not then know or suspect that the property constituted or represented a person's benefit from criminal conduct, the act was not a prohibited act; and

(c) the disclosure is made on his own initiative and as soon as is practicable after he first knows or suspects that the property constitutes or represents a person's benefit from criminal conduct.

(4) The third condition is that-

(a) the disclosure is made after the alleged offender does the prohibited act;

(b) he has a reasonable excuse for his failure to make the disclosure before he did the act; and

(c) the disclosure is made on his own initiative and as soon as it is practicable for him to make it.

(5) An authorised disclosure is not to be taken to breach any restriction on the disclosure of information (however imposed).

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(6) Where an authorised disclosure is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by or on whose behalf it is made.

(7) A disclosure to a nominated officer is a disclosure which-

(a) is made to a person nominated by the alleged offender's employer to receive authorised disclosures; and

(b) is made in the course of the alleged offender's employment.

(8) References to the prohibited act are to an act mentioned in section 2(1), 3(1) or 4(1) (as the case may be).

Protected disclosures.

4H.(1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).

(2) The first condition is that the information or other matter disclosed came to the person making the disclosure (the discloser) in the course of his trade, profession, business or employment.

(3) The second condition is that the information or other matter-

(a) causes the discloser to know or suspect, or

(b) gives him reasonable grounds for knowing or suspecting,

that another person is engaged in money laundering.

(4) The third condition is that the disclosure is made to the GFIU, a police officer, a customs officer or a nominated officer as soon as is practicable after the information or other matter comes to the discloser.

(5) Where a disclosure consists of a disclosure protected under subsection (1) and a disclosure of either or both of-

(a) the identity of the other person mentioned in subsection (3), and

(b) the whereabouts of property forming the subject-matter of the money laundering that the discloser knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in,

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the disclosure of the thing mentioned in paragraph (a) or (b) (as well as the disclosure protected under subsection (1)) is not to be taken to breach any restriction on the disclosure of information (however imposed).

(6) A disclosure to a nominated officer is a disclosure which-

(a) is made to a person nominated by the discloser's employer to receive disclosures under this section, and

(b) is made in the course of the discloser's employment.

Voluntary disclosure of information.

4I.(1) A person may disclose information to the GFIU if the disclosure is made for the purposes of the exercise of a GFIU function.

(2) Information obtained by the GFIU pursuant to subsection (1) may be used by the GFIU towards the fulfilment of its other functions.

(3) A disclosure of information pursuant to subsection (1) does not breach–

(a) an obligation of confidence owed by the person making the disclosure, or

(b) any other restriction on the disclosure of information (however imposed).

Tipping-off.

5.(1) A person is guilty of an offence if–

(a) he discloses any matter within subsection (2); and

(b) the information on which the disclosure is based came to him in the course of a business or activity to which section 9(1) applies.

(2) The matters are–

(a) that either he or another person has made a disclosure under this Part–

(i) to a police officer;

(ii) to a customs officer;

(iii) the appropriate person under section 28; or

(iv) to the GFIU,

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of information that came to him in the course of a business or activity listed in section 9(1); or

(b) that an investigation into allegations that an offence under this Part has been committed is being contemplated or is being carried out.

(2A) Nothing in subsections (1) and (2) make it an offence for a person to disclose information to the GFIU, a police or customs officer, the appropriate person under section 28 or a supervisory body.

(3) Nothing in subsections (1) and (2) makes it an offence for a notary, independent legal professional, auditor, external accountant or tax advisor to disclose any information or other matter–

(a) to a client or his representative in connection with the giving by the notary, independent legal professional, auditor, external accountant or tax advisor of advice in connection with ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning, judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings; or

(b) to any person, in contemplation of, or in connection with, ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning, judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before during or after such proceedings.

(4) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(5) A person shall not incur any liability under this section where the disclosure is made between credit institutions or financial institutions to which this Act applies and which are members of the same group, or between a credit institution or financial institution and its branches and majority-owned subsidiaries located in third countries, provided that those branches and majority-owned subsidiaries fully comply with the group-wide policies and procedures including procedures for sharing information within in the group, in accordance with Article 45 of the Money Laundering Directive and the group-wide policies and procedures comply with the requirements of the Money Laundering Directive.

(6) Nothing in this section shall prevent a disclosure by a person described in points 3(a) and (b) of article 2(1) of the Money Laundering Directive (an auditor, external accountant, tax advisor, notary or independent legal professional) if-

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(a) the disclosure is to another such person;

(b) both the person making the disclosure and the person to whom it is made perform their professional activities in Gibraltar or in a third country which imposes requirements that have an equivalent effect to those laid down in the Money Laundering Directive; and

(c) those persons perform their professional activities, regardless of whether they are employed or self-employed, within different undertakings within the same legal person or larger structure to which the person belongs and which share common ownership, management or compliance control.

(7) Nothing in this section shall prevent the disclosure of information when this is done for the purposes of preventing money laundering and the following conditions are satisfied–

(a) the disclosure is between a person described in point (1), (2) or (3)(a) or (b) of article 2(1) of the Money Laundering Directive and one or more such persons from the same professional category;

(b) the person to whom the disclosure is made is situated within Gibraltar or in a State or Territory which imposes requirements that are equivalent to the Money Laundering Directive;

(c) the disclosure relates to the same customer and the same transaction; and

(d) the person making the information and the person receiving it are subject to equivalent duties of professional confidentiality and protection of personal data under the Data Protection Act 2004.

(8) A person shall not be guilty of an offence under this section where he makes a disclosure to his client and the purpose of that disclosure was to seek to dissuade the client from engaging in criminal conduct.

(9) In this section "money laundering" means–

(a) doing any act which constitutes an offence under section 2, 3 or 4;

(b) doing any act which constitutes an offence under section 35, 36, 37, 38A or 39 of the Terrorism Act 2018;

(c) doing any act which constitutes an offence under any other enactment that applies in Gibraltar and that offence relates to terrorism or the financing of terrorism,

or in the case of an act done otherwise than in Gibraltar, would constitute such an offence if done in Gibraltar.

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(10) For the purposes of subsection (9), having possession of any property shall be taken to be doing an act in relation to it.

(11) A person guilty of an offence under this section shall be liable–

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

(12) No police or customs officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to an offence to which this Part applies.

(13) *Omitted*.

(14) In this section "group" has the meaning attributed to it in section 7(1).

5A. A court in Gibraltar shall have jurisdiction to hear any matter to which sections 2 to 5 of this Act applies, where the offence was committed wholly or partly on board a vessel that is registered under the laws of Gibraltar at the time the offence was committed.

6. *Repealed*.

Disclosures to supervisory authorities.

6A.(1) Supervisory authorities must establish effective and reliable mechanisms to encourage the reporting of potential or actual breaches of Gibraltar law transposing the Money Laundering Directive.

(2) The mechanisms referred to in subsection (1) shall include at least-

(a) specific procedures for the receipt of reports on breaches and their follow-up;

(b) protection for employees or persons in a comparable position of a relevant financial business who report breaches committed within the relevant financial business (whether internally, to the relevant supervisory authority or to the GFIU), which must include-

(i) ensuring that such individuals are not exposed to threats, retaliatory or hostile action by other employees, management body members or customers of the relevant financial business;

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(ii) ensuring that such individuals are protected from adverse or discriminatory employment actions;

(iii) ensuring that any individual who, as a result of having reported a breach, has (or claims to have) been exposed to threats, retaliatory or hostile action by other employees, management body members or customers of the relevant financial business, or exposed to adverse or discriminatory employment actions, is allowed to present a complaint in a safe manner;

(c) appropriate protection for the accused person;

(d) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in compliance with the principles laid down in the Data Protection Act 2004;

(e) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports the breaches committed within the relevant financial business, unless disclosure is required by Gibraltar law in the context of further investigations or subsequent judicial proceedings; and

(f) one or more secure channels of communication for persons reporting breaches committed within a relevant financial businesses, which must ensure that the identity of such persons is known only to the supervisory authorities concerned with such reports.

(3) An employee of a relevant financial business who reports a potential or actual breach in accordance with arrangements established under this section–

(a) is not to be considered to be in breach of any restriction on disclosure of information imposed by contract or by any law and any provision in an agreement is void in so far as it purports to preclude an employee from reporting a potential or actual breach; and

(b) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the employee has reported a potential or actual breach.

(4) An employee who has been subjected to a detriment contrary to subsection (3)(b) may present a complaint to the Employment Tribunal as if the reporting of a potential or actual breach were a protected disclosure within the meaning of Part IVA of the Employment Act.

Failure to disclose: relevant financial business.

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6B.(1) Where a person undertakes relevant financial business in accordance with section 9 and that person–

(a) knows, suspects or has reasonable grounds to suspect that another person is engaged in money laundering, or is attempting to launder money;

(b) the information or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment, or during the application of customer due diligence measures pursuant to section 11; and

(c) he does not disclose the information or other matter to the GFIU as soon as is reasonably practicable after it comes to his attention,

he is guilty of an offence.

(2) A person is not guilty of an offence under subsection (1) if–

(a) that person is a notary, independent legal professional, auditor, external accountant or tax advisor, and

(b) the information has been obtained on or received from one of their clients-

(i) in the course of ascertaining the legal position for their client; or

(ii) whilst performing the task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings,

whether such information is received or obtained before, during or after such proceedings.

(3) A person guilty of an offence under this section is liable–

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both; or

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

PART III
MEASURES TO PREVENT THE USE OF THE FINANCIAL SYSTEM FOR PURPOSES OF MONEY LAUNDERING, TERRORIST FINANCING AND PROLIFERATION FINANCING

Interpretation.

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7.(1) In this Part–

"applicant for business" means a person seeking to form a business relationship, or carry out a one-off transaction, with a person who is carrying out relevant financial business in Gibraltar;

"art market participant" means a person who by way of business trades in, or acts as an intermediary in the sale or purchase of, artistic works and the value of the transaction, or a series of linked transactions, amounts to 10,000 euro or more;

"art storage freeport operator" means a person who operates a freeport when it, or any other person, by way of business stores artistic works in the freeport and the value of the artistic works so stored for a person, or a series or linked persons, amounts to 10,000 euro more;

"artistic work" has the meaning given to it in section 6 of the Intellectual Property (Copyright and Related Rights) Act 2005;

"the Authority" has the same meaning as in the Financial Services (Investment and Fiduciary Services) Act;

"Banking Supervisor" means the person appointed in accordance with section 13 of the Financial Services (Banking) Act;

"beneficial owner" has the meaning given in subsections (1A) to (1C);

"business relationship" has the meaning given by section 8;

"Commissioner of Banking" means a person appointed in accordance with section 12 of the Financial Services (Banking) Act;

"Commissioner of Insurance" means a person appointed in accordance with section 7 of the Insurance Companies Act 1987;

"competent authority" means a competent authority established in Gibraltar or a third country involved in combatting anti-money laundering, the financing of terrorism and proliferation financing, or a relevant government authority or supervisory authority established in Gibraltar or a third country;

"Correspondent relationship" means–

(a) the provision of banking services by one credit institution as the correspondent to another credit institution as the respondent, including providing a current or other liability account and related services, such as cash management, international

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funds transfers, cheque clearing, payable-through accounts and foreign exchange services;

(b) the relationships between and among credit institutions and financial institutions, including where similar services are provided by a correspondent institution to a respondent institution, and including relationships established for securities transactions or funds transfers or relationships established for transactions in virtual assets or transfers of virtual assets;

"credit institution" means-

(a) a credit institution as defined in Article 4.1(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms as that regulation formed part of domestic law on IP completion day and as may be further amended from time to time; or

(b) a branch (as defined in Article 4.1(17) of that Regulation located in Gibraltar of an institution falling within subparagraph (a) (or an equivalent institution whose head office is located in a third country) wherever the institution's head office is located;

"customs officer" has the same meaning as in the Imports and Exports Act 1986;

"DLT" has the meaning given to it in paragraph 138 of Schedule 2 to the Financial Services Act 2019;

"EIR supervisory body" means the Gibraltar Regulatory Authority in its capacity as the supervisory body appointed under regulation 4 of the Electronic Identification and Trust Services for Electronic Transactions Regulations 2017;

"Electronic Identification Regulation" means Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC as that regulation formed part of domestic law on IP completion day and as may be further amended from time to time;"

"electronic money" has the meaning given to it in point (2) of Article 2 of the Electronic Money Directive, but excludes "monetary value" as referred to in Article 1(4) and (5) of that Directive;

"Electronic Money Directive" means Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, as the same may be amended from time to time;

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"financial institution" means-

(a) an undertaking, other than a credit institution, which carries out one or more of the operations included in paragraphs 2 to 12, 14 and 15 of the Schedule to the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020, including the activities of currency exchange offices (bureaux de change);

(b) an insurance undertaking within the meaning of regulation 3 of the Financial Services (Insurance Companies) Regulations 2020, insofar as it carries out life assurance activities to which those Regulations apply;

(c) an investment firm within the meaning of section 2(1) of the Financial Services Act 2019;

(d) a collective investment undertaking marketing its units or shares;

(e) an insurance intermediary or ancillary insurance intermediary within the meaning of paragraph 33 of Schedule 2 to the Financial Services Act 2019;

(f) a branch located in Gibraltar of a person in paragraphs (a) to (e), wherever the person's head office is located (or an equivalent person whose head office is located in a third country) when carrying out any activity mentioned in paragraphs (a) to (e);

"Financial Services Commission" means the Financial Services Commission established under section 3 of the Financial Services Commission Act 2007;

"freeport" means an "approved place" for the purposes of section 2 of the Imports and Exports Act 1986;

"gambling services" means a service which involves wagering a stake with monetary value in games of chance, including those with an element of skill such as lotteries, casino games, poker games and betting transactions that are provided at a physical location, or by any means at a distance, by electronic means or any other technology for facilitating communication, and at the individual request of a recipient of services;

"the Gibraltar GDPR" has the meaning given to it in the Data Protection Act 2004;

"group" means a group of undertakings which consists of a parent undertaking, its subsidiaries, and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 22 of Directive 2013/34/EU;

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"Insurance Supervisor" means a person appointed in accordance with section 8 of the Insurance Companies Act 1987;

"letting agency work" means work–

(a) consisting of things done in response to instructions received from-

(i) a person (a "prospective landlord") seeking to find another person to whom to let land, or

(ii) a person (a "prospective tenant") seeking to find land to rent, and

(b) done in a case where an agreement is concluded for the letting of land-

(i) for a term of a month or more, and

(ii) at a rent which during at least part of the term is, or is equivalent to, a monthly rent of 10,000 euros or more,

provided that "letting agency work" does not include the things set out in (c) to (f) below done by any person if that person does not do anything else falling within (a) and (b) above-

(c) publishing advertisements or disseminating information;

(d) providing a means by which a prospective landlord or a prospective tenant can, in response to an advertisement or dissemination of information, make direct contact with a prospective tenant or a prospective landlord;

(e) providing a means by which a prospective landlord and a prospective tenant can communicate directly with each other;

(f) the provision of legal or notarial services by a barrister, advocate, solicitor or other legal representative communications with whom may be the subject of a claim to professional privilege,

and for the purposes of this definition "land" includes part of a building and part of any other structure;

"letting agent" means any person carrying out letting agency work;

"Listed Entity" means a company or other body corporate with shares admitted to trading on a regulated market–

(a) in Gibraltar;

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(b) in the European Economic Area; or

(c) listed in Schedule 9;

"Minister" means the Minister with responsibility for finance;

"money service business" means an undertaking which by way of business operates a currency exchange office, transmits money (or any representations of monetary value) by any means or cashes cheques which are made payable to customers;

"police officer" has the same meaning as in the Police Act 2006;

"regulated market"

(a) within Gibraltar means a regulated market within the meaning of paragraph 1(1) of Schedule 2 to the Financial Services Act 2019 which is authorized and functions regularly in accordance with the provisions contained in or made under that Act;

(b) within the United Kingdom means a UK regulated market, as defined by Article 2(1)(13A) of Regulation (EU) 600/2014 as it applies in the United Kingdom after IP completion day;

(c) outside Gibraltar or the United Kingdom means-

(i) within the EEA, a regulated market as defined by Article 2(1)(13) of Regulation 600/2014/EU as it applies in the EEA; or

(ii) outside the EEA, a regulated financial market which subjects companies whose securities are admitted to trading to disclosure obligations which are equivalent to the specified disclosure obligations;

"relevant financial business" has the meaning given by section 9;

"Savings Bank" means the Gibraltar Savings Bank constituted under section 3 of the Savings Bank Act;

"self-hosted address" means a distributed ledger address not linked to either–

(a) a virtual asset service provider;

(b) an entity not established in Gibraltar and providing services similar to those of a virtual asset service provider,

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and for this purpose "distributed ledger address" means an alphanumeric code that identifies an address on a network using distributed ledger technology (DLT) or similar technology where virtual assets can be sent or received;

"senior management" means an officer or employee with sufficient knowledge of the institution's money laundering, terrorist financing and proliferation financing risk exposure and sufficient seniority to take decisions affecting its risk exposure, and need not, in all cases, be a member of the board of directors;

"the specified disclosure obligations" means disclosure requirements consistent with-

(a) Articles 17 and 19 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse as that regulation formed part of domestic law on IP completion day and as may be further amended from time to time;

(b) requirements in Part 19 of the Financial Services Act 2019; or

(c) Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to a regulated market as that regulation formed part of domestic law on IP completion day and as further amended from time to time;

"supervisory authority" has the meaning given by section 29;

"tax advisor" means any person that undertakes to provide, directly or through a third party, material aid, assistance or advice in connection with the tax affairs of other persons; and

"virtual asset" means a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes, but does not include digital representations of–

(a) fiat currencies; or

(b) financial instruments specified in paragraph 46 of Schedule 2 to the Financial Services Act 2019;

"virtual asset service provider" means an undertaking which by way of business carries on–

(a) the regulated activity in paragraph 139 or 139A of Schedule 2 to the Financial Services Act 2019 (providing distributed ledger technology services or virtual asset arrangements); or

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(b) the activity in regulation 4(1)(c) of the Proceeds of Crime Act 2015 (Relevant Financial Business) (Registration) Regulations 2021;

(1ZA) The Minister may by Notice in the Gazette amend Schedule 9 by adding, deleting or otherwise altering any entry therein.

(1A) In this Act, "beneficial owner" means;

(a) in the case of a natural person-

(i) where a person is conducting a transaction or activity on his own behalf, that natural person; or

(ii) where a transaction or activity is being conducted on behalf of another person, the person on whose behalf the transaction or activity is being conducted;

(b) in the case of a Listed Entity, or a majority owned subsidiary of such a Listed Entity, the Listed Entity;

(c) in the case of a corporate or legal entity, other than a Listed Entity or a majority owned subsidiary of a Listed Entity-

(i) the natural person who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings;

(ii) if, after having exhausted all possible means,

(a) there is doubt as to whether the person identified under subparagraph (i) is the beneficial owner; or

(b) no person under subparagraph (i) is identified,

the natural person exercising control via other means;

(iii) if, after having exhausted all possible means-

(a) there is doubt as to whether the person identified under subparagraph (ii) is the beneficial owner, or

(b) no person under subparagraph (ii) is identified,

the person specified in subparagraph (iv);

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(iv) for the purposes of subparagraph (iii) the specified person is-

(a) if the company or legal entity is ultimately owned or controlled through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, by a Listed Entity, or a majority owned subsidiary of a Listed Entity, the Listed Entity, and

(b) in all other cases, the natural person who holds the position of senior managing official;

(d) in the case of trusts–

(i) the settlor or settlors;

(ii) the trustee or trustees;

(iii) the protector or protectors, if any;

(iv) the beneficiaries, or where the individuals benefiting from the trust have yet to be determined, the class of persons in whose main interest the trust is set up or operates;

(v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

(e) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person holding equivalent or similar positions to those referred to in paragraph (d),

and "beneficial owners" shall be construed accordingly.

(1B) In paragraph (c) of the meaning of "beneficial owner" in subsection (1A), a shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25% plus one share or an ownership interest of more than 25% in the customer held by a corporate entity, which is under the control of a natural person, or by multiple corporate entities, which are under the control of the same natural person, shall be an indication of indirect ownership. Control through other means may be determined, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC as it had effect immediately before IP completion day.

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(1C) The Minister may by legal notice in the Gazette amend the percentage referred to in subsection (1B) which may be taken as an indication of ownership or control.

(2) In this Part, except in so far as the context otherwise requires, "money laundering" means doing any act which constitutes an offence–

(a) under section 2, 3 or 4 of this Act;

(b) under section 35, 36, 37, 38A or 39 of the Terrorism Act 2018;

(c) doing any act which constitutes an offence under any other enactment that applies in Gibraltar and that offence relates to terrorism or the financing of terrorism,

or in the case of an act done outside Gibraltar would constitute such an offence under that Act if done in Gibraltar.

(3) For the purposes of this section, a business relationship formed by any person acting in the course of relevant financial business is an established business relationship where that person has through the application of customer due diligence measures obtained, satisfactory evidence of the identity of the person who, in relation to the formation of that business relationship, was the applicant for business.

Business relationships.

8.(1) In this Part "business relationship" means a business, professional or commercial relationship which is connected with the professional activities of a relevant financial business and which is expected, at the time when contact is established, to have an element of duration.

(2) A relationship where the relevant person is asked to form a company for its customer is to be treated as a business relationship for the purpose of this Act, whether or not the formation of the company is the only transaction carried out for that customer.

(3) For the purposes of this Act-

(a) an estate agent is to be treated as entering into a business relationship with a purchaser (as well as with a seller), at the point when the purchaser's offer is accepted by the seller;

(b) a letting agent is to be treated as entering into a business relationship with a tenant (as well as with a landlord), at the point when the tenant's offer is accepted by the landlord.

Relevant financial business.

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9.(1) For the purposes of this Part, "relevant financial business" means the business of engaging in one or more of the following businesses or activities-

(a) issuing electronic money or accepting deposits, within the meaning of Schedule 2 to the Financial Services Act 2019, carried on by a person authorised under that Act;

(b) business of the Savings Bank;

(c) any home regulated activity carried on by a European institution;

(d) financial instruments business which is a regulated activity falling within the following provisions of Schedule 2 to the Financial Services Act 2019;

(i) Chapter 2 of Part 6 (investment services and investment activities); or

(ii) Chapter 3 of Part 6 (sending dematerialized instructions);

(e) any of the activities in paragraphs 1 to 12 or 14 of the Schedule to the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;

(f) life insurance activities covered by the Financial Services (Insurance Companies) Regulations 2020 carried on by a person authorised in accordance with those Regulations;

(g) auditors, insolvency practitioners, external accountants and tax advisors;

(h) estate agents and letting agents;

(i) art market participants;

(j) art storage freeport operators;

(k) notaries and other independent legal professionals, when they participate whether-

(i) by assisting in the planning or execution of transactions for their client concerning the-

(A) buying and selling of real property or business entities;

(B) managing of client money, securities or other assets;

(C) opening or management of bank, savings or securities accounts;

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(D) organizations of contributions necessary for the creation, operation or management of companies;

(E) creation, operation or management of trusts, companies, foundations or similar structures; or

(ii) by acting on behalf of and for their client in any financial or real estate transaction;

(l) a regulated activity within the meaning of any of the following provisions of Schedule 2 to the Financial Services Act 2019–

(i) paragraph 19 (providing payment services);

(ii) paragraph 29 (insurance management);

(iii) paragraph 34 (in respect of life insurance distribution);

(iv) paragraph 35 (in respect of life reinsurance distribution);

(v) paragraph 106 (establishing, etc. a personal pension scheme);

(vi) paragraph 107 (advising on personal or occupational pension schemes);

(vii) paragraph 118 (granting credit by means of a mortgage credit agreement);

(viii) paragraph 119 (acting as a mortgage credit intermediary);

(ix) paragraph 120 (providing mortgage credit advisory services);

(x) paragraph 126 (company etc. management);

(xi) paragraph 131 (acting as a professional trustee or foundation councillor);

(xii) paragraph 135 (acting as a bureau de change); or

(xiii) paragraph 139 or 139A (providing distributed ledger technology services or virtual asset arrangements);

(m) dealers in all high value goods whenever payment is made or received in cash and in an amount of 10,000 euro or more;

(n) gambling services;

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(o) a collective investment scheme authorised, recognised or otherwise regulated by or under the Financial Services Act 2019 and any regulated activity specified in paragraphs 93 to 102 of Schedule 2 to that Act;

(p) undertakings that receive, whether on their own account or on behalf of another person, proceeds in any form from the sale of tokenised digital assets involving the use of DLT or a similar means of recording a digital representation of an asset;

(q) *Omitted*

(r) submitting an application under the Qualifying (Category 2) Individual Rules 2004.

(s) prediction market activity within the meaning of the Prediction Market Regulations 2026, carried on by an operator authorised in accordance with those Regulations.

(2) *Omitted*.

(3) The Minister may by regulations add to, delete or otherwise amend the list of businesses or activities set out in subsection (1).

(4) *Omitted*.

Extension of provisions to other entities.

9A. The Minister must, by regulations made pursuant to section 9(3) and in accordance with the risk-based approach, ensure that the scope of this Part is extended in whole or in part to professions and to categories of undertakings, other than the obliged entities referred to in Article 2(1) of the Money Laundering Directive, which engage in activities which are particularly likely to be used for the purposes of money laundering, terrorist financing or proliferation financing.

Responsibility for compliance.

9B. A relevant financial business which is a legal person or a legal arrangement (other than a trust) must, appoint a director, senior manager or partner, and it shall be that person's duty to ensure compliance with Part II and this Part.

Customer Due Diligence

Meaning of customer due diligence measures.

10. **"**Customer due diligence measures" shall comprise–

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(a) identifying the customer;

(b) identifying all beneficial owners;

(c) understanding the ownership and control structure of the customer;

(ca) verifying, in accordance with section 8A of the Sanctions Act 2019, that the customer (or the beneficial owner for the purposes of that Act) is not a person to whom international sanctions apply;

(d) understanding and, as appropriate, obtaining information on, the purpose and intended nature of the business relationship or occasional transaction;

(e) taking a risk-based approach to the verification of the identity of the customer and all beneficial owners, on the basis of documents, data or information obtained from a reliable and independent source including, where available, electronic identification means or relevant trust services as set out in the Electronic Identification Regulation or any other secure, remote or electronic identification process regulated, recognised, approved or accepted by the EIR supervisory body, so that the relevant financial business is satisfied that it knows who the customer and beneficial owners are;

(f) taking a risk-based approach to the verification of the source of funds and wealth of the customer and beneficial owners;

(g) in the case of a corporate or legal entity, obtaining, at least, the following information on the corporate or legal entity-

(i) its name, legal form and proof of existence;

(ii) the powers that regulate and bind the corporate or legal entity;

(iii) the names of the relevant persons having a senior management position in the corporate or legal entity;

(iv) the address of its registered office and, if different, its principal place of business;

(h) in the case of trusts, obtaining, at least, the following information on the trust-

(i) its name, legal form and proof of existence;

(ii) the powers that regulate and bind the trust;

(iii) the principal place of business of the trustees;

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(i) in the case of legal entities such as foundations, and legal arrangements similar to trusts, obtaining, at least, the following information on the entity or similar legal arrangement-

(i) its name, legal form and proof of existence;

(ii) the powers that regulate and bind the entity or legal arrangement;

(iii) the names of the relevant persons having a senior management position in the entity or legal arrangement, if any;

(iv) the address of its registered office and, if different, its principal place of business;

(j) determining whether the customer, or its beneficial owner, is a politically exposed person;

(k) conducting ongoing monitoring in accordance with section 12; and

(l) subject to section 25, keeping records of all the actions taken under this section, as well as any difficulties encountered during the process.

Actions through authorised persons.

10A. A relevant financial business undertaking the tasks set out in section 10(a) and (b) must also verify that any person purporting to act on behalf of the customer is so authorised and identify and verify the identity of that person.

Application of customer due diligence measures.

11.(1) A relevant financial business must apply customer due diligence measures when it–

(a) establishes a business relationship;

(b) carries out an occasional transaction amounting to 15,000 euro or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

(ba) in the case of persons trading in goods, when carrying out occasional transactions in cash amounting to 10,000 euro or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

(c) suspects money laundering, terrorist financing or proliferation financing, regardless of any derogation, exemption or threshold;

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(d) doubts the veracity or adequacy of documents, data or information previously obtained for the purposes of identification or verification;

(e) constitutes a transfer of funds, as defined in Article 3(9) of Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (1), exceeding 1,000 euro;

(f) for providers of gambling services, upon the collection of winnings, the wagering of a stake, or both, when carrying out transactions amounting to 2,000 euro or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

(g) carries out an occasional transaction involving a virtual asset or virtual assets with a value of 1,000 euro or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked.

(2) A relevant financial business must also apply customer due diligence measures at other appropriate times to existing customers on the basis of materiality and on a risk-sensitive basis, including at times when-

(a) the relevant circumstances of a customer change; or

(b) a legal duty arises-

(i) pursuant to this Act or any regulations made under this Act, to contact the customer for the purpose of reviewing any information relating to the beneficial owner or beneficial owners;

(ii) pursuant to Parts I, IA and IB of the Income Tax Act; or

(iii) pursuant to the Tax (Mutual Administrative Assistance) Act 2014.

(3) A relevant financial business must–

(a) determine the extent of customer due diligence measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction; and

(b) be able to demonstrate to his supervisory authority that the extent of the measures is appropriate in view of the risks of money laundering, terrorist financing and proliferation financing that have been identified.

(4) Where–

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(a) a relevant financial business is required to apply customer due diligence measures in the case of a trust, legal entity (other than a body corporate) or a legal arrangement (other than a trust); and

(b) the class of persons in whose main interest the trust, entity or arrangement is set up or operates is identified as a beneficial owner, the relevant financial business is not required to identify all the members of the class.

(4A). Where a relevant financial business is required to apply customer due diligence measures to a trust, corporate or legal entity which is subject to the registration of beneficial ownership information pursuant to Articles 30 or 31 of the Money Laundering Directive or the Register of Ultimate Beneficial Owners, Nominators and Appointors Regulations 2017, the relevant financial business shall collect proof of registration or an excerpt of the relevant register.

(4B). Where a relevant financial business is required to apply customer due diligence measures to a Listed Entity, or a majority owned subsidiary of a Listed Entity, it shall not be necessary to identify and verify the identity of any shareholder or beneficial owner of the Listed Entity, and it shall be necessary only for the relevant financial business to record the Listed Entity's entry in the public register of the regulated market in which the Listed Entity's shares are trading, and to retain a copy of such entry subject to section 25.

(5) When determining to what extent to apply customer due diligence measures a relevant financial business must, at least, take into account the following list of risk variables-

(a) the purpose of an account or relationship;

(b) the level of assets to be deposited by a customer or the size of transactions undertaken; and

(c) the regularity or duration of the business relationship.

(5A) Where, during the course of applying customer due diligence measures, a relevant financial business knows, suspects or has reasonable grounds to suspect that the person subject to such measures or another person is engaged in money laundering, terrorist financing or proliferation financing, or is attempting any one or more of those acts, the relevant financial business must, where it is of the opinion that to continue would result in the tipping-off of the person, cease applying customer due diligence measures, and shall make a relevant disclosure to the GFIU without delay.

(6) Nothing in this section shall be read as derogating from the obligation of a relevant financial business to apply due diligence measures under subsections (1) to (5), including the application of those measures pursuant to sections 13, 14, 16 to 20 and 23.

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Ongoing monitoring.

12.(1) A relevant financial business must conduct ongoing monitoring of a business relationship.

(2) "Ongoing monitoring" of a business relationship means–

(a) scrutinising of transactions undertaken throughout the course of the relationship to ensure that the transactions are consistent with the relevant financial business's or person's knowledge of the customer, his business and risk profile, including where necessary the source of funds; and

(b) undertaking reviews of existing records (and updating these where necessary) to ensure that the documents, data or information obtained for the purpose of applying customer due diligence measures is kept up-to-date and relevant.

(3) Section 11(3) applies to the duty to conduct ongoing monitoring under subsection (1) as it applies to customer due diligence measures.

Timing of verification.

13.(1) This section applies in respect of the duty under section 11(1) to apply the customer due diligence measures referred to in section 10.

(2) Subject to subsection (3) to (5) and section 14, a relevant financial business must verify the identity of the customer (and any beneficial owner) before the establishment of a business relationship or the carrying out of an occasional transaction.

(3) Such verification may be completed during the establishment of a business relationship if–

(a) this is necessary not to interrupt the normal conduct of business; and

(b) there is little risk of money laundering, terrorist financing or proliferation financing occurring, provided that the verification is completed as soon as practicable after contact is first established.

(4) A credit institution or financial institution involved in life insurance or other investment-related insurance activities must, in addition to the customer due diligence and ongoing monitoring requirements at sections 11 and 12, conduct the following customer due diligence measures on the beneficiaries of life insurance and other investment-related insurance policies, as soon as the beneficiaries are identified or designated-

(a) in the case of beneficiaries that are identified as specifically named persons or legal arrangements, taking the name of the person;

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(b) in the case of beneficiaries that are designated by characteristics or by class or by other means, obtaining sufficient information concerning those beneficiaries to satisfy the credit institutions or financial institution that it will be able to establish the identity of the beneficiary at the time of the payout.

(4A) Pursuant to subsection (4)-

(a) the verification of the identity of the beneficiaries shall take place at the time of the payout; and

(b) in the case of assignment, in whole or in part, of the life or other investment-related insurance to a third party, credit institutions and financial institutions aware of the assignment shall identify the beneficial owner at the time of the assignment to the natural or legal person or legal arrangement receiving for its own benefit the value of the policy assigned.

(4B) Subsection (4C) applies if-

(a) the relevant person is required to apply customer due diligence measures in the case of a trust, a legal entity (other than a body corporate) or a legal arrangement (other than a trust); and

(b) the beneficiaries of that trust, entity or arrangement are designated as a class, or by reference to particular characteristics.

(4C) If this subsection applies, the relevant person must establish and verify the identity of the beneficiary before-

(a) any payment is made to the beneficiary; or

(b) the beneficiary exercises its vested rights in the trust, entity or legal arrangement.

(5) The verification of the identity of a bank account holder may take place after the bank account has been opened provided that there are adequate safeguards in place to ensure that–

(a) the account is not closed; and

(b) transactions are not carried out by or on behalf of the account holder (including any payment from the account to the account holder), before verification has been completed.

Casinos.

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14.(1) A casino must establish and verify the identity of all customers who purchase or exchange gambling chips with a value of 2,000 euro or more.

(2) If the casino is subject to state supervision it shall be deemed to have complied with the customer due diligence requirements if it registers, identifies and verifies the identity of the customer immediately on or before entry, regardless of the number of the gambling chips purchased.

Requirement to cease transactions etc.

15.(1) Where, in relation to any customer, a relevant financial business is unable to apply customer due diligence measures in accordance with the provisions of this Part, it–

(a) must not carry out a transaction with or for the customer through a bank account;

(b) must not establish a business relationship, open an account or carry out an occasional transaction with the customer;

(c) must terminate any existing business relationship with the customer;

(d) must consider whether he is required to make a disclosure to the GFIU.

(2) Subsection (1) does not apply to notaries, independent members of professions which are legally recognised and controlled, auditors and tax advisors who are in the course of ascertaining the legal position for their client or performing the task of defending or representing that client in, or concerning, legal proceedings, including advice on the institution or avoidance of proceedings.

Simplified customer due diligence.

16.(1) Where a relevant financial business-

(a) identifies areas of lower risk;

(b) has ascertained that the business relationship or the transaction presents a lower degree of risk, and

(c) has not identified a suspicion or knowledge of money laundering, terrorist financing, or proliferation financing,

it may, in accordance with this section apply simplified customer due diligence measures.

(2) Nothing in this section is to be construed as derogating from the need to undertake sufficient monitoring of the transactions and business relationships to enable the detection of unusual or suspicious transactions or from the provisions of section 12.

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(3) When assessing the risks of money laundering and terrorist financing relating to types of customers, geographic areas, and particular products, services, transactions or delivery channels, a relevant financial business must take into account at least–

(a) the factors of potentially lower risk situations set out in Schedule 6; and

(b) the risks identified within any information that is made available to the relevant financial business pursuant to the National Coordinator for Anti-Money Laundering and Combatting Terrorist Financing Regulations 2016.

(4) In the case of credit institutions and financial institutions, these shall in addition, have regard to guidelines issued by the Commission pursuant to Article 17 of the Money Laundering Directive.

(5) When taking account of the factors of potentially lower risk situations set out in paragraphs (1)(c) and (3) of Schedule 6, a relevant financial business must ensure that a risk assessment including geographical risk factors, takes into account any additional geographical risk factors including those identified within any information that is made available to the relevant financial business pursuant to the National Coordinator for Anti-Money Laundering and Combatting Terrorist Financing Regulations 2016 and that any geographical risk factors contained in such information take precedence.

Enhanced customer due diligence measures: application.

17.(1) Relevant financial business must apply enhanced due diligence measures to appropriately manage and mitigate risks-

(a) in the cases referred to in Articles 18a to 24 of the Money Laundering Directive;

(b) when dealing with natural persons or legal entities established in third countries identified by Gibraltar as high risk third countries; and

(c) in other cases of higher risk identified-

(i) by the relevant financial business;

(ii) by the Minister by notice in the Gazette; or

(iii) within any information that is made available to the relevant financial business pursuant to the National Coordinator for Anti-Money Laundering and Combatting Terrorist Financing Regulations 2016.

(2) Notwithstanding subsection (1), enhanced customer due diligence measures need not be invoked automatically in any business relationship or transaction with a customer established

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in a high-risk third country where that customer is a branch or majority-owned subsidiary of an obliged entity established in a third country if all the following conditions are satisfied –

(a) the entity is-

(i) subject to requirements in national legislation having an equivalent effect to those laid down in the Money Laundering Directive on an obliged entity (within the meaning of that directive); and

(ii) supervised for compliance with those requirements in a manner equivalent to section 2 of Chapter VI of the Money Laundering Directive;

(b) the branch or subsidiary complies fully with procedures and policies established for the group under requirements equivalent to those laid down in Article 45 of the Money Laundering Directive; and

(c) the relevant financial business applying a risk based approach, does not consider that it is necessary to apply enhanced due diligence measures.

(3) A relevant financial business must examine, as far as reasonably possible, the background and purpose of all transactions that fulfil at least one of the following conditions-

(a) they are complex transactions;

(b) they are unusually large transactions;

(c) they are conducted in an unusual pattern;

(d) they do not have an apparent economic or lawful purpose, and in particular, a relevant financial business shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear suspicious.

(4) When assessing the risks of money laundering, terrorist financing and proliferation financing, a relevant financial business must take into account at least the factors of potentially higher-risk situations set out in Schedule 7.

(4A) In addition to the factors set out in Schedule 7, when assessing the risks of money laundering, terrorist financing and proliferation financing, credit institutions and financial institutions shall include the beneficiary of any life insurance policy as a relevant risk factor in determining whether to apply enhanced due diligence measures under subsection (1), and in particular whether such beneficiary, being a legal person or legal arrangement, presents a higher risk, in which case the relevant financial business shall apply enhanced due diligence measures to appropriately manage and mitigate the risk, including identifying and verifying the identity of the beneficial owner of the beneficiary at the time of payout.

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(5) *Omitted*.

(6) In relation to business relationships or transactions involving high-risk third countries identified pursuant to subsection (1)(b), a relevant financial business must apply the following enhanced customer due diligence measures-

(a) obtain additional information on the customer and on the beneficial owners;

(b) obtain additional information on the intended nature of the business relationship;

(c) obtain information on the source of funds and source of wealth of the customer and of the beneficial owners;

(d) obtain information on the reasons for the intended or performed transactions;

(e) obtain the approval of senior management for establishing or continuing the business relationship; and

(f) conduct enhanced monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.

(7) The supervisory authority of a relevant financial business may give a direction under this subsection to the relevant financial business to apply one or more of the additional mitigating measures set out in Schedule 8 to persons and legal entities carrying out transactions involving high risk third countries identified pursuant to subsection (1)(b).

(8) A supervisory authority may require increased external audit requirements in respect of branches or subsidiaries of a relevant financial business where those branches or subsidiaries are located in a high risk third country identified pursuant to subsection (1)(b).

17A. *Deleted*.

Non face-to-face.

18. Where the customer has not been physically present for identification purposes, a relevant financial business must take specific and adequate measures to compensate for the higher risk, for example, by applying one or more of the following measures–

(a) ensuring that the customer's identity is established by additional documents, data or information;

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(b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit institution or financial institution which is subject to the Money Laundering Directive;

(c) ensuring that the first payment is carried out through an account opened in the customer's name with a credit institution.

Correspondent banking.

19.(1) A credit institution or financial institution ("the correspondent") which has or proposes to have a correspondent banking relationship involving the execution of payments with a respondent institution ("the respondent") outside Gibraltar must, in addition to the customer due diligence requirements under sections 10 to 13–

(a) gather sufficient information about the respondent to understand fully the nature of its business;

(b) determine from publicly-available information the reputation of the respondent and the quality of its supervision;

(ba) determine from publicly available information whether the respondent has been subject to any money laundering, terrorist financing or proliferation financing investigation or regulatory action.

(c) assess the respondent's anti-money laundering, combatting terrorist financing and proliferation financing controls;

(d) obtain approval from senior management before establishing a new correspondent banking relationship;

(e) understand and document the respective responsibilities of the respondent and correspondent;

(ea) be satisfied that the respondent does not permit its accounts to be used by shell banks; and

(f) be satisfied that, in respect of those of the respondent's customers who have direct access to accounts of the correspondent, the respondent-

(i) has verified the identity of, and conducts ongoing monitoring in respect of, such customers; and

(ii) is able to provide to the correspondent, upon request, the documents, data or information obtained when applying customer due diligence measures and ongoing monitoring.

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(2) A supervisory authority may direct a relevant financial business which is a credit institution or a financial institution and which is in a correspondent relationship with a respondent institution in a high risk country identified pursuant to section 17(1)(b) to review, amend, or terminate the correspondent relationship with that respondent institution.

Self-hosted address transfers.

19A.(1) A virtual asset service provider must identify and assess the risk of money laundering, terrorist financing and proliferation financing associated with transfers of virtual assets directed to or originating from a self-hosted address.

(2) For the purposes of subsection (1), virtual asset service providers must–

(a) have appropriate internal policies, procedures and controls in place; and

(b) apply mitigating measures commensurate with the risks identified, including include one or more of the following–

(i) taking risk-based measures to identify, and verify the identity of, the originator or beneficiary of a transfer made to or from a self-hosted address or the beneficial owner of such originator or beneficiary, including through reliance on third parties;

(ii) requiring additional information on the origin and destination of the transferred virtual assets;

(iii) conducting enhanced ongoing monitoring of those transactions; or

(iv) any other measure to mitigate and manage the risks of money laundering, terrorist financing and proliferation financing as well as the risk of non-implementation and evasion of targeted financial sanctions.

Correspondent relationships: virtual assets.

19B.(1) A virtual asset service provider ("the correspondent") which has or proposes to have a correspondent relationship involving the execution of virtual asset services with a respondent entity and providing similar services, including transfers of virtual assets, outside Gibraltar must, in addition to the customer due diligence requirements under sections 10 to 13–

(a) determine whether the respondent is appropriately licensed or registered (however described);

(b) gather sufficient information about the respondent to understand fully the nature of its business;

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(c) determine from publicly available information the reputation of the respondent and the quality of its supervision;

(d) assess the respondent's anti-money laundering, terrorist financing and proliferation financing controls;

(e) obtain approval from senior management before establishing a new correspondent relationship;

(f) understand and document the respective responsibilities of the respondent and the correspondent;

(g) be satisfied, with respect to payable-through virtual asset accounts, that the respondent–

(i) has verified the identity of, and conducts ongoing due diligence on, customers who have direct access to the accounts of the correspondent; and

(ii) is able to provide relevant customer due diligence data to the correspondent upon request.

(2) A virtual asset service provider must–

(a) update the due diligence information for any correspondent relationship on a regular basis or when new risks emerge in relation to the respondent; and

(b) take account of the information referred to in subsection (1) in order to determine, on a risk-sensitive basis, the appropriate measures to be taken to mitigate the risks associated with the respondent.

(3) If a virtual asset service provider decides to terminate a correspondent relationship for reasons relating to the prevention of money laundering, terrorist financing or proliferation financing, it must document and record that decision.

Politically exposed persons.

20.(1) A relevant financial business that has, or proposes to have, a business relationship or carry out an occasional transaction with a politically exposed person (including a customer whose beneficial owner is a politically exposed person) must, in addition to the customer due diligence requirements under sections 10 to 13–

(a) have approval from senior management for establishing or continuing the business relationship with that person;

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(b) take adequate measures to establish the source of wealth and source of funds which are involved in the existing or proposed business relationship or occasional transaction; and

(c) where the business relationship is entered into, conduct enhanced ongoing monitoring of the relationship.

(2) Subsection (1) and section 20B applies to family members and persons known to be close associates of politically exposed persons as though such persons are themselves politically exposed persons.

(3) For the purpose of deciding whether a person is a known close associate of a person referred to in subsection (2)(a), a relevant financial business need only have regard to information which is in its possession or is publicly known.

Politically exposed person: interpretation.

20A. For the purposes of this Part-

"family members" includes the following-

(a) the spouse, or a person considered to be equivalent to a spouse, of a politically exposed person;

(b) the children and their spouses, or persons considered to be equivalent to a spouse, of a politically exposed person;

(c) the parents of a politically exposed person;

"persons known to be close associates" means-

(a) natural persons who are known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a politically exposed person;

(b) natural persons who have sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the de facto benefit of a politically exposed person;

"politically exposed person" means a natural person who is or who has been entrusted with prominent public functions and includes the following-

(a) heads of State, heads of government, ministers and deputy or assistant ministers;

(b) members of parliament or of similar legislative bodies;

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(c) members of the governing bodies of political parties;

(d) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances;

(e) members of courts of auditors or of the boards of central banks;

(f) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;

(g) members of the administrative, management or supervisory bodies of State-owned enterprises;

(h) directors, deputy directors and members of the board or equivalent function of an international organisation,

but no public function referred to in paragraphs (a) to (h) shall be understood as covering middle-ranking or more junior officials;

Politically exposed person: continuing obligations.

20B. Where a politically exposed person is no longer entrusted with a prominent public function in Gibraltar or by a third country, or with a prominent public function by an international organisation, a relevant financial business must, for at least 12 months after ceasing to be so entrusted, take into account the continuing risk posed by that person and to apply appropriate and risk-sensitive measures until such time as that person is deemed to pose no further risk specific to politically exposed persons.

Branches and subsidiaries.

21.(1) A relevant financial business must require its branches and subsidiary undertakings which are located in a country or territory outside Gibraltar to apply, to the extent permitted by the law of that country or territory, measures at least equivalent to those set out in this Act with regard to regard to customer due diligence measures, ongoing monitoring and record-keeping.

(2) Where the law of a country or territory outside Gibraltar does not permit the application of such equivalent measures in subsection (1) by the branch or subsidiary undertaking located in that country or territory, the relevant financial business must–

(a) inform its supervisory authority accordingly;

(b) take additional measures to handle effectively the risks of money laundering, terrorist financing and proliferation financing; and

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(c) ensure that the level of requirements expected in Gibraltar is applied, to the extent that the country's or territory's law so allows.

(2A) If the additional measures referred to in subsection (2)(b) are not sufficient, the supervisory authority shall exercise additional supervisory actions, including requiring that the group does not establish or that it terminates business relationships, and does not undertake transactions and, where necessary, requesting the group to close down its operations in the third country.

(3) In this section "subsidiary undertaking" except in relation to an incorporated friendly society, has the meaning given by section 2 of the Companies Act 2014 and,

(i) in relation to a body corporate in or formed under the law of an EEA State includes an undertaking which is a subsidiary undertaking within the meaning of any rules in force in that State for purposes connected with the implementation of Directive 2013/34/EC of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings as it had effect immediately before 1 January 2021; and

(ii) in relation to a body corporate in or formed under the law of the United Kingdom has the same meaning as in the UK Companies Acts (see section 1162 of and Schedule 7 to, the Companies Act 2006).

Shell banks, anonymous accounts etc.

22.(1) A credit institution or financial institution must not enter into, or continue, a correspondent banking relationship with a shell bank.

(2) A credit institution or financial institution must take appropriate measures to ensure that it does not enter into, or continue, a corresponding banking relationship with a bank which permits its accounts to be used by a shell bank.

(3) A credit institution or financial institution carrying on business in Gibraltar must not set up an anonymous account or an anonymous passbook for any new or existing customer.

(3A) A credit institution or financial institution which seeks to carry on business in Gibraltar must subject the owner and beneficiary of an existing anonymous account or anonymous passbook or anonymous safe-deposit box to customer due diligence measures as soon as possible and in any event before such account or passbook is used in any way.

(3B) Supervisory authorities shall publish such guidance as they consider necessary to prevent the misuse of bearer shares and bearer share warrants.

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(4) A "shell bank" means a credit institution or financial institution, or an institution that carries out equivalent activities to those carried out by credit institutions and financial institutions, incorporated in a jurisdiction in which it has no physical presence, involving meaningful decision making and management, and which is unaffiliated with a regulated financial group.

Reliance.

23.(1) A relevant financial business may rely on a person who falls within subsection (2) where it has satisfied itself that the person being relied on is regulated and supervised, and has measures in place for compliance with customer due diligence and record–keeping requirements in line with this Part, provided that–

(a) the other person consents to being relied on; and

(b) notwithstanding the relevant person's reliance on the other person, the relevant person remains liable for any failure to apply such measures.

(1A) Subsection (1) shall not be construed as permitting reliance on a third party that is established in a high risk third country identified pursuant to section 17(1)(b).

(1B) Subsection (1A) does not apply to branches and majority-owned subsidiaries of obliged entities if all of the following conditions are met –

(a) the entity is –

(i) a person who is subject to the requirements in this Act as a relevant financial business within the meaning of section 9 and who is supervised for compliance with them; or

(ii) subject to requirements in national legislation having an equivalent effect to those laid down in the Money Laundering Directive on an obliged entity (within the meaning of that directive) and supervised for compliance with those requirements in a manner equivalent to section 2 of Chapter VI of the Money Laundering Directive;

(b) the branch or subsidiary fully complies with procedures and policies established for the group under –

(i) section 26(1B); or

(ii) requirements in national legislation having an equivalent effect to those laid down in Article 45 of the Money Laundering Directive.

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(1C) When considering reliance on a person in accordance with subsection (1), the relevant financial business must have regard to the level of country risk posed by the country in which that person is established, and in determining the level of country risk account must be taken of geographical risk factors including those identified within any information that is made available to the relevant financial business pursuant to the National Coordinator for Anti-Money Laundering and Combatting Terrorist Financing Regulations 2016, and any geographical risk factors contained in such information take precedence.

(2) The persons are–

(a) a credit institution or financial institution which is an authorised person;

(b) an auditor, insolvency practitioner, external accountant, tax advisor or independent legal professional supervised for the purposes of this Act by one of the bodies listed in Part 1 of Schedule 2;

(c) *Omitted*

(d) a person who carries on business in a third country who is–

(i) a credit institution or financial institution (or equivalent institution), auditor, insolvency practitioner, external accountant, tax advisor or independent legal professional;

(ii) subject to mandatory professional registration recognised by law;

(iii) subject to requirements equivalent to those laid down in section 2 of Chapter VI of the Money Laundering Directive; and

(iv) supervised for compliance with those requirements in a manner equivalent to section 2 of Chapter VI of the Money Laundering Directive.

(3) In subsection (2) and (d)(i), "auditor" and "insolvency practitioner" includes a person situated in a third country who provides services equivalent to the services provided by an auditor or insolvency practitioner.

(4) Nothing in this section prevents a relevant financial business applying customer due diligence measures by means of an outsourcing service provider or agent provided that the relevant person remains liable for any failure to apply such measures but this section does not apply to outsourcing or agency relationships where, on the basis of a contractual arrangement, the outsourcing service provider or agent is to be regarded as part of the obliged entity.

(5) In this section, "financial institution" excludes money service businesses.

Reliance: additional provisions.

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23A. A relevant financial business that is part of a group may be considered to have complied with the provisions adopted pursuant to sections 23 and 25(5) of this Act through its group programme if-

(a) the relevant financial business relies on information provided by a person that is part of the same group;

(b) that group applies customer due diligence measures, rules on record-keeping and programmes against money laundering, terrorist financing and proliferation financing in accordance with this Act or equivalent rules;

(c) the effective implementation of the requirements referred to in paragraph (b) is supervised at group level by a supervisory authority in Gibraltar or a supervisory authority in the third country.

Directions where Financial Action Task Force applies counter-measures.

24.(1) The Minster may direct any relevant financial business–

(a) not to enter into a business relationship;

(b) not to carry out an occasional transaction; or

(c) not to proceed any further with a business relationship or occasional transaction,

with a person to which the Financial Action Task Force has decided to apply counter-measures.

(2) Where the Minister issues a direction under subsection (1) he shall cause that direction to be published in the Gazette.

Record-keeping, procedures and training

Record-keeping.

25.(1) Subject to subsection (4), a relevant financial business must keep the records specified in subsection (2) for at least the period specified in subsection (3).

(2) The records are-

(a) a copy of the documents and information obtained pursuant to sections 10, 10A, 11, 12, 13, 14, 16, 17, 17A, 18, 19, 20, 20B or 22(3), and, where available, data or information obtained through electronic identification means or relevant trust

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services as set out in Electronic Identification Regulation or any other secure, remote or electronic identification process regulated, recognised, approved or accepted by the EIR supervisory body;

(b) the supporting evidence and records of all transactions, both domestic and international, including account files and business correspondence, and results of any analysis undertaken, as well as any other information that may reasonably be necessary to identify such transactions (consisting of the original documents or copies).

(2A) Evidence and records collected in accordance with subsection (2) must be sufficient so as to permit the reconstruction of individual transactions so as to provide, if necessary, evidence for the prosecution of criminal activity.

(3) The period is five years beginning on–

(a) in the case of the records specified in subsection (2)(a), the date on which–

(i) an occasional transaction is completed; or

(ii) the business relationship ends; or

(b) in the case of the records specified in subsection (2)(b)–

(i) where the records relate to a particular transaction, the date on which the transaction is completed;

(ii) for all other records, the date on which the business relationship ends.

(4) A relevant financial business who is relied on by another person must keep the records specified in subsection (2)(a) for five years beginning on the date on which he is relied on for the purposes of sections 10A, 11, 12, 13, 14, 16, 17, 17A, 18, 19, 20, 20B or 22 in relation to any business relationship or occasional transaction.

(5) A person referred to in section 23(2)(a) or (b) who is relied on by a relevant financial business must, without delay if requested by the person relying on him within the period referred to in subsection (4)–

(a) make available to the person who is relying on him any information about the customer (and any beneficial owner) which he obtained when applying customer due diligence measures; and

(b) forward to the person who is relying on him copies of any identification and verification data and other relevant documents on the identity of the customer (and any beneficial owner) which he obtained when applying those measures

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including, where available, electronic identification means or relevant trust services as set out in Electronic Identification Regulation or any other secure, remote or electronic identification process regulated, recognised, approved or accepted by the EIR supervisory body.

(6) A relevant financial business who relies on a person referred to in section 23(2)(c) or (d) to apply customer due diligence measures must take steps to ensure that the third party will, without delay if requested by the relevant financial business within the period referred to in subsection (4)–

(a) make available to him any information about the customer (and any beneficial owner) which the third party obtained when applying customer due diligence measures; and

(b) forward to him copies of any identification and verification data and other relevant documents on the identity of the customer (and any beneficial owner) which the third party obtained when applying those measures including, where available, electronic identification means or relevant trust services as set out in Electronic Identification Regulation or any other secure, remote or electronic identification process regulated, recognised, approved or accepted by the EIR supervisory body.

(6A) Steps taken under subsection (6) may include conducting such tests in such manner and at such intervals as the relevant financial business considers appropriate in all the circumstances in order to establish whether–

(a) the person being relied on has appropriate and consistent policies and procedures in place to allow the relevant financial business to rely on that person;

(b) if the person being relied on has not already provided to the relevant financial business the information and relevant documents referred to in subsection (5), the person being relied on-

(i) keeps the information and relevant documents referred to in subsection (5), obtained when applying customer due diligence measures; and

(ii) if requested by the relevant financial business, provides the relevant financial business with that the information and relevant documents referred to in subsection (5) without delay;

(c) the person being relied on may be prevented, under the provisions of this or any other enactment, from providing the required information and relevant documents referred to in subsection (5).

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(7) Subsection (5) and (6) do not apply where a relevant financial business applies customer due diligence measures by means of an outsourcing service provider or agent.

(8) For the purposes of this section a person relies on another person when he does so in accordance with section 23(1).

(9) Institutions and persons referred to in section 9(1) situated in Gibraltar shall recognise and accept the outcome of the customer due diligence requirements laid down in this Act and carried out in accordance with this Act by an institution referred to in section 9(1) in Gibraltar or another EEA State and meeting the requirements in this Act even if, in the case of institutions situated in a third country, the documents or data on which these requirements have been based are different to those required in Gibraltar.

(10) Upon expiry of the retention periods referred to in this section personal data shall be deleted, unless-

(a) retention is required by another enactment; or

(b) where the Minister by Order provides for the retention of records specified in that Order.

(11) The Minister must not make an Order under subsection (10)(b) unless there has been carried out a thorough assessment of the necessity and proportionality of such further retention and the Minister considers it to be justified as necessary for the prevention, detection or investigation of money laundering, terrorist financing or proliferation financing.

(12) An order under subsection (10)(b) cannot require retention of records for a period exceeding 5 years.

Record keeping and legal proceedings.

25ZA.(1) A relevant financial business may retain, until the 25 June 2020 the information and documents which are necessary evidence of the customer's identity obtained pursuant to sections 10A, 11, 12, 13, 14, 16, 17, 17A, 18, 19, 20, 20B or 22(3), where this information is related to legal proceedings which commenced prior to 25 June 2015.

(2) Upon expiry of the retention periods referred to in this section personal data shall be deleted, unless-

(a) retention is required by another enactment; or

(b) where the Minister by Order provides for the retention of the information and documents specified in that Order.

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(3) The Minister must not make an Order under subsection (2)(b) unless there has been carried out a thorough assessment of the necessity and proportionality of such further retention and the Minister considers it to be justified as necessary for the prevention, detection or investigation of money laundering, terrorist financing or proliferation financing.

(4) An order under subsection (2)(b) cannot require retention of information and documents for a period exceeding 5 years.

Risk assessment.

25A.(1) Subject to subsection (4), a relevant financial business must take appropriate steps to identify and assess the risks of money laundering, terrorist financing and proliferation financing, taking into account risk factors including those relating to their customers, countries or geographic areas, products, services, transactions or delivery channels, delivery mechanisms and developing technologies (for both new and existing products and business practices) prior to the launch of these, delivery mechanisms and developing technologies (for both new and existing products) prior to the launch of these, and any information that is made available to the relevant financial business pursuant to the National Coordinator for Anti-Money Laundering and Combatting Terrorist Financing Regulations 2016.

(2) The steps referred to in subsection (1) must be proportionate to the nature and size of the relevant financial business.

(3) The risk assessment referred to in subsection (1) must be documented, kept up-to-date and made available to the relevant competent authorities concerned.

(4) A competent authority may decide that individual documented risk assessments are not required where the specific risks inherent in the sector are clear and understood, and where that competent authority takes such a decision it shall ensure that the relevant financial businesses which it supervises are informed accordingly.

Policies and procedures.

26.(1) A relevant financial business must establish and maintain appropriate and risk-sensitive policies, controls and procedures, relating to–

(a) customer due diligence measures and ongoing monitoring;

(b) reporting;

(c) record-keeping;

(d) internal control;

(e) risk assessment and management;

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(f) compliance management including the allocation of overall responsibility for the establishment and maintenance of effective systems of control to a compliance officer at management level (being a director, senior manager, or partner); and

(g) employee screening.

(1ZA) The policies, controls and procedures referred to in subsection (1) shall be proportionate to the nature and size of the relevant financial business.

(1ZB) A relevant financial business shall monitor the implementation of the policies, controls and procedures referred to in subsection (1), including enhancing these where higher risks are identified.

(1A) A relevant financial business must undertake an independent audit function for the purposes of testing the policies, controls and procedures referred to in subsection (1), and such function shall have regard to the size and nature of the business.

(1B) A relevant financial business that has branches or subsidiaries must implement group-wide policies and procedures applicable to all branches and majority-owned subsidiaries within the relevant financial business's group, which should at least include–

(a) policies, controls and procedures referred to in subsection (1);

(b) policies and procedures for sharing information required for the purposes of satisfying the customer due diligence requirements of this Part, within the group;

(c) the provision, at group-level functions, of customer, account and transaction information from branches and subsidiaries where necessary for the purposes of anti-money laundering and combatting terrorist financing and proliferation financing, which shall include, to the extent permitted under the Data Protection Act 2004-

(i) information about transactions or activities which appear unusual; and

(ii) any analysis undertaken in respect of sub-paragraph (i), including the content of any report made to the GFIU or its underlying information where such disclosure is made in confidence and would not cause tipping-off of the customer;

(d) adequate safeguards on the confidentiality and use of information exchanged under paragraph (b), including safeguards to prevent tipping-off; and

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(e) the provision of information from group–level functions to branches and subsidiaries where relevant and appropriate to the management of the risks of money laundering, terrorist financing and proliferation financing.

(1BB) In subsection (1B), "group-level functions" comprise any functions related to compliance, audit or anti-money laundering and combatting terrorist financing and proliferation financing.

(1C) Any sharing of information under subsection (1B) shall be to the extent permitted under the Data Protection Act 2004, and may only be used for the purposes of anti-money laundering and combatting terrorist financing.

(2) The policies, controls and procedures referred to in subsection (1) include policies, controls and procedures–

(a) which provide for the identification and scrutiny of–

(i) complex or unusually large transactions;

(ii) unusual patterns of transactions which have no apparent economic or visible lawful purpose; and

(iii) any other activity which the relevant financial business regards as particularly likely by its nature to be related to money laundering, terrorist financing or proliferation financing;

(b) which specify the taking of additional measures, where appropriate, to prevent the use for money laundering, terrorist financing or proliferation financing of products and transactions which might favour anonymity;

(c) which provide a procedure to determine whether a customer or a beneficial owner of a customer is a politically exposed person, or whether such persons are family members or persons known to be close associates of politically exposed persons.

(d) under which–

(i) an individual in the relevant financial business's organisation is the appropriate person nominated to receive disclosures under section 28;

(ii) anyone in the organisation to whom information or other matter comes in the course of the business as a result of which he knows or suspects or has reasonable grounds for knowing or suspecting that a person is engaged in money laundering, terrorist financing or proliferation financing is required to comply with Part II of this Act;

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(iii) where a disclosure is made to the appropriate person, he must consider it in the light of any relevant information which is available to the relevant financial business and determine whether it gives rise to knowledge or suspicion or reasonable grounds for knowledge or suspicion that a person is engaged in money laundering, terrorist financing or proliferation financing.

(e) which allow for full and speedy responses to requests from the GFIU, a law enforcement authority or a supervisory authority, including requests referred to in section 30B and the information and records referred to in section 25.

(2A) The policies and procedures implemented for the purposes of compliance with subsection (2), where they concern the determination of whether the beneficiary of a life or other investment-related insurance policy (or, if appropriate, the beneficial owner of the beneficiary) is a politically exposed person, must be implemented no later than at the time of the payout or at the time of the assignment, in whole or in part, of the policy, and where there are higher risks identified, in addition to applying the customer due diligence measures laid down in sections 10 to 13, a relevant financial business must-

(a) ensure that senior management is informed before payout of policy proceeds;

(b) conduct enhanced scrutiny of the entire business relationship with the policyholder.

(3) Subsections (1)(g) and (2)(d) do not apply where the relevant financial business is an individual who neither employs nor acts in association with any other person.

(4) A credit institution or financial institution must establish and maintain systems which enable it to respond fully and rapidly to enquiries from the GFIU as to–

(a) whether it maintains, or has maintained during the previous five years, a business relationship with any person; and

(b) the nature of that relationship.

(5) A credit institution or financial institution must communicate where relevant the policies and procedures which it establishes and maintains in accordance with this section to its branches and subsidiary undertakings which are located outside Gibraltar.

(5A) *Deleted*.

(5B) A payment service provider which uses agents must–

(a) include such agents within the policies and procedures which it establishes and maintains in accordance with this section;

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(b) communicate the policies and procedures to the agents; and

(c) monitor the agent's compliance with such policies and procedures.

(6) In this section–

(a) "subsidiary undertaking" has the same meaning as in section 21; and

(b) "payment service provider" has the same meaning as in paragraph 15 of Schedule 4 to the Financial Services Act 2019.

Approval of policies, controls and procedures.

26A. The policies, controls and procedures referred to in section 26 must not be implemented without the prior approval of senior management.

Training.

27.(1) A relevant financial business must take appropriate measures, having regard to the risks, the nature of the business and its size, so that its employees are–

(a) made aware of-

(i) the law relating to money laundering, terrorist financing and proliferation financing; and

(ii) relevant data protection requirements; and

(b) regularly given training in how to recognise and deal with transactions and other activities which may be related to money laundering, terrorist financing and proliferation financing.

(2) Where a natural person falling within section 9(1)(g) or (k) performs his professional activities as an employee of a legal person, the obligations in this section shall apply to that legal person rather than to the natural person.

(3) The GFIU must ensure relevant financial businesses have access to up-to-date information on the practices of money launderers and financers of terrorism, on the practices of proliferation financing and on indications leading to the recognition of suspicious transactions.

(4) In this section, "GFIU" has the meaning given in section 1A of this Act.

Internal reporting procedures.

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28.(1) A group must have in place internal reporting procedures for the purposes of receiving disclosures about knowledge or suspicions of money laundering, terrorist financing or proliferation financing that may be taking place in regards to activities related to the group.

(2) Internal reporting procedures maintained by a person are in accordance with this section if they include provision–

(a) identifying a person ("the appropriate person") to whom a report is to be made of any information or other matter which comes to the attention of a person handling relevant financial business and which, in the opinion of the person handling that business, gives rise to a knowledge or suspicion that another person is engaged in money laundering;

(b) requiring that any such report be considered in the light of all other relevant information by the appropriate person, or by another designated person, for the purpose of determining whether or not the information or other matter contained in the report does give rise to such a knowledge or suspicion;

(c) for any person charged with considering a report in accordance with paragraph (b) to have reasonable access to other information which may be of assistance to him and which is available to the person responsible for maintaining the internal reporting procedures concerned; and

(d) for securing that the information or other matter contained in a report is disclosed to the GFIU where the person who has considered the report under the procedures maintained in accordance with the preceding provisions of this section knows or suspects that another person is engaged in money laundering.

(3) Information about money laundering, terrorist financing and proliferation financing received under this section may be shared between the group unless instructed otherwise by the GFIU.

Supervisory authorities.

29.(1) References in this Part to supervisory authorities shall be construed in accordance with the following provisions.

(2) For the purposes of this Part, each of the bodies listed in Part I of Schedule 2 shall be a supervisory authority.

(3) The Minister may by order published in the Gazette add to, delete from, or amend the list of supervisory authorities in Part I of Schedule 2.

Duties of supervisory authorities.

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30.(1) A supervisory authority must effectively monitor the relevant persons for whom it is the supervisory authority and take necessary measures for the purpose of securing compliance by such persons with the requirements of this Act, which shall include those necessary to prevent such relevant persons from engaging or otherwise being concerned in (directly or indirectly) money laundering, terrorist financing or proliferation financing, or otherwise knowingly or recklessly assisting or facilitating such conduct by any other person.

(1A) Supervisory authorities-

(a) must ensure that they employ only persons with appropriate qualifications, professional standards, integrity and professional skills to carry out the supervision;

(b) are responsible for ensuring the maintenance of high professional standards in relation to such persons, including in relation to the handling of conflicts of interests and the handling of sensitive information.

(2) Where under section 29 there is more than one supervisory authority for a relevant person, the supervisory authorities shall agree between them which one shall act as the supervisory authority for that person and shall notify that person accordingly.

(3) With respect to relevant financial businesses referred to in section 9(1)(g), (h), (k), (l), (p) and (q) (with the exception of insolvency practitioners), measures taken under this section shall include those necessary to prevent persons convicted of a relevant offence or their associates from holding a management function in, or being a beneficial owner of, those businesses.

(4) Where an obliged entity as defined under article 2(1) of the Money Laundering Directive operates an establishment in Gibraltar, the supervisory authority shall supervise the relevant establishment.

(5) In the case of an establishment referred to in article 45(9) of the Money Laundering Directive, the supervision referred to in subsection (4) may include the taking of appropriate and proportionate measures to address serious failings that require immediate remedies, and such measures shall be temporary and be terminated when the failings identified are addressed.

(6) Measures taken under subsection (5) may be taken with the assistance of, or in cooperation with, an overseas authority.

(7) In this section, "overseas authority" means an authority established in a third country which has equivalent functions to a supervisory authority established under this Act.

Supervisory authorities: duty to inform GFIU.

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30A. Where a supervisory authority, in the course of checks carried out on persons for whom it is the supervisory authority or in any other way, discovers facts that could be related to money laundering, to terrorist financing, or to proliferation financing, it shall promptly inform the GFIU.

Secure communication systems.

30B.(1) A relevant financial business must have systems in place which allow for full and speedy responses to a request from the GFIU, a law enforcement authority or a supervisory authority in relation to whether the relevant financial business maintains or has maintained a business relationship with a specified person in the 5 years prior to the request.

(2) The systems referred to in subsection (1) must be secure channels of communication that ensure full confidentiality of the enquiries.

Criminal checks.

30C.(1) A supervisory authority must, when carrying out checks to ensure that a person is fit and proper, make enquiries of the Commissioner of Police to evaluate whether-

(a) a person who is or intends to be-

(i) a controller of a relevant financial business;

(ii) a beneficial owner of a relevant financial business; or

(iii) a shareholder of a relevant financial business;

(b) a person who holds or intends to hold a senior management position in a relevant financial business; or

(c) an associate of a person under either paragraphs (a) or (b),

has a relevant criminal conviction.

(2) *Omitted*.

(3) *Omitted*.

(4) The Commissioner of Police must inspect the conviction register held by the Royal Gibraltar Police and provide the supervisory authority with such information.

(5) *Omitted*.

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(6) Subject to subsection (7), the Commissioner of Police must reply to a request for information from a supervisory authority under this section within 14 working days of receipt of such request.

(7) Where the Commissioner of Police requires further information in order to carry out a request successfully, he shall contact the supervisory authority for the further information required, before the expiry of the 14 working days referred to in subsection (6), and must reply to the supervisory authority within 10 working days from the date the further information was received.

(8) In this section-

"conviction register" means the record of criminal convictions maintained by the Royal Gibraltar Police;

"Gibraltarian" means a person registered as such under the Gibraltarian Status Act; and

"supervisory authority" means each of the bodies listed in Part I of Schedule 2.

31. *Omitted*

Supervisors, etc. to report evidence of money laundering.

32.(1) Subject to subsection (2), where a supervisory authority–

(a) obtains any information; and

(b) is of the opinion that the information indicates that any person has or may have been engaged in money laundering,

the authority shall, as soon as is reasonably practicable, disclose that information to the GFIU.

(2) Where any person is a secondary recipient of information obtained by a supervisory authority, and that person forms such an opinion as is mentioned in subsection (1)(b), that person may disclose the information to the GFIU.

(3) Where any person within subsection (6)–

(a) obtains any information whilst acting in the course of any investigation, or discharging any functions to which his appointment or authorisation relates; and

(b) is of the opinion that the information indicates that any person has or may have been engaged in money laundering,

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that person shall, as soon as is reasonably practicable, either disclose that information to the GFIU or disclose that information to the supervisory authority by whom he was appointed or authorised.

(4) Any disclosure when made in good faith made by virtue of the preceding provisions of this section shall not be treated as a breach of any restriction imposed by statute or otherwise.

(5) Any information–

(a) which has been disclosed to the GFIU by virtue of the preceding provisions of this section; and

(b) which would, apart from the provisions of subsection (4), be subject to such a restriction as is mentioned in that subsection;

may be disclosed by the GFIU, or any person obtaining the information directly or indirectly from him, in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings, but not otherwise.

(6) (a) Persons falling within this section are persons or inspectors appointed under an enactment set out in Part II of Schedule 2;

(b) The Minister may by order published in the Gazette add to, delete from or amend the list of enactments set out in Part II of Schedule 2.

(7) In this section "secondary recipient" in relation to information obtained by a supervisory authority, means any person to whom that information has been passed by the authority.

Criminal offences.

33.(1) A person who fails to comply with any requirement in sections 11(1), (2) or (3), 12(1) or (3), 13(2), (4) or (5), 14, 15(1)(a), (b) or (c), 16(3), 17, 17A, 19(1) or (2), 20, 20B, 21(1) or (2), 22(1), (2), (3) or (4), 23(1)(a), 25(1), (4), (5) or (6), 25A, 26(1), (1A), (1B), (2), (2A), (4) or (5), 26A, 27 or 28, or a direction made under section 24, is guilty of an offence and liable–

(a) on summary conviction, to a fine not exceeding level 5 on the standard scale;

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

(2) In deciding whether a person has committed an offence under subsection (1), the court must consider whether he followed any relevant guidance which was at the time issued by a supervisory authority or any other appropriate body.

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(3) In subsection (2), an "appropriate body" means any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender and includes the National Coordinator for anti-money laundering and combatting terrorist financing.

(4) A person is not guilty of an offence under this section if he took all reasonable steps and exercised all due diligence to avoid committing the offence.

Offences by bodies corporate, partnerships and unincorporated associations.

34.(1) Where an offence under a provision of this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any other person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by the members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of a body corporate.

(3) Where an offence is committed by a partnership, or by an unincorporated association other than a partnership, is proved to have been committed with the consent or connivance of, or is attributable to any neglect on the part of, a partner in the partnership or (as the case may be) a person concerned in the management or control of the association he, as well as the partnership or association, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Data protection.

34A.(1) A data subjects rights under the Data Protection Act 2004, subject to any limitations therein provided for, are not affected by anything in this Act unless there is a provision in this Act specifying otherwise.

(2) Personal data shall be processed by relevant financial business on the basis of Part II and this Part only for the purposes of the prevention of money laundering and terrorist financing as referred to in Article 1 of the Money Laundering Directive, and the prevention of proliferation financing and shall not be further processed in a way that is incompatible with those purposes.

(3) The processing of personal data on the basis of Part IA, Part I, Part II, this Part or the Money Laundering Directive for any other purposes, such as commercial purposes, is prohibited.

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(4) Relevant financial businesses must provide new clients with the information required pursuant to the Data Protection Act 2004 before establishing a business relationship or carrying out an occasional transaction and must, in particular, include a general notice concerning the legal obligations to process personal data for the purposes of the prevention of money laundering and terrorist financing as referred to in Article 1 of the Money Laundering Directive, and the prevention of proliferation financing.

(5) Notwithstanding subsection (1) the prohibition on tipping-off as regards the customer set out in section 5, a data subject's right of access to personal data relating to him shall be lawfully partially or fully restricted where such partial or complete restriction is necessary and proportionate to-

(a) enable the relevant financial business or supervisory body to fulfil its tasks properly for the purposes of this Act or the Money Laundering Directive; or

(b) avoid obstructing official or legal inquiries, analyses, investigations or procedures for the purposes of this Act or the Money Laundering Directive and to ensure that the prevention, investigation and detection of money laundering, terrorist financing and proliferation financing is not jeopardised.

Information about real estate.

34B.(1) The Minister may, by regulations, introduce such measures as the Minister considers appropriate in order to assist the GFIU and competent authorities to obtain access to information which enables them to identify, in a timely manner, the owners of real estate in Gibraltar.

Action in cases of supervisory failure.

34C.(1) Where it appears to the Minister that a supervisory authority is failing to discharge its functions, the Minister may appoint a suitable person to–

(a) review the supervisory authority's discharge of its functions; and

(b) report and, as appropriate, make recommendations to the Minister.

(2) The supervisory authority that is the subject of an investigation under subsection (1) must, without delay–

(a) cooperate with the appointed person; and

(b) provide the appointed person with any information that the person requests for the purposes of the investigation.

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(3) The appointed person must submit a report the Minister which sets out any supervisory failures identified by the investigation and includes recommendations as to any steps which the supervisory authority must take in order to address those failures.

(4) Before making any recommendations to the Minister, the appointed person may engage with the supervisory authority and seek to reach an agreement on the steps which the authority must take in order to address the identified failures.

(5) The Minister, having considered the appointed person's report and any representations made by the supervisory authority, may by notice direct the supervisory authority to take the steps specified in the notice, within the time specified in the notice, in order to address the identified failures.

(6) If the supervisory authority fails to comply with a direction under subsection (5), for the purpose of giving effect to the direction, the Minister may exercise any power of the supervisory authority or do any act or other thing authorised to be done by the supervisory authority.

(7) The Minister's powers under subsection (6) may be exercised by a person appointed by the Minister for that purpose.

PART IV
CONFISCATION OF THE PROCEEDS OF CRIMINAL CONDUCT

Confiscation orders.

35.(1) Where a defendant appears before the Supreme Court to be sentenced in respect of one or more than one indictable offence, and has not previously been sentenced or otherwise dealt with in respect of his conviction for the offence or, as the case may be, any of the offences concerned, then–

(a) if the prosecutor asks the court to proceed under this section, or

(b) if the court considers that, even though the prosecutor has not asked it to do so, it is appropriate for it to proceed under this section,

it shall act as follows.

(2) The court shall first determine whether the defendant has benefited from criminal conduct.

(3) For the purposes of this Part, a person has benefited from criminal conduct if he has at any time (whether before or after the commencement of this section) received any payment or other reward in connection with criminal conduct carried on by him or another person.

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(4) If the court determines that the defendant has so benefited, the court shall, before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine, in accordance with section 38, the amount to be recovered in his case by virtue of this section.

(5) The court shall then, in respect of the offence or the offences concerned–

(a) order the defendant to pay that amount;

(b) take account of the order before–

(i) imposing any fine on him;

(ii) making any order involving any payment by him; or

(iii) making any order under section 525 of the Crimes Act 2011 or section 123 or 124 of the Imports and Exports Act or section 604 of the Criminal Procedure and Evidence Act 2011; and

(c) subject to paragraph (b), leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(6) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall, by reason only of the making of an order under this section, restrict the court from dealing with an offender in any way the court considers appropriate in respect of an indictable offence.

(7) The standard of proof required to determine any question arising under this Part as to–

(a) whether a person has benefited from criminal conduct, or

(b) the amount to be recovered in his case by virtue of this section,

shall be that applicable in civil proceedings.

Committal by magistrates' court.

35A.(1) This section applies if –

(a) a defendant is convicted of an offence by a magistrates' court; and

(b) the prosecutor asks the court to commit the defendant to the Supreme Court with a view to a confiscation order being considered under section 35.

(2) In such a case the magistrates' court –

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(a) must commit the defendant to the Supreme Court in respect of the offence; and

(b) may commit him to the Supreme Court in respect of any other offence falling within subsection (3).

(3) An offence falls within this subsection if –

(a) the defendant has been convicted of it by the magistrates' court or any other court; and

(b) the magistrates' court has power to deal with him in respect of it.

(4) If a committal is made under this section in respect of an offence or offences –

(a) section 35 applies accordingly; and

(b) the committal operates as a committal of the defendant to be dealt with by the Supreme Court in accordance with section 35B.

(5) If a committal is made under this section in respect of an offence for which (apart from this section) the magistrates' court could have committed the defendant for sentence under sections 217 or 218 the court must state whether it would have done so.

(6) A committal under this section may be in custody or bail.

Sentencing by Supreme Court.

35B.(1) If a defendant is committed to the Supreme Court under section 35A in respect of an offence or offences, this section applies (whether or not the court proceeds under section 35).

(2) In the case of an offence in respect of which the magistrates' court has stated under section 35A(5) that it would have committed the defendant for sentence, the Supreme Court –

(a) must inquire into the circumstances of the case; and

(b) may deal with the defendant in any way in which it could deal with him if he had just been convicted of the offence on indictment before it.

(3) In the case of any other offence the Supreme Court –

(a) must inquire into the circumstances of the case; and

(b) may deal with the defendant in any way in which the magistrates' court could deal with him if it had just convicted him of the offence.

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Postponed determinations.

36.(1) Where the Supreme Court is acting under section 35 but considers that it requires further information before–

(a) determining whether the defendant has benefited from criminal conduct, or

(b) determining the amount to be recovered in his case by virtue of that section,

it may, for the purpose of enabling that information to be obtained, postpone making the determination for such period as it may specify.

(2) More than one postponement may be made under subsection (1) in relation to the same case.

(3) Unless it is satisfied that there are exceptional circumstances, the court shall not specify a period under subsection (1) which–

(a) by itself, or,

(b) where there have been one or more previous postponements under subsections (1) or (4), when taken together with the earlier specified period or periods,

exceeds 2 years beginning with the date of conviction.

(4) Where the defendant appeals against his conviction, the court may, on that account–

(a) postpone making either or both of the determinations mentioned in subsection (1) for such period as it may specify; or

(b) where it has already exercised its powers under this section to postpone, extend the specified period.

(5) A postponement or extension under subsections (1) and (4) may be made–

(a) on application by the defendant or the prosecutor; or

(b) by the court of its own motion.

(6) Unless the court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (4) shall not exceed the period ending three months after the date on which the appeal is determined or otherwise disposed of.

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(7) Where the court exercises its power under subsection (1) or (4), it may nevertheless proceed to sentence, or otherwise deal with, the defendant in respect of the relevant offence or any of the relevant offences.

(8) Where the court has so proceeded, section 35 shall have effect as if–

(a) in subsection (4) of that section, the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned" were omitted; and

(b) in subsection (5)(c) of that section, after the word "determining" there were inserted ", in relation to any offence in respect of which he has not been sentenced or otherwise dealt with,".

(9) In sentencing, or otherwise dealing with, the defendant in respect of the relevant offence or any of the relevant offences at any time during the specified period, the court shall not–

(a) impose any fine on him; or

(b) make any such order as is mentioned in section 35(5) (b)(ii) or (iii).

(10) In this section–

"the date of conviction" means–

(a) the date on which the defendant was convicted; or

(b) where he appeared to be sentenced in respect of one or more than one conviction and those convictions were not all on the same date, the date of the latest of those convictions; and

"the relevant offence" means the offence in respect of which the defendant appears (as mentioned in section 35(1)) before the court, and where more than one offence is concerned "relevant offences" shall be construed accordingly;

and references to an appeal include references to an application under section 62 of the Magistrates Court Act.

Assessing the proceeds of criminal conduct.

37.(1) For the purposes of this Part–

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(a) any payment or other rewards received by a person at any time (whether before or after the commencement of this Act) in connection with criminal conduct carried on by him or another person are his proceeds of criminal conduct; and

(b) the value of his proceeds of criminal conduct is the aggregate of the values of the payments or other rewards.

(2) The court shall, for the purpose of determining whether the defendant has benefited from criminal conduct and, if he has, of assessing the value of his proceeds of criminal conduct, make the required assumptions.

(3) The required assumptions are–

(a) that any item of property appearing to the court–

(i) to have been held by the defendant at any time since his conviction, or

(ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,

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

(b) that any item of expenditure of his, since the beginning of that period, was met out of payments received by him in connection with criminal conduct carried on by him; and

(c) that for the purposes of valuing any item of property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.

(4) The court shall not make any one of the required assumptions only to the extent that–

(a) that assumption is shown to be incorrect in the defendant's case:

Provided that the required assumptions may be shown to be incorrect only to the extent that the defendant shows to the satisfaction of the court that the property, or, where the property is not money, the money with which the property was purchased, has been declared by the defendant to the Commissioner of Income Tax or to the taxation authority or authorities in the jurisdiction in which the property is or from which it came, or, where the property is not liable to tax in the hands of the defendant, has been so declared by another person unless the defendant can, by the production of such evidence as the court may, in its discretion, require, satisfy the court that the property was not and is not subject

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to taxation in Gibraltar or in any other jurisdiction in which the property is or from which it came; or

(b) the court is satisfied that there would be a serious risk of injustice in the defendant's case if the assumption were to be made.

(5) *Repealed*.

(6) Where the court does not make one or more of the required assumptions, it shall state its reasons.

(7) For the purpose of assessing the value of the defendant's proceeds of criminal conduct in a case where a confiscation order has previously been made against him, the court shall leave out of account any of his proceeds of criminal conduct that are shown to the court to have been taken into account in determining the amount to be recovered under that order.

Amount to be recovered under confiscation order.

38.(1) Subject to subsection (3), the amount to be recovered in the defendant's case under the confiscation order shall be the amount the court assesses to be the value of the defendant's proceeds of criminal conduct.

(2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made whether by reason of–

(a) the acceptance by the prosecutor or the defendant of an allegation made in a statement given under section 56; or

(b) information given under section 57; or

(c) a failure to comply with an order under section 57; or

(d) otherwise,

the court may issue a certificate giving the court's opinion as to the matters concerned, and shall do so if satisfied as mentioned in subsection (3).

(3) If the court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of his proceeds of criminal conduct, the amount to be recovered in the defendant's case under the confiscation order shall be–

(a) the amount appearing to the court to be the amount that might be so realised; or

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(b) a nominal amount, whether it appears to the court, on the information available to it at the time, that the amount that might be so realised is nil.

Meaning of "amount that might be realised" and "realisable property".

39.(1) For the purposes of this Part, the amount that might be realised at the time a confiscation order is made against the defendant is–

(a) the total of the values at that time of all the realisable property held by the defendant, less

(b) where there are obligations having priority at that time, the total amount payable in pursuance of such obligations,

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

(2) In this Part, "realisable property" means, subject to subsection (1)–

(a) any property held by the defendant; and

(b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Part.

(3) Property is not realisable property if there is in force in respect of it an order under any of the following enactments, namely–

(a) section 525 of the Crimes Act 2011;

(b) section 604 of the Criminal Procedure and Evidence Act 2011.

(4) For the purposes of subsection (1), an obligation has priority at any time if it is an obligation of the defendant–

(a) to 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) to pay any sum which would be included among the preferential debts, within the meaning given by subsection (5), in the defendant's bankruptcy commencing on the date of the confiscation order or order appointing a liquidator made on that date.

(5) For the purposes of subsection (4) "preferential debts" means debts that are preferential debts within the meaning of the Insolvency Act 2011.

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Value of property, etc.

40.(1) Subject to the following provisions of this section and to section 41, for the purposes of this Part the value of property, other than cash, in relation to any person holding the property is the market value of the property, except that, where any other person holds an interest in the property, the value is–

(a) the market value of the first-mentioned person's beneficial interest in the property, less

(b) the amount required to discharge any incumbrance, other than a charging order, on that interest.

(2) Subject to section 41(2), references in this Part to the value at any time (referred to in subsection (3) as "the material time") of a gift caught by this Part or of any payment or reward are references to–

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

(b) where subsection (3) applies, the value there mentioned,

whichever is the greater.

(3) Subject to section 41(2), if at the material time the recipient holds–

(a) the property which he received, not being cash, or

(b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (2)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it represents the property which he received, but disregarding in either case any charging order.

(4) References in this section to a charging order include a reference to a charging order under section 60.

Gifts caught by this Part.

41.(1) A gift, including a gift made before the commencement of this Act, is caught by this Part if–

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(a) it was made by the defendant at any time since the beginning of the period of six years ending when the proceedings were instituted against him; or

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

(i) received by the defendant in connection with criminal conduct carried on by him or another person; or

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

(2) For the purposes of this Part–

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

(b) in those circumstances, the provisions of subsection (1) and of sections 39 and 40 shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

Application of procedure for enforcing fines.

42.(1) Where the court orders the defendant to pay any amount under section 35, it shall make an order fixing the term of imprisonment which he is to undergo if any sum which he is liable to pay is not duly paid or covered.

(2) Subject to subsections (3) and (4), the periods set out in the second column of the following table shall be the maximum periods of imprisonment under subsection (1) applicable respectively to the amounts set out opposite thereto.

TABLE

An amount not exceeding £50	7 days
An amount exceeding £400 but not exceeding £1,000	60 days
An amount exceeding £1,000 but not exceeding £2,000	90 days
An amount exceeding £2,000 but not exceeding £5,000	6 months
An amount exceeding £5,000 but not exceeding £10,000	9 months

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An amount exceeding £10,000 but not exceeding £20,000	12 months
An amount exceeding £20,000 but not exceeding £50,000	18 months
An amount exceeding £50,000 but not exceeding £100,000	2 years
An amount exceeding £100,000 but not exceeding £250,000	3 years
An amount exceeding £250,000 but not exceeding £1 million	5 years
An amount exceeding £1 million	10 years.

(3) Where the amount due at the time imprisonment is imposed is so much as remains due after part payment, then, subject to subsection (4), the maximum period applicable to the amount shall be the period applicable to the whole sum reduced by such number of days as bears to the total number of days therein the same proportion as the part paid bears to the total sum.

(4) In calculating the reduction required under subsection (3), any fraction of a day shall be left out of account and the maximum period shall not be reduced to less than five days.

(5) Where the defendant serves a term of imprisonment in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.

(6) This section applies in relation to confiscation orders made–

(a) by the court by virtue of section 50,

(b) by the Court of Appeal under Part II of the Court of Appeal Act, or

(c) by Her Majesty in Council on appeal from the Court of Appeal,

as it applies in relation to confiscation orders made by the court, and the reference in subsection (1) to the court shall be construed accordingly.

Interest on sums unpaid under confiscation orders.

43.(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 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.

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(2) The court may, on the application of the prosecutor, increase the term of imprisonment fixed in respect of the confiscation order under section 30(1) if the effect of subsection (1) is to increase the maximum period applicable in relation to the order under section 42(2).

(3) The rate of interest under subsection (1) shall be that for the time being applying to a civil judgment debt as provided for under section 36 of the Supreme Court Act.

Reconsideration of case where the court has not proceeded under section 35.

44.(1) This section applies where the defendant has appeared before the court to be sentenced in respect of one or more indictable offences but the court has not proceeded under section 35.

(2) If the prosecutor has evidence–

(a) which was not available to him when the defendant appeared to be sentenced, and accordingly was not considered by the court; but

(b) which the prosecutor believes would have led the court to determine that the defendant had benefited from criminal conduct if–

(i) the prosecutor had asked the court to proceed under section 35; and

(ii) the evidence had been considered by the court,

he may apply to the court for it to consider the evidence.

(3) The court shall proceed under section 35 if, having considered the evidence, it is satisfied that it is appropriate to do so.

(4) In considering whether it is appropriate to proceed under section 35, the court shall have regard to all the circumstances of the case.

(5) Where, having decided to proceed under section 35, the court proposes to make a confiscation order against the defendant, it shall order the payment of such amount as it thinks just in all the circumstances of the case.

(6) In considering the circumstances of any case, the court shall have regard, in particular, to the amount of any fine or fines imposed on the defendant in respect of the offence or offences in question.

(7) Where the court is proceeding under section 35 by virtue of this section, subsection (4) of that section shall have effect as if the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned" were omitted.

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(8) The court may take into account any payment or other reward received by the defendant on or after the date of conviction, but only if the prosecutor shows that it was received by the defendant in connection with criminal conduct carried on by the defendant or another person on or before that date.

(9) In considering under this section any evidence which relates to any payment or reward to which subsection (8) applies, the court shall not make the assumptions which would otherwise be required by section 37.

(10) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date of conviction.

(11) In this section, "the date of conviction" means–

(a) the date on which the defendant was convicted; or

(b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.

(12) Sections 56 and 57 shall apply where the prosecutor makes an application under this section as they apply where the prosecutor asks the court to proceed under section 35.

Re-assessment of whether defendant has benefited from criminal conduct.

45.(1) This section applies where the court has made a determination under section 35(2) ("the section 35(2) determination") that the defendant has not benefited from criminal conduct.

(2) If the prosecutor has evidence–

(a) which was not considered by the court in making the section 35(2) determination, but

(b) which the prosecutor believes would have led the court to determine that the defendant had benefited from criminal conduct if it had been considered by the court,

he may apply to the court for it to consider that evidence.

(3) If, having considered the evidence, the court is satisfied that it would have determined that the defendant had benefited from criminal conduct if that evidence had been available to it, the court–

(a) shall make–

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(i) a fresh determination under subsection (2) of section 35; and

(ii) a determination under subsection (4) of that section of the amount to be recovered by virtue of that section; and

(b) may make an order under that section.

(4) Where the court is proceeding under section 35 by virtue of this section, subsection (4) of that section shall have effect as if the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned" were omitted.

(5) The court may take into account any payment or other reward received by the defendant on or after the date of the section 35(2) determination, but only if the prosecutor shows that it was received by the defendant in connection with criminal conduct carried on by the defendant or another person on or before that date.

(6) In considering under this section any evidence which relates to any payment or reward to which subsection (5) applies, the court shall not make the assumptions which would otherwise be required by section 37.

(7) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date of conviction, and in this subsection "the date of conviction" has the same meaning as in section 44.

(8) Sections 56 and 57 shall apply where the prosecutor makes an application under this section as they apply where the prosecutor asks the court to proceed under section 35.

Increase in realisable property.

46.(1) This section applies where, by virtue of section 38(3), 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 criminal conduct.

(2) If, on an application made in accordance with subsection (3), the court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased) the court shall issue a certificate to that effect giving the court's reasons.

(3) An application under subsection (2) may be made either by the prosecutor or by a receiver appointed under this Part in relation to the realisable property of the person in question under section 59 or section 62.

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(4) Where a certificate has been issued under subsection (2), the prosecutor may apply to the court for an increase in the amount to be recovered under the confiscation order, and on that application 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 fixed in respect of the confiscation order under subsection (1) of section 42 if the effect of the substitution is to increase the maximum period applicable in relation to the order under subsection (2) of that section.

Revised assessment of proceeds of criminal conduct.

47.(1) This section applies where the court has made a determination under subsection (4) of section 35 of the amount to be recovered in a particular case by virtue of that section ("the current section 35(4) determination").

(2) Where the prosecutor is of the opinion that the real value of the defendant's proceeds of criminal conduct was greater than their assessed value, the prosecutor may apply to the court for the evidence on which the prosecutor has formed his opinion to be considered by the court.

(3) If, having considered the evidence, the court is satisfied that the real value of the defendant's proceeds of criminal conduct is greater than their assessed value (whether because the real value at the time of the current section 35(4) determination was higher than was thought or because the value of the proceeds in question has subsequently increased), the court shall make a fresh determination under subsection (4) of section 35 of the amount to be recovered by virtue of that section.

(4) In subsections (2) and (3)–

"assessed value" means the value of the defendant's proceeds of criminal conduct as assessed by the court in accordance with section 38(1); and

"real value" means the value of the defendant's proceeds of criminal conduct which took place–

(a) in the period by reference to which the current section 35(4) determination was made; or

(b) in any earlier period.

(5) Where the court is proceeding under section 35 by virtue of this section, subsection (4) of that section shall have effect as if the words "before sentencing or otherwise dealing with

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him in respect of the offence or, as the case may be, any of the offences concerned" were omitted.

(6) Any determination made under section 35(4) by virtue of this section shall be by reference to the amount that might be realised at the time when the determination is made.

(7) In the case of any determination under section 35(4) by virtue of this section, section 37(7) shall not apply in relation to any of the defendant's proceeds of criminal conduct taken into account in respect of the current section 35(4) determination.

(8) In relation to any such determination by virtue of this section–

(a) sections 38(2), 39(4) and 56(9)(a) shall have effect as if for "confiscation order" there were substituted "determination";

(b) section 38(3) shall have effect as if for "confiscation order is made" there were substituted "determination is made"; and

(c) section 39(1) shall have effect as if for "a confiscation order is made against the defendant" there were substituted "of the determination".

(9) The court may take into account any payment or other reward received by the defendant on or after the date of the current section 35(4) determination, but only if the prosecutor shows that it was received by the defendant in connection with criminal conduct carried on by the defendant or another person on or before that date.

(10) In considering under this section any evidence which relates to any payment or reward to which subsection (9) applies, the court shall not make the assumptions which would otherwise be required by section 37.

(11) If, as a result of making the fresh determination required by subsection (4), the amount to be recovered exceeds the amount set by the current section 35(4) determination, the court may substitute for the amount to be recovered under the confiscation order which was made by reference to the current section 35(4) determination such greater amount as it thinks just in all the circumstances of the case.

(12) Where the court varies a confiscation order under subsection (11), it shall substitute for the term of imprisonment fixed under section 42(1) in respect of the amount to be recovered under the order a longer term determined in accordance with that section in respect of the greater amount substituted under subsection (11).

(13) Subsection (12) shall apply only if the effect of the substitution is to increase the maximum period applicable in relation to the order under section 42(2).

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(14) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date of conviction, and in this subsection "the date of conviction" has the same meaning as in section 44.

(15) Sections 56 and 57 shall apply where the prosecutor makes an application as they apply where the prosecutor asks the court to proceed under section 35, but, in the case of section 56, subject to subsection (8)(a).

Inadequacy of realisable property.

48.(1) If, on an application made in respect of a confiscation order by–

(a) the defendant, or

(b) a receiver appointed under section 59 or 62 or in pursuance of a charging order,

the court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order, the court shall issue a certificate to that effect, giving the court's reasons.

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

(a) in the case of realisable property held by a person against whom a bankruptcy order has been made or whose estate has been sequestrated, the court shall take into account the extent to which any property held by him may be distributed among creditors; and

(b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Part from any risk of realisation under this Part.

(3) Where a certificate has been issued under subsection (1), the person who applied for it may apply to the court for the amount to be recovered under the confiscation order to be reduced.

(4) The court shall, on an application under subsection (3)–

(a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and

(b) substitute for the term of imprisonment fixed under section 42(1) in respect of the amount to be recovered under the order a shorter term determined in accordance with that section in respect of the lesser amount.

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(5) Rules of court may make provision–

(a) for the giving of notice of any application under this section; and

(b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the court.

Compensation.

49.(1) If proceedings are instituted against a person for any indictable offence or offences and either–

(a) the proceedings do not result in his conviction, or

(b) he is convicted of one or more offence but–

(i) the conviction or convictions concerned are quashed, or

(ii) he is pardoned by the Governor in respect of the conviction or convictions concerned,

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

(2) The court shall not order compensation to be paid in any case unless the court is satisfied–

(a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned, being a person mentioned in subsection (6); and

(b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order of the court under sections 59 to 62.

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

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

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(5) Compensation payable under this section shall be paid out of any special fund established under the Public Finance (Control and Audit) Act which has as its prescribed expenditure such compensation, or in the absence of such a fund, out of the Consolidated Fund.

(6) The persons referred to in subsection (2) are–

(a) any customs officer;

(b) any police officer; and

(c) any person engaged by the Government to provide legal services to it.

Powers of the court where the defendant has absconded or died.

50.(1) Subsection (2) applies where a person has been convicted of one or more indictable offences.

(2) If the prosecutor asks it to proceed under this section, the court may exercise its powers under this Part to make a confiscation order against the defendant if satisfied that the defendant has died or absconded.

(3) Subsection (4) applies where proceedings for one or more indictable offences have been instituted against a person but have not been concluded.

(4) If the prosecutor asks it to proceed under this section, the court may exercise its powers under this Part to make a confiscation order against the defendant if satisfied that the defendant has absconded.

(5) The power conferred by subsection (4) may not be exercised at any time before the end of the period of two years beginning with the date which is, in the opinion of the court, the date on which the defendant absconded.

(6) In any proceedings on an application under this section–

(a) section 37(2) shall not apply;

(b) section 56 shall apply as it applies where the prosecutor asks the court to proceed under section 35 but with the omission of subsections (5), (7) and (8);

(c) the court shall not make a confiscation order against a person who has absconded unless it is satisfied that the prosecutor has taken reasonable steps to contact him; and

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(d) any person appearing to the court to be likely to be affected by the making of a confiscation order by the court shall be entitled to appear before the court and make representations.

(7) Where the court–

(a) has been asked to proceed under this section in relation to a defendant who has absconded, but

(b) has decided not to make a confiscation order against him,

section 45 shall not apply at any time while he remains an absconder.

(8) Where a confiscation order has been made in relation to any defendant by virtue of this section, section 47 shall not apply at any time while he is an absconder.

Effect of conviction where the court has acted under section 50.

51. (1) Where, in the case of any defendant, the court has made a confiscation order by virtue of section 50, the court shall, in respect of the offence, or, as the case may be, any of the offences concerned–

(a) take account of the order before–

(i) imposing any fine on the defendant;

(ii) making any order involving any payment by him; or

(iii) making any order under section 525 of the Crimes Act 2011 or section 604 of the Criminal Procedure and Evidence Act 2011; and

(b) subject to paragraph (a), leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(2) Where the court has made a confiscation order by virtue of section 60 and the defendant subsequently appears before the court to be sentenced in respect of one or more of the offences concerned, section 35(1) shall not apply so far as his appearance is in respect of that offence or those offences.

Variation of confiscation orders made by virtue of section 50.

52.(1) This section applies where–

(a) the court has made a confiscation order by virtue of section 50(4), and

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(b) the defendant has ceased to be an absconder.

(2) If the defendant alleges that–

(a) the value of his proceeds of criminal conduct in the period by reference to which the determination in question was made (the "original value"), or

(b) the amount that might have been realised at the time the confiscation order was made,

was less than the amount ordered to be paid under the confiscation order, he may apply to the court for it to consider his evidence.

(3) If, having considered that evidence, the court is satisfied that the defendant's allegation is correct, it–

(a) shall make a fresh determination under section 35(4); and

(b) may, if it considers it just in all the circumstances, vary the amount to be recovered under the confiscation order.

(4) In the case of any determination under section 35 by virtue of this section, section 37(7) shall not apply in relation to the defendant's proceeds of criminal conduct taken into account in determining the original value.

(5) Where the court varies a confiscation order under this section–

(a) it shall substitute for the term of imprisonment fixed under section 42(1) in respect of the amount to be recovered under the order a shorter term determined in accordance with section 42(2) in respect of the lesser amount; and

(b) on the application of a person who held property which was realisable property, it may order compensation to be paid to the applicant in accordance with section 55 if–

(i) it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order, and

(ii) having regard to all the circumstances of the case, the court considers it to be appropriate.

(6) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date on which the confiscation order was made.

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Compensation, etc. where absconder is acquitted.

53. (1) This section applies where–

(a) the court has made a confiscation order by virtue of section 50(4), and

(b) the defendant is subsequently tried for the offence or offences concerned and acquitted on all counts.

(2) The court by which the defendant is acquitted shall cancel the confiscation order.

(3) The court may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant in accordance with section 55 if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

Power to discharge confiscation order and order compensation where absconder returns.

54. (1) This section applies where–

(a) the court has made a confiscation order by virtue of section 50(4) in relation to an absconder;

(b) the defendant has ceased to be an absconder; and

(c) section 53 does not apply.

(2) The court may, on the application of the defendant, cancel the confiscation order if it is satisfied that–

(a) there has been undue delay in continuing the proceedings in respect of which the power under section 50(4) was exercised; or

(b) the prosecutor does not intend to proceed with the prosecution.

(3) Where the court cancels a confiscation order under this section it may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant in accordance with section 55 if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

Provisions supplementary to sections 52, 53 and 54.

55.(1) Where the court orders compensation to be paid under section 52, 53 or 54, the amount of that compensation shall be such as the court considers just in all the circumstances of the case.

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(2) Rules of court may make provision–

(a) for the giving of notice of any application under section 52, 53 or 54; and

(b) for any person appearing to the court to be likely to be affected by any exercise of its powers under any of those sections to be given an opportunity to make representations to the court.

(3) Compensation payable under any of those sections shall be paid out of a special fund established under the Finance (Control and Audit) Act and having as its prescribed expenditure such compensation or in the absence of such a fund, out of the Consolidated Fund.

(4) Where the court cancels a confiscation order under section 53 or 54, it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

Statements relating to criminal conduct.

56. (1) Where the prosecutor asks the court to proceed under section 35, he shall give the court, within such period as it may direct, a statement of matters which he considers relevant in connection with–

(a) determining whether the defendant has benefited from criminal conduct; or

(b) assessing the value of his proceeds of criminal conduct.

(2) In this section such a statement is referred to as a "prosecutor's statement".

(3) Where the court proceeds under section 35 without the prosecutor having asked it to do so, it may require him to give it a prosecutor's statement, within such period as it may direct.

(4) Where the prosecutor has given a prosecutor's statement–

(a) he may at any time give the court a further such statement; and

(b) the court may at any time require him to give it a further such statement, within such period as it may direct.

(5) Where any prosecutor's statement has been given and the court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant–

(a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement; and

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(b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposes to rely.

(6) Where the court has given a direction under this section it may at any time vary it by giving a further direction.

(7) Where the defendant accepts to any extent any allegation in any prosecutor's statement, the court may, for the purposes of–

(a) determining whether the defendant has benefited from criminal conduct; or

(b) assessing the value of his proceeds of criminal conduct,

treat his acceptance as conclusive of the matters to which it relates.

(8) If the defendant fails in any respect to comply with a requirement under subsection (5), he may be treated for the purposes of this section as accepting every allegation in the prosecutor's statement in question apart from–

(a) any allegation in respect of which he has complied with the requirement; and

(b) any allegation that he has benefited from criminal conduct or that any payment or other reward was received by him in connection with criminal conduct carried on by him or another person.

(9) Where–

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

(b) the prosecutor accepts to any extent any allegation in the statement,

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

(10) An allegation may be accepted, or particulars of any matter may be given, for the purposes of this section in such manner as may be prescribed by rules of court or as the court may direct.

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

Provision of information by defendant.

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57.(1) This section applies where–

(a) the prosecutor has requested the court to proceed under section 35; or

(b) no such request has been made but the court is nevertheless proceeding, or considering whether to proceed, under section 35.

(2) For the purpose of obtaining information to assist it in carrying out its functions, the court may at any time order the defendant to give it such information as may be specified in the order.

(3) An order under subsection (2) may require all, or any specified part, of the required information to be given to the court in such manner, and before such date, as may be specified in the order.

(4) Rules of court may make provision as to the maximum or minimum period that may be allowed under subsection (3).

(5) If the defendant fails, without reasonable excuse, to comply with any order under this section, the court may draw such inference from that failure as it considers appropriate.

(6) Where the prosecutor accepts to any extent any allegation made by the defendant in giving to the court information required by an order under this section, the court may treat that acceptance as conclusive of the matters to which it relates.

(7) For the purposes of this section, an allegation may be accepted in such manner as may be prescribed by rules of court or as the court may direct.

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

58.(1) The powers conferred on the court by sections 59(1) and 60(1) are exercisable where–

(a) proceedings have been instituted in Gibraltar against the defendant for an indictable offence or an application has been made by the prosecutor in respect of the defendant under section 44, 45, 46, 47 or 50;

(b) the proceedings have not, or the application has not, been concluded; and

(c) the court is satisfied that there are reasonable grounds to suspect –

(i) in the case of an application under section 46 or 47, that the court will be satisfied as mentioned in section 46(2) or, as the case may be, 47(3); or

(ii) in any other case, that the defendant has benefited from criminal conduct.

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(2) The court shall not exercise those powers by virtue of subsection (1) if it is satisfied that–

(a) there has been undue delay in continuing the proceedings or application in question; or

(b) the prosecutor does not intend to proceed.

(3) The powers mentioned in subsection (1) are also exercisable where–

(a) the court is satisfied that, whether by the laying of an information or otherwise, a person is to be charged with an indictable offence or that an application of a kind mentioned in subsection (1)(a) is to be made in respect of the defendant; and

(b) the court is also satisfied as mentioned in subsection (1)(c).

(3A) The powers mentioned in subsection (1) are also exercisable if the following conditions are satisfied–

(a) a criminal investigation has been started in Gibraltar with regard to an offence; and

(b) there are reasonable grounds to suspect that the alleged offender has benefited from his criminal conduct.

(4) For the purposes of sections 59 and 60, at any time when those powers are exercisable before proceedings have been instituted–

(a) references in this Part to the defendant shall be construed as references to the person referred to in subsection (3)(a);

(b) references in this Part to the prosecutor shall be construed as references to the person who the court is satisfied is to have the conduct of the proposed proceedings; and

(c) references in this Part to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (3)(a) for an indictable offence.

(5) Where the court has made an order under section 59(1) or 60(1) by virtue of subsection (3), the court shall discharge the order if proceedings in respect of the offence are not instituted, whether by the laying of an information or otherwise, or, as the case may be, if the application is not made, within such time as the court considers reasonable.

Restraint orders.

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59. (1) The Supreme Court may by order (in this Part referred to as a "restraint order") prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) A restraint order may apply–

(a) to all realisable property held by a specified person, whether the property is described in the order or not; and

(b) to realisable property held by a specified person, being property transferred to him after the making of the order.

(3) Without prejudice to the generality of subsection (1) a restraint order may make such provision as the court deems fit and in particular may-

(a) make provision for reasonable living expenses and reasonable legal expenses;

(b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation.

(4) This section shall not have effect in relation to any property for the time being subject to a charge under section 60.

(5) A restraint order–

(a) may be made only on an application by the prosecutor;

(b) may be made on an ex parte application to a judge in chambers; and

(c) shall provide for notice to be given to persons affected by the order.

(6) A restraint order–

(a) may be discharged or varied in relation to any property; and

(b) shall be discharged on the conclusion of the proceedings or of the application in question.

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

(7A) Subsections (7B) and (7C) apply where the court makes a restraint order as a result of a criminal investigation having been started with regard to an offence.

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(7B) The court-

(a) must include in the order a requirement for the applicant for the order to report to the court on the progress of the investigation at such times and in such manner as the order may specify (a "reporting requirement"); and

(b) must discharge the order if proceedings for the offence are not started within a reasonable time (and this duty applies whether or not an application to discharge the order is made).

(7C) The duty under subsection (7B)(a) does not apply if the court decides that, in the circumstances of the case, a reporting requirement should not be imposed, but the court-

(a) must give reasons for its decision; and

(b) may at any time vary the order so as to include a reporting requirement (and this power applies whether or not an application to vary the order is made).

(8) Where the court has made a restraint order, the court–

(a) may at any time appoint a receiver–

(i) to take possession of any realisable property, and

(ii) in accordance with the court's directions, to manage or otherwise deal with any property in respect of which he is appointed, subject to such exceptions and conditions as may be specified by the court; and

(b) may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.

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

(a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and

(b) removing the property from Gibraltar.

(10) Where a restraint order has been made, a police or customs officer may, for the purpose of preventing any realisable property being removed from Gibraltar, seize the property.

(11) Property seized under subsection (10) shall be dealt with in accordance with the directions of the court which made the order.

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Enforcement abroad.

59A.(1)This section applies if –

(a) any of the conditions in section 58 is satisfied;

(b) the prosecutor believes that realisable property is situated in a country or territory outside Gibraltar (the receiving country); and

(c) the prosecutor sends a request for assistance to the Supreme Court with a view to it being forwarded under this section.

(2) In a case where no confiscation order has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property.

(3) In a case where a confiscation order has been made and has not been satisfied, discharged or quashed, a request for assistance is a request to the government of the receiving country to secure that–

(a) any person is prohibited from dealing with realisable property;

(b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country.

(4) No request for assistance may be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or quashed.

(5) If the Supreme Court believes it is appropriate to do so it may forward the request for assistance to the government of the receiving country.

Charging orders in respect of land, securities, etc.

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

(a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and

(b) where a confiscation order has been made, of an amount not exceeding the amount payable under the confiscation order.

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

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(3) A charging order–

(a) may be made only on an application by the prosecutor;

(b) may be made on an ex parte application to a judge in chambers;

(c) shall provide for notice to be given to persons affected by the order; and

(d) may be made subject to such conditions as the court thinks fit including, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.

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

(a) any interest in realisable property which is an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Part and is an interest–

(i) in any asset of a kind mentioned in subsection (5); or

(ii) under any trust; or

(b) any interest in realisable property held by a person as trustee of a trust ("the relevant trust") if the interest is in such an asset or is an interest under another trust and a charge made by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the relevant trust.

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

(a) land in Gibraltar; or

(b) securities of any of the following kinds–

(i) government stock;

(ii) stock of any body (other than a building society) incorporated within Gibraltar;

(iii) stock of any body incorporated outside Gibraltar or of any country or territory outside Gibraltar, being stock registered in a register kept at any place within Gibraltar;

(iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within Gibraltar.

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

(7) In relation to a charging order, the court–

(a) may make an order discharging or varying it; and

(b) shall make an order discharging it–

(i) on the conclusion of the proceedings or of the application in question; or

(ii) on payment into court of the amount, payment of which is secured by the charge.

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

(8A) Subsections (8B) and (8C) apply where the court makes a charging order as a result of a criminal investigation having been started with regard to an offence.

(8B) The court-

(a) must include in the order a requirement for the applicant for the order to report to the court on the progress of the investigation at such times and in such manner as the order may specify (a "reporting requirement"); and

(b) must discharge the order if proceedings for the offence are not started within a reasonable time (and this duty applies whether or not an application to discharge the order is made).

(8C) The duty under subsection (8B)(a) does not apply if the court decides that, in the circumstances of the case, a reporting requirement should not be imposed, but the court-

(a) must give reasons for its decision; and

(b) may at any time vary the order so as to include a reporting requirement (and this power applies whether or not an application to vary the order is made).

(9) In this section “dividend”, “government stock”, “stock” and “unit trust” have the same meaning as in the Charging Orders Act, 1988.

Charging orders: supplementary provisions.

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61.(1) Subject to any provision made under section 62 or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same court and in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.

(2) The Government may, by notice in the Gazette, amend section 60 by adding to or removing from the kinds of assets for the time being referred to there any asset of a kind which, in its opinion, ought to be so added or removed.

Realisation of property.

62. (1) Where a confiscation order–

(a) has been made under this Part,

(b) is not satisfied, and

(c) is not subject to appeal,

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

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

(3) The court may empower a receiver appointed under subsection (2) of this section, under section 59 or in pursuance of a charging order–

(a) to enforce any charge imposed under section 60 on realisable property or on interest or dividends payable in respect of such property; and

(b) in relation to any realisable property, other than property for the time being subject to a charge under section 60, to take possession of the property subject to such conditions or exceptions as may be specified by the court.

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

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

(6) The court may–

(a) order any person holding an interest in realisable property to make to the receiver such payment as it may direct in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Part; and

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(b) on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 60.

(8) The court shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

Application of proceeds of realisation and other sums.

63.(1) The following sums in the hands of a receiver appointed under section 59 or 62 or in pursuance of a charging order, that is–

(a) the proceeds of the enforcement of any charge imposed under section 60,

(b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 59 or 62, and

(c) any other sums, being property held by the defendant,

shall be applied, subject to subsection (2), on the defendant's behalf towards the satisfaction of the confiscation order.

(2) Before any such sums are so applied they shall be applied–

(a) first, in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 67(3); and

(b) second, in making such payments, if any, as the court may direct.

(3) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver as is mentioned in subsection (1), the receiver shall distribute those sums–

(a) among such of those who held property which has been realised under this Part, and

(b) in such proportions,

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

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(4) A receipt of any sum by a clerk of the magistrates' court on account of an amount payable under a confiscation order shall reduce the amount so payable, but the clerk of the magistrates' court shall apply the money received for the purpose specified in this section and in the order so specified.

(5) The clerk of the magistrates' court shall first pay any expenses incurred by a person acting as an insolvency practitioner and payable under section 67(3) but not already paid under subsection (2).

(6) If the money was paid to the clerk of the magistrates' court by a receiver appointed under section 59 or 62 or in pursuance of a charging order, the clerk of the magistrates' court shall next pay the receiver's remuneration and expenses.

(7) After making–

(a) any payment required by subsection (5), and

(b) in a case to which subsection (6) applies, any payment required by that subsection,

the clerk of the magistrates' court shall reimburse any amount paid under section 68(2).

(8) Any balance in the hands of the clerk to the magistrates' court after he has made all payments required by the preceding provisions of this section shall be paid into any special fund established under the Public Finance (Control and Audit) Act having as prescribed income such sums, and in the absence of such a fund, shall be paid into the Consolidated Fund.

Exercise by the court or receiver of powers for the realisation of property.

64. (1) The following provisions apply to the powers conferred–

(a) on the court by sections 59 to 63; or

(b) on a receiver appointed under section 59 or 63 or in pursuance of a charging order.

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

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

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

(5) In exercising the powers, no account shall be taken of any obligations or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

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

Bankruptcy of defendant, etc.

65.(1) Where a bankruptcy order is made against a person who holds realisable property,

(a) the property for the time being subject to a restraint order made before the bankruptcy order, and

(b) any proceeds of property by virtue of section 59(8) or 62(5) or (6) for the time being in the hands of a receiver appointed under section 59 or 62,

is excluded from the bankrupt's estate for the purpose of the Insolvency Act 2011.

(2) Where a bankruptcy order has been made against a person, the powers conferred on the court by sections 59 to 63 or on a receiver so appointed shall not be exercised in relation to–

(a) property for the time being comprised in the bankrupt's estate for the purpose of the Insolvency Act 2011;

(b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 412(1)(c) of the Insolvency Act 2011,

but otherwise, nothing in that Act shall be taken as restricting or enabling the restriction of, the exercise of those powers.

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

(a) made before the order adjudging the person bankrupt; or

(b) on property which was subject to a restraint order when the bankruptcy order was made.

(4) Where in the case of a debtor, an interim receiver stands appointed under section 334 of the Insolvency Act 2011 and any property of the debtor is subject to a restraint order, the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the restraint order.

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(5) Where a bankruptcy order is made against a person who has directly or indirectly made a gift caught by this Part–

(a) no order shall be made under Part 15 of the Insolvency Act 2011 (Voidable Transactions), in respect of the making of the gift, at any time when–

(i) proceedings for an indictable offence have been instituted against him and have not been concluded;

(ii) an application has been made in respect of the defendant under section 44, 45, 46, 47 or 50 and has not been concluded; or

(iii) the property of the person to whom the gift was made is subject to a restraint order or charging order, and

(b) any order made under Part 15 of the Insolvency Act 2011 after the conclusion of the proceedings or of the application shall take into account any realisation under this Act of property held by the person to whom the gift was made.

(6) For the purposes of this section, a confiscation order is satisfied when the defendant in respect of whom it was made has served a term of imprisonment in default of payment of the amount due under the order.

(7) Section 413 of the Insolvency Act 2011 shall have effect as if amounts payable under a confiscation order were a liability excepted under subsection (3)(c) of that section.

Liquidation or Administration of company holding realisable property.

66.(1) Where realisable property is held by a company and a liquidator or administrator has been appointed under the Insolvency Act 2011 or a voluntary liquidator has been appointed under the Companies Act 2014, the functions of the liquidator, administrator or voluntary liquidator, shall not be exercisable in relation to–

(a) the property for the time being subject to a restraint order made before the relevant time; and

(b) any proceeds of property realised by virtue of section 59(7) or 52(5) or (6) for the time being in the hands of a receiver appointed under section 59 or 62.

(2) Where, in the case of a company, a liquidator, administrator or voluntary liquidator has been appointed, the powers conferred on the court by sections 59 to 63 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator, administrator or voluntary liquidator are exercisable–

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(a) so as to inhibit him from exercising those functions for the purposes of distributing any property held by the company to the company's creditors; or

(b) so as to prevent the payment out of any property of expenses, including the remuneration of the liquidator, administrator or voluntary liquidator properly incurred in the liquidation, administration or voluntary liquidation in respect of the property;

but otherwise nothing in the Insolvency Act 2011 or the Companies Act 2014 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

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

(4) In this section–

"company" means any company in respect of which a liquidator, administrator or voluntary liquidator, as the case may be, may be appointed;

"liquidator" includes a provisional liquidator; and

"the relevant time"–

(a) in the case of a company in liquidation or administration, has the meaning specified in section 2 of the Insolvency Act 2011; and

(b) in the case of a company in voluntary liquidation, means the commencement of the voluntary liquidation within the meaning of the Companies Act 2014.

Persons acting as insolvency practitioners.

67.(1) Without prejudice to the generality of a provision in the Insolvency Act 2011 or in any other Act, where–

(a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and

(b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

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

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(2) A person acting as an insolvency practitioner shall, in the circumstances mentioned in subsection (1)(a) and (b), have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, voluntary liquidation, administration, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(3) Where a person acting as an insolvency practitioner–

(a) incurs expenses in respect of such property as is mentioned in paragraph (a) of subsection (1) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order, or

(b) incurs expenses other than expenses in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order might have been met by taking possession and realising the property,

that person shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under subsection (2)) to payment of those expenses under section 63(1) or (5).

Receivers: supplementary provisions.

68.(1) Where a receiver appointed under section 59 or 62 or in pursuance of a charging order–

(a) takes any action in relation to property which is not realisable property, being action which he would be entitled to take if it were such property, and

(b) believes, and has reasonable grounds for so believing that he is entitled to take that action in relation to that property,

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 63(6) be paid by the prosecutor or, in a case where proceedings for an indictable offence are not instituted, by the person on whose application the receiver was appointed.

PART V
CIVIL RECOVERY OF THE PROCEEDS ETC. OF UNLAWFUL CONDUCT

Chapter 1
Introductory

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General purpose of this Part.

69.(1) This Part has effect for the purposes of–

(a) enabling the Attorney General to recover, in civil proceedings before the Court, property which is, or represents, property obtained through unlawful conduct,

(b) enabling cash which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before the court.

(2) The powers conferred by this Part are exercisable in relation to any property (including cash) whether or not any proceedings have been brought for an offence in connection with the property.

"Unlawful conduct".

70.(1) Conduct occurring in Gibraltar is unlawful conduct if it is unlawful under the criminal law of Gibraltar.

(2) Conduct which occurs in a country or territory other than Gibraltar and is unlawful under the criminal law applying in that country or territory is also unlawful conduct.

(2A) Conduct which–

(a) occurs in a country or territory outside Gibraltar;

(b) constitutes, or is connected with, the commission of a gross human rights abuse or violation in accordance with section 70A; and

(c) if it occurred in Gibraltar, would be an offence triable under the criminal law on indictment or triable either way,

is also unlawful conduct.

(3) The court must decide on a balance of probabilities whether it is proved–

(a) that any matter alleged to constitute unlawful conduct has occurred, or

(b) that any person intended to use any cash in unlawful conduct.

"Gross human rights abuse or violation".

70A.(1) Conduct constitutes the commission of a gross human rights abuse or violation if all three of the following conditions are met.

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(2) The first condition is that–

(a) the conduct constitutes the torture of a person who has sought–

(i) to expose illegal activity carried out by a public official or a person acting in an official capacity; or

(ii) to obtain, exercise, defend or promote human rights and fundamental freedoms; or

(b) the conduct otherwise involves the cruel, inhuman or degrading treatment or punishment of such a person.

(3) The second condition is that the conduct is carried out in consequence of that person having sought to do anything falling within subsection (2)(a)(i) or (ii).

(4) The third condition is that the conduct is carried out–

(a) by a public official, or a person acting in an official capacity, in the performance or purported performance of his official duties; or

(b) by a person not falling within paragraph (a) at the instigation or with the consent or acquiescence–

(i) of a public official; or

(ii) of a person acting in an official capacity,

who is instigating the conduct, or in consenting to or acquiescing in it, is acting in the performance or purported performance of his official duties.

(5) Conduct is connected with the commission of a gross human rights abuse or violation if it is conduct by a person that involves–

(a) acting as an agent for another in connection with activities relating to conduct constituting the commission of a gross human rights abuse or violation;

(b) directing, or sponsoring, such activities;

(c) profiting from such activities; or

(d) materially assisting such activities.

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(6) Conduct that involves the intentional infliction of severe pain or suffering on another person is conduct that constitutes torture for the purposes of subsection (2)(a).

(7) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or omission.

(8) The cases in which a person materially assists activities for the purposes of subsection (5)(d) include, but are not limited to, those where the person–

(a) provides goods or services in support of the carrying out of the activities; or

(b) provides any financial or technological support in connection with their carrying out.

"Gross human rights abuse or violation" – Supplementary.

70B.(1) Subject to subsection (2), sections 70(2A) and 70A apply–

(a) in relation to conduct, so far as that conduct constitutes or is connected with the torture of a person, whether the conduct occurs before or after the coming into force of those sections.

(b) in relation to property obtained through such conduct, whether the property is obtained before or after the coming into force of those sections;

(c) in relation to conduct, so far as that conduct involves or is connected with the cruel, inhuman or degrading treatment or punishment of a person, only if the conduct occurs after the coming into force of those sections.

(2) Proceedings under Chapter 2 of Part V may not be brought in respect of property obtained through unlawful conduct of the kind mentioned in section 70(2A) after the end of the period of 20 years from the date on which the conduct constituting the commission of the gross human rights abuse or violation occurs.

(3) Proceedings under that Chapter are brought when–

(a) a claim form is issued;

(b) an application is made for a property freezing order under section 74; or

(c) an application is made for an interim receiving order under section 81,

whichever is the earliest.

"Property obtained through unlawful conduct".

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71.(1) A person obtains property through unlawful conduct (whether his own conduct or another's) if he obtains property by or in return for the conduct.

(2) In deciding whether any property was obtained through unlawful conduct–

(a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct,

(b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

Chapter 2
Civil Recovery

Proceedings for recovery orders

Proceedings for recovery orders.

72.(1) Proceedings for a recovery order may be taken by the Attorney General against any person who he thinks holds recoverable property.

(2) The Attorney General must serve the claim form–

(a) on the respondent, and

(b) unless the court dispenses with service, on any other person who the authority thinks holds any associated property which the Attorney General wishes to be subject to a recovery order,

wherever domiciled, resident or present.

(3) If any property which the Attorney General wishes to be subject to a recovery order is not specified in the claim form it must be described in the form in general terms; and the form must state whether it is alleged to be recoverable property or associated property.

(4) The references above to the claim form include the particulars of claim, where they are served subsequently.

(5) Except as may be expressly provided, nothing in this Chapter limits any power of the court apart from granting interim relief in connection with proceedings (including prospective proceedings).

"Associated property".

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73.(1) "Associated property" means property of any of the following descriptions (including property held by the respondent) which is not itself the recoverable property–

(a) any interest in the recoverable property,

(b) any other interest in the property in which the recoverable property subsists,

(c) if the recoverable property is a tenancy in common, the tenancy of the other tenant,

(d) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property.

(2) References to property being associated with recoverable property are to be read accordingly.

(3) No property is to be treated as associated with recoverable property consisting of rights under a pension scheme.

Property freezing orders

Application for property freezing order.

74.(1) Where the Attorney General may take proceedings for a recovery order, he may apply to the court for a property freezing order (whether before or after starting the proceedings).

(2) A property freezing order is an order that–

(a) specifies or describes the property to which it applies, and

(b) subject to any exclusions, prohibits any person to whose property the order applies from dealing with the property in any way.

(3) An application for a property freezing order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Attorney General to obtain a recovery order in respect of any property.

(4) The court may make a property freezing order on an application if it is satisfied that the condition in subsection (5) is met and, where applicable, that the condition in subsection (6) is met.

(5) The first condition is that there is a good arguable case–

(a) that the property to which the application for the order relates is or includes recoverable property, and

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(b) that, if any of it is not recoverable property, it is associated property.

(6) The second condition is that, if–

(a) the property to which the application for the order relates includes property alleged to be associated property, and

(b) the Attorney General has not established the identity of the person who holds it,

the Attorney General has taken all reasonable steps to do so.

Variation and setting aside of order.

75.(1) The court may at any time vary or set aside a property freezing order.

(2) If the court makes an interim receiving order that applies to all of the property to which a property freezing order applies, it must set aside the property freezing order.

(3) If the court makes an interim receiving order that applies to some but not all of the property to which a property freezing order applies, it must vary the property freezing order so as to exclude any property to which the interim receiving order applies.

(4) If the court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.

(5) Before exercising power under this Chapter to vary or set aside a property freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(6) Subsection (5) does not apply where the court is acting as required by subsection (2) or (3).

Exclusions.

76.(1) The power to vary a property freezing order includes (in particular) power to make exclusions as follows–

(a) power to exclude property from the order, and

(b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

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(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may, in particular, make provision for the purpose of enabling any person–

(a) to meet his reasonable living expenses, or

(b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that he has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion–

(a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs,

(b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and

(c) is made subject to the required conditions (see section 113) in addition to any conditions imposed under subsection (4).

(6) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses of his in respect of proceedings under this Part must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which he is a participant.

(7) If excluded property is not specified in the order it must be described in the order in general terms.

(8) The power to make exclusions must, subject to subsection (6), be exercised with a view to ensuring, insofar as practicable, that the satisfaction of any right of the Attorney General to recover the property obtained through unlawful conduct is not unduly prejudiced.

(9) Subsection (8) does not apply where the court is acting as required by section 75(3) or (4).

Restriction on proceedings and remedies.

77.(1) While a property freezing order has effect–

(a) the court may stay any action, execution or other legal process in respect of the property to which the order applies, and

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(b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

(2) If proceedings are pending in respect of any property is satisfied that a property freezing order has been applied for or made in respect of the property, it may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) If a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

(4) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

Receivers in connection with property freezing orders.

78.(1) Subsection (2) applies if–

(a) the court makes a property freezing order on an application by the Attorney General, and

(b) the authority applies to the court to proceed under subsection (2) (whether as part of the application for the property freezing order or at any time afterwards).

(2) The court may by order appoint a receiver in respect of any property to which the property freezing order applies.

(3) An application for an order under this section may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Attorney General to obtain a recovery order in respect of any property.

(4) In its application for an order under this section, the Attorney General must nominate a suitably qualified person for appointment as a receiver.

(5) Such a person may be a member of staff of the Attorney General.

(6) The Attorney General may apply a sum received under section 91(2) in making payment of the remuneration and expenses of a receiver appointed under this section.

(7) Subsection (6) does not apply in relation to the remuneration of the receiver if he is a member of the staff of the Attorney General (but it does apply in relation to such remuneration

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if the receiver is a person providing services under arrangements made by the Attorney General).

Powers of receivers appointed under section 78.

79.(1) If the court appoints a receiver on an application by the Attorney General, the court may act under this section.

(2) The court may by order authorise or require the receiver-

(a) to exercise management powers in relation to any property in respect of which the receiver is appointed, including-

(i) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes,

(ii) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business,

(iii) incurring capital expenditure in respect of the property;

(b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it).

(3) The court may by order require any person in respect of whose property the receiver is appointed–

(a) to bring the property to a place specified by the receiver or to place it in the custody of the receiver (if, in either case, he is able to do so),

(b) to do anything he is reasonably required to do by the receiver for the preservation of the property.

(4) The court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in his possession or control to a place specified by the receiver or to place them in the custody of the receiver.

(5) In subsection (4) "document" means anything in which information of any description is recorded.

(6) Any prohibition on dealing with property imposed by a property freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.

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(7) If–

(a) the receiver deals with any property which is not property in respect of which he is appointed, and

(b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so by virtue of his appointment,

the receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except insofar as the loss or damage is caused by his negligence.

Supervision of section 78 receiver and variations.

80.(1) Any of the following persons may at any time apply to the Court for directions as to the exercise of the functions of a receiver appointed under section 78–

(a) the receiver,

(b) any party to the proceedings for the appointment of the receiver or the property freezing order concerned,

(c) any person affected by any action taken by the receiver,

(d) any person who may be affected by any action proposed to be taken by the receiver.

(2) Before giving any directions under subsection (1), the court must give an opportunity to be heard to–

(a) the receiver,

(b) the parties to the proceedings for the appointment of the receiver and for the property freezing order concerned,

(c) any person who may be interested in the application under subsection (1).

(3) The court may at any time vary or set aside the appointment of a receiver under section 78, any order under section 79 or any directions under this section.

(4) Before exercising any power under subsection (3), the court must give an opportunity to be heard to–

(a) the receiver,

(b) the parties to the proceedings for the appointment of the receiver, for the order or, as the case may be, for the directions under this section;

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(c) the parties to the proceedings for the property freezing order concerned,

(d) any person who may be affected by the court's decision.

Interim receiving orders

Application for interim receiving order.

81.(1) Where the Attorney General may take proceedings for a recovery order, he may apply to the court for an interim receiving order (whether before or after starting the proceedings).

(2) An interim receiving order is an order for–

(a) the detention, custody or preservation of property, and

(b) the appointment of an interim receiver.

(3) An application for an interim receiving order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Attorney General to obtain a recovery order in respect of any property.

(4) The court may make an interim receiving order on an application if it is satisfied that the conditions in subsections (5) and, where applicable, (6) are met.

(5) The first condition is that there is a good arguable case–

(a) that the property to which the application for the order relates is or includes recoverable property, and

(b) that, if any of it is not recoverable property, it is associated property.

(6) The second condition is that, if–

(a) the property to which the application for the order relates includes property alleged to be associated property, and

(b) the Attorney General has not established the identity of the person who holds it,

the Attorney General has taken all reasonable steps to do so.

(7) In his application for an interim receiving order, the Attorney General must nominate a suitably qualified person for appointment as interim receiver, but the nominee may not be a member of the staff of the Attorney General.

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(8) The extent of the power to make an interim receiving order is not limited by sections 82 to 89.

Functions of interim receiver.

82.(1) An interim receiving order may authorise or require the interim receiver–

(a) to exercise any of the powers mentioned in Schedule 3,

(b) to take any other steps the court thinks appropriate,

for the purpose of securing the detention, custody or preservation of the property to which the order applies or of taking any steps under subsection (2).

(2) An interim receiving order must require the interim receiver to take any steps which the court thinks necessary to establish–

(a) whether or not the property to which the order applies is recoverable property or associated property,

(b) whether or not any other property is recoverable property (in relation to the same unlawful conduct) and, if it is, who holds it.

(3) If–

(a) the interim receiver deals with any property which is not property to which the order applies, and

(b) at the time he deals with the property he believes on reasonable grounds that he is entitled to do so in pursuance of the order,

the interim receiver is not liable to any person in respect of any loss or damage resulting from his dealing with the property except insofar as the loss or damage is caused by his negligence.

Property freezing orders and interim receiving orders: registration

Registration.

83.(1) The Gibraltar Land Titles Act 2011–

(a) shall apply as appropriate in relation to property freezing orders, and in relation to interim receiving orders, as it applies in relation to orders which affect land and are made by the court for the purpose of enforcing judgements or recognisances,

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(b) shall apply as appropriate in relation to applications for property freezing orders, and in relation to applications for interim receiving orders, as it applies in relation to other pending land actions.

Interim receiving orders: further provisions

Duties of respondent etc.

84.(1) An interim receiving order may require any person to whose property the order applies–

(a) to bring the property to a place specified by the interim receiver or place it in the custody of the interim receiver (if, in either case, he is able to do so),

(b) to do anything he is reasonably required to do by the interim receiver for the preservation of the property.

(2) An interim receiving order may require any person to whose property the order applies to bring any documents relating to the property which are in his possession or control to a place specified by the interim receiver or to place them in the custody of the interim receiver.

(3) In subsection (2) "document" means anything in which information of any description is recorded.

Supervision of interim receiver and variation of order.

85.(1) The interim receiver, any party to the proceedings and any person affected by any action taken by the interim receiver, or who may be affected by any action proposed to be taken by him, may at any time apply to the court for directions as to the exercise of the interim receiver's functions.

(2) Before giving any directions under subsection (1), the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be interested in the application.

(3) The court may at any time vary or set aside an interim receiving order.

(4) Before exercising any power under this Chapter to vary or set aside an interim receiving order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to the interim receiver and to any person who may be affected by the court's decision.

Restrictions on dealing etc. with property.

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86.(1) An interim receiving order must, subject to any exclusions made in accordance with this section, prohibit any person to whose property the order applies from dealing with the property.

(2) Exclusions may be made when the interim receiving order is made or on an application to vary the order.

(3) An exclusion may, in particular, make provision for the purpose of enabling any person–

(a) to meet his reasonable living expenses, or

(b) to carry on any trade, business, profession or occupation,

and may be made subject to conditions.

(4) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that he has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion–

(a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs,

(b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and

(c) is made subject to the required conditions (see section 113) in addition to any conditions imposed under subsection (3).

(5) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses of his in respect of proceedings under this Part must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which he is a participant.

(6) If the excluded property is not specified in the order it must be described in the order in general terms.

(7) The power to make exclusions must, subject to subsection (5), be exercised with a view to ensuring, insofar as practicable, that the satisfaction of any right of the Attorney General to recover the property obtained through unlawful conduct is not unduly prejudiced.

Restriction on proceedings and remedies.

87.(1) While an interim receiving order has effect–

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(a) the court may stay any action, execution or other legal process in respect of the property to which the order applies,

(b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

(2) If a court in which proceedings are pending in respect of any property is satisfied that an interim receiving order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) If the interim receiving order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

(4) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings in question an opportunity to be heard) give such an opportunity to the interim receiver (if appointed) and any person who may be affected by the court's decision.

Exclusion of property which is not recoverable etc.

88.(1) If the court decides that any property to which an interim receiving order applies is neither recoverable property nor associated property, it must vary the order so as to exclude it.

(2) The court may vary an interim receiving order so as to exclude from the property to which the order applies any property which is alleged to be associated property if the court thinks that the satisfaction of any right of the Attorney General to recover the property obtained through unlawful conduct will not be prejudiced.

(3) The court may exclude any property within subsection (2) on any terms or conditions, applying while the interim receiving order has effect, which the court thinks necessary or expedient.

Reporting.

89.(1) An interim receiving order must require the interim receiver to inform the Attorney General and the court as soon as reasonably practicable if the interim receiver thinks that–

(a) any property to which the order applies by virtue of a claim that it is recoverable property is not recoverable property,

(b) any property to which the order applies by virtue of a claim that it is associated property is not associated property,

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(c) any property to which the order does not apply is recoverable property (in relation to the same unlawful conduct) or associated property, or

(d) any property to which the order applies is held by a person who is different from the person it is claimed holds it,

or if he thinks that there has been any other material change of circumstances.

(2) An interim receiving order must require the interim receiver–

(a) to report his findings to the court,

(b) to serve copies of his report on the Attorney General and on any person who holds any property to which the order applies or who may otherwise be affected by the report.

Vesting and realisation of recoverable property

Recovery orders.

90.(1) If in proceedings under this Chapter the court is satisfied that any property is recoverable, the court must make a recovery order.

(2) The recovery order must vest the recoverable property in the trustee for civil recovery.

(3) But the court may not make in a recovery order any provision in respect of any recoverable property if each of the conditions in subsection (4) or (as the case may be) (5) is met and it would not be just and equitable to do so.

(4) The conditions referred to in subsection (3) are that–

(a) the respondent obtained the recoverable property in good faith,

(b) he took steps after obtaining the property which he would not have taken if he had not obtained it or he took steps before obtaining the property which he would not have taken if he had not believed he was going to obtain it,

(c) when he took the steps, he had no notice that the property was recoverable,

(d) if a recovery order were made in respect of the property, it would, by reason of the steps, be detrimental to him.

(6) In deciding whether it would be just and equitable to make the provision in the recovery order where the conditions in subsection (4) are met, the court must have regard to–

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(a) the degree of detriment that would be suffered by the respondent if the provision were made,

(b) the Attorney General's interest in receiving the realised proceeds of the recoverable property.

(7) A recovery order may sever any property.

(8) A recovery order may impose conditions as to the manner in which the trustee for civil recovery may deal with any property vested by the order for the purpose of realising it.

(9) A recovery order made by a court may provide for payment under section 103 of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of–

(a) the proceedings under this Part in which the order is made, or

(b) any related proceedings under this Part.

(10) If regulations under section 114 apply to an item of expenditure, a sum in respect of the item is not payable under section 103 in pursuance of provision under subsection (9) unless–

(a) the Attorney General agrees to its payment, or

(b) the court has assessed the amount allowed by the regulations in respect of that item and the sum is paid in respect of the assessed amount.

(11) This section is subject to sections 93 to 101.

Functions of the trustee for civil recovery.

91.(1) The trustee for civil recovery is a person appointed by the court to give effect to a recovery order.

(2) The Attorney General must nominate a suitably qualified person for appointment as the trustee.

(3) The functions of the trustee are–

(a) to secure the detention, custody or preservation of any property vested in him by the recovery order,

(b) in the case of property other than money, to realise the value of the property for the benefit of the Attorney General, and

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(c) to perform any other functions conferred on him by virtue of this Chapter.

(4) In performing his functions, the trustee acts on behalf of the Attorney General and must comply with any directions given by the authority.

(5) The trustee is to realise the value of property vested in him by the recovery order, insofar as practicable, in the manner best calculated to maximise the amount payable to the Attorney General.

(6) The trustee has the powers mentioned in Schedule 4.

(7) References in this section to a recovery order include an order under section 99 and references to property vested in the trustee by a recovery order include property vested in him in pursuance of an order under section 99.

Rights of pre-emption, etc.

92.(1) A recovery order is to have effect in relation to any property despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the vesting of the property.

(2) A right of pre-emption, right of return or other similar right does not operate or become exercisable as a result of the vesting of any property under a recovery order.

A right of return means any right under a provision for the return or reversion of property in specified circumstances.

(3) Where property is vested under a recovery order, any such right is to have effect as if the person in whom the property is vested were the same person in law as the person who held the property and as if no transfer of the property had taken place.

(4) References to rights in subsections (2) and (3) do not include any rights in respect of which the recovery order was made.

(5) This section applies in relation to the creation of interests, or the doing of anything else, by a recovery order as it applies in relation to the vesting of property.

Associated and joint property.

93.(1) Sections 94 and 95 apply if the court makes a recovery order in respect of any recoverable property in a case within subsection (2) or (3).

(2) A case is within this subsection if–

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(a) the property to which the proceedings relate includes property which is associated with the recoverable property and is specified or described in the claim form, and

(b) if the associated property is not the respondent's property, the claim form or application has been served on the person whose property it is or the court has dispensed with service.

(3) A case is within this subsection if–

(a) the recoverable property belongs to joint tenants, and

(b) one of the tenants is an excepted joint owner.

(4) An excepted joint owner is a person who obtained the property in circumstances in which it would not be recoverable as against him; and references to the excepted joint owner's share of the recoverable property are to so much of the recoverable property as would have been his if the joint tenancy had been severed.

Agreements about associated and joint property.

94.(1) Where–

(a) this section applies, and

(b) the Attorney General (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other) agree,

the recovery order may, instead of vesting the recoverable property in the trustee for civil recovery, require the person who holds the associated property or who is the excepted joint owner to make a payment to the trustee.

(2) A recovery order which makes any requirement under subsection (1) may, insofar as required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in property.

(3) The amount of the payment is to be the amount which the Attorney General and that person agree represents–

(a) in a case within section 93(2), the value of the recoverable property,

(b) in a case within section 93(3), the value of the recoverable property less the value of the excepted joint owner's share.

(4) But if–

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(a) a property freezing order or an interim receiving order applied at any time to the associated property or joint tenancy, and

(b) the Attorney General agrees that the person has suffered loss as a result of the order mentioned in paragraph (a),

the amount of the payment may be reduced by any amount the Attorney General and that person agree is reasonable, having regard to that loss and to any other relevant circumstances.

(5) If there is more than one such item of associated property or excepted joint owner, the total amount to be paid to the trustee, and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both (or all) of them and the Attorney General.

(6) A recovery order which makes any requirement under subsection (1) must make provision for any recoverable property to cease to be recoverable.

Associated and joint property: default of agreement.

95.(1) Where this section applies, the court may make the following provision if–

(a) there is no agreement under section 94, and

(b) the court thinks it just and equitable to do so.

(2) The recovery order may provide–

(a) for the associated property to vest in the trustee for civil recovery or (as the case may be) for the excepted joint owner's interest to be extinguished, or

(b) in the case of an excepted joint owner, for the severance of his interest.

(3) A recovery order making any provision by virtue of subsection (2)(a) may provide–

(a) for the trustee to pay an amount to the person who holds the associated property or who is an excepted joint owner, or

(b) for the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in the trustee,

or for both.

(4) In making any provision in a recovery order by virtue of subsection (2) or (3), the court must have regard to–

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(a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to him of that property or, as the case may be, of his share (including any value which cannot be assessed in terms of money),

(b) the Attorney General's interest in receiving the realised proceeds of the recoverable property.

(5) If–

(a) a property freezing order or an interim receiving applied at any time to the associated property or joint tenancy, and

(b) the court is satisfied that the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the order mentioned in paragraph (a),

a recovery order making any provision by virtue of subsection (2) or (3) may require the Attorney General to pay compensation to that person.

(6) The amount of compensation to be paid under subsection (5) is the amount the court thinks reasonable, having regard to the person's loss and to any other relevant circumstances.

Payments in respect of rights under pension schemes.

96.(1) This section applies to recoverable property consisting of rights under a pension scheme.

(2) A recovery order in respect of the property must, instead of vesting the property in the trustee for civil recovery, require the trustees or managers of the pension scheme–

(a) to pay to the trustee for civil recovery within a prescribed period the amount determined by the trustees or managers to be equal to the value of the rights, and

(b) to give effect to any other provision made by virtue of this section and the two following sections in respect of the scheme.

This subsection is subject to sections 99 to 101.

(3) A recovery order made by virtue of subsection (2) overrides the provisions of the pension scheme to the extent that they conflict with the provisions of the order.

(4) A recovery order made by virtue of subsection (2) may provide for the recovery by the trustees or managers of the scheme (whether by deduction from any amount which they are required to pay to the trustee for civil recovery or otherwise) of costs incurred by them in–

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(a) complying with the recovery order, or

(b) providing information, before the order was made, to the Attorney General, receiver appointed under section 78, interim receiver or interim administrator.

Consequential adjustment of liabilities under pension schemes.

97.(1) A recovery order made by virtue of section 96(2) must require the trustees or managers of the pension scheme to make such reduction in the liabilities of the scheme as they think necessary in consequence of the payment made in pursuance of that subsection.

(2) Accordingly, the order must require the trustees or managers to provide for the liabilities of the pension scheme in respect of the respondent's recoverable property to which section 96 applies to cease.

(3) Insofar as the trustees or managers are required by the recovery order to provide for the liabilities of the pension scheme in respect of the respondent's recoverable property to which section 96 applies to cease, their powers include (in particular) power to reduce the amount of–

(a) any benefit or future benefit to which the respondent is or may be entitled under the scheme,

(b) any future benefit to which any other person may be entitled under the scheme in respect of that property.

Pension schemes: supplementary.

98.(1) Regulations may make provision as to the exercise by trustees or managers of their powers under sections 96 and 97, including provision about the calculation and verification of the value at any time of rights or liabilities.

(2) The power conferred by subsection (1) includes power to provide for any values to be calculated or verified–

(a) in a manner which, in the particular case, is approved by a prescribed person, or

(b) in accordance with guidance from time to time prepared by a prescribed person.

(3) Regulations means regulations made by the Minister and prescribed means prescribed by regulations.

(4) A pension scheme means an occupational pension scheme or a personal pension scheme.

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(5) In relation to an occupational pension scheme or a personal pension scheme, the trustees or managers means–

(a) in the case of a scheme established under a trust, the trustees,

(b) in any other case, the managers.

(6) References to a pension scheme include–

(a) a retirement annuity contract,

(b) an annuity or insurance policy purchased, or transferred, for the purpose of giving effect to rights under an occupational pension scheme or a personal pension scheme.

(7) References to the trustees or managers-

(a) in relation to a retirement annuity contract or other annuity, are to the provider of the annuity,

(b) in relation to an insurance policy, are to the insurer.

(8) Subsections (3) to (7) have effect for the purposes of this group of sections (that is, sections 96 and 97 and this section).

Consent orders.

99.(1) The court may make an order staying any proceedings for a recovery order on terms agreed by the parties for the disposal of the proceedings if each person to whose property the proceedings, or the agreement, relates is a party both to the proceedings and the agreement.

(2) An order under subsection (1) may, as well as staying the proceedings on terms–

(a) make provision for any property which may be recoverable property to cease to be recoverable,

(b) make any further provision which the court thinks appropriate.

(3) Section 103 applies to property vested in the trustee for civil recovery, or money paid to him, in pursuance of the agreement as it applies to property vested in him by a recovery order or money paid under section 94.

Consent orders: pensions.

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100.(1) This section applies where recoverable property to which proceedings under this Chapter relate includes rights under a pension scheme.

(2) An order made under section 99–

(a) may not stay the proceedings on terms that the rights are vested in any other person, but

(b) may include provision imposing the following requirement, if the trustees or managers of the scheme are parties to the agreement by virtue of which the order is made.

(3) The requirement is that the trustees or managers of the pension scheme–

(a) make a payment in accordance with the agreement, and

(b) give effect to any other provision made by virtue of this section in respect of the scheme.

(4) The trustees or managers of the pension scheme have power to enter into an agreement in respect of the proceedings on any terms on which an order made under section 99 may stay the proceedings.

(5) The following provisions apply in respect of an order under section 99, insofar as it includes the requirement mentioned in subsection (3).

(6) The order overrides the provisions of the pension scheme to the extent that they conflict with the requirement.

(7) The order may provide for the recovery by the trustees or managers of the scheme (whether by deduction from any amount which they are required to pay in pursuance of the agreement or otherwise) of costs incurred by them in–

(a) complying with the order, or

(b) providing information, before the order was made, to the Attorney General, receiver or interim receiver.

(8) Sections 96 and 97 (read with section 98) apply as if the requirement were included in an order made by virtue of section 96(2).

(9) Section 98(4) to (7) has effect for the purposes of this section.

Limit on recovery.

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101.(1) This section applies if the Attorney General seeks a recovery order–

(a) in respect of both property which is or represents property obtained through unlawful conduct and related property, or

(b) in respect of property which is or represents property obtained through unlawful conduct where such an order, or an order under section 87, has previously been made in respect of related property.

(2) For the purposes of this section–

(a) the original property means the property obtained through unlawful conduct,

(b) the original property, and any items of property which represent the original property, are to be treated as related to each other.

(3) The court is not to make a recovery order if it thinks that the Attorney General's right to recover the original property has been satisfied by a previous recovery order or order under section 99.

(4) Subject to subsection (3), the court may act under subsection (5) if it thinks that–

(a) a recovery order may be made in respect of two or more related items of recoverable property, but

(b) the making of a recovery order in respect of both or all of them is not required in order to satisfy the Attorney General's right to recover the original property.

(5) The court may in order to satisfy that right to the extent required make a recovery order in respect of–

(a) only some of the related items of property, or

(b) only a part of any of the related items of property,

or both.

(6) Where the court may make a recovery order in respect of any property, this section does not prevent the recovery of any profits which have accrued in respect of the property.

(7) If–

(a) recoverable property is forfeited in pursuance of a forfeiture notice under section 123, and

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(b) the Attorney General subsequently seeks a recovery order in respect of related property,

the forfeiture notice is to be treated for the purposes of this section as if it were a recovery order obtained by the Attorney General in respect of the forfeited property.

(8) If–

(a) an order is made under section 130 for the forfeiture of recoverable property, and

(b) the Attorney General subsequently seeks a recovery order in respect of related property,

the order under section 130 is to be treated for the purposes of this section as if it were a recovery order obtained by the Attorney General in respect of the forfeited property.

(9) If–

(a) in pursuance of a judgment in civil proceedings (whether in Gibraltar or elsewhere), the claimant has obtained property from the defendant ("the judgment property"),

(b) the claim was based on the defendant's having obtained the judgment property or related property through unlawful conduct, and

(c) the Attorney General subsequently seeks a recovery order in respect of property which is related to the judgment property,

the judgment is to be treated for the purposes of this section as if it were a recovery order obtained by the Attorney General in respect of the judgment property.

(10) If–

(a) property has been taken into account in deciding the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order, and

(b) the Attorney General subsequently seeks a recovery order in respect of related property,

the confiscation order is to be treated for the purposes of this section as if it were a recovery order obtained by the Attorney General in respect of the property referred to in paragraph (a).

Section 101: supplementary.

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102.(1) Subsections (2) and (3) give examples of the satisfaction of the Attorney General's right to recover the original property.

(2) If–

(a) there is a disposal, other than a part disposal, of the original property, and

(b) other property (the representative property) is obtained in its place,

the Attorney General's right to recover the original property is satisfied by the making of a recovery order in respect of either the original property or the representative property.

(3) If–

(a) there is a part disposal of the original property, and

(b) other property (the representative property) is obtained in place of the property disposed of,

the Attorney General's right to recover the original property is satisfied by the making of a recovery order in respect of the remainder of the original property together with either the representative property or the property disposed of.

(4) In this section–

(a) "a part disposal" means a disposal to which section 144(1) applies,

(b) "the original property" has the same meaning as in section 101(2).

Applying realised proceeds.

103.(1) Subsection (2) applies to sums which are in the hands of the trustee for civil recovery if they are–

(a) sums which represent the realised proceeds of property which was vested in the trustee for civil recovery by a recovery order or which he obtained in pursuance of a recovery order,

(b) sums vested in the trustee by a recovery order or obtained by him in pursuance of a recovery order.

(2) The trustee is to make out of the sums–

(a) first, any payment required to be made by him by virtue of section 95,

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(b) next, any payment of legal expenses which, after giving effect to section 90, are payable under this subsection in pursuance of provision under section 90 contained in the recovery order,

(c) then, any payment of expenses incurred by a person acting as an insolvency practitioner which are payable under this subsection,

and any sum which remains is to be paid to the Attorney General.

(3) The Attorney General may apply a sum received by it under subsection (2) in making payment of the remuneration and expenses of–

(a) the trustee, or

(b) any interim receiver appointed in, or in anticipation of, the proceedings for the recovery order.

(4) Subsection (3)(a) does not apply in relation to the remuneration of the trustee if the trustee is a member of the staff of the Attorney General (but it does apply in relation to such remuneration if the trustee is a person providing services under arrangements made by the Attorney General).

Exemptions etc.

Victims of theft, etc.

104.(1) In proceedings for a recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to him may apply for a declaration under this section.

(2) If the applicant appears to the court to meet the following condition, the court may make a declaration to that effect.

(3) The condition is that–

(a) the person was deprived of the property he claims, or of property which it represents, by unlawful conduct,

(b) the property he was deprived of was not recoverable property immediately before he was deprived of it, and

(c) the property he claims belongs to him.

(4) Property to which a declaration under this section applies is not recoverable property.

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Other exemptions.

105.(1) Proceedings for a recovery order may not be taken against any person in circumstances of a prescribed description; and the circumstances may relate to the person himself or to the property or to any other matter.
In this subsection, prescribed means prescribed by an order made by the Minister.

(2) Proceedings for a recovery order may not be taken in respect of cash found at any place unless the proceedings are also taken in respect of property other than cash which is property of the same person.

(3) Proceedings for a recovery order may not be taken against any person in respect of any recoverable property which he holds by reason of his acting, or having acted, as an insolvency practitioner.

Scope of powers

Scope of powers.

106.(1) An order under this Chapter may be made by the Court–

(a) in respect of property wherever situated, and

(b) in respect of a person wherever domiciled, resident or present,

subject to subsection (2).

(2) Such an order may not be made by the Court in respect of property that is outside Gibraltar unless there is or has been a connection between the case and Gibraltar.

(3) The circumstances in which there is or has been such a connection include those described in Schedule 5.

Enforcement outside Gibraltar

Enforcement abroad before recovery order: Attorney General.

107.(1) This section applies if–

(a) the property freezing conditions are met in relation to property,

(b) the property is not property to which a recovery order applies, and

(c) the Attorney General believes that the property is in a country or territory outside Gibraltar (the receiving country or territory).

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(2) The property freezing conditions are the conditions in section 74(5) and (6) and, for the purposes of this subsection, the references in those provisions to property to which the application for the order relates are to be read as references to the property mentioned in subsection (1)(a).

(3) The Attorney General may send a request for assistance in relation to the property to the Minister with a view to it being forwarded under this section.

(4) The Minister may forward the request for assistance to the government of the receiving country or territory.

(5) A request for assistance under this section is a request to the government of the receiving country or territory–

(a) to secure that any person is prohibited from dealing with the property;

(b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

Enforcement abroad before recovery order: receiver or administrator.

108.(1) This section applies if–

(a) a property freezing order made by the court has effect in relation to property, and

(b) the receiver appointed under section 73 or 78 in respect of the property believes that it is in a country or territory outside Gibraltar (the receiving country or territory).

(2) This section also applies if–

(a) an interim receiving order made by the court has effect in relation to property, and

(b) the interim receiver or interim administrator believes that the property is in a country or territory outside Gibraltar (the receiving country or territory).

(3) The receiver or administrator may send a request for assistance in relation to the property to the Minister with a view to it being forwarded under this section.

(4) The Minister must forward the request for assistance to the government of the receiving country or territory.

(5) A request for assistance under this section is a request to the government of the receiving country or territory–

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(a) to secure that any person is prohibited from dealing with the property;

(b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

Evidence overseas: interim receiver or interim administrator.

109.(1) This section applies if–

(a) an interim receiving order made by the court has effect in relation to property, and

(b) the order requires the interim receiver or interim administrator to take steps to establish a matter described in section 82(2)(a) or (b).

(2) The interim receiver or interim administrator may request assistance under this section if the interim receiver or interim administrator thinks that there is relevant evidence in a country or territory outside Gibraltar.

(3) A judge of the court may request assistance under this section if–

(a) an application is made by the interim receiver or by a person subject to investigation by the interim receiver, and

(b) the judge thinks that there is relevant evidence in a country or territory outside Gibraltar.

(4) The assistance that may be requested under this section is assistance in obtaining outside Gibraltar relevant evidence specified in the request.

(5) Relevant evidence is, in relation to an application or request made for the purposes of an investigation by an interim receiver, evidence as to a matter described in section 82(2)(a) or (b).

(6) A request for assistance under this section may be sent–

(a) to a court or tribunal which is specified in the request and which exercises jurisdiction in the place where the evidence is to be obtained,

(b) to the government of the country or territory concerned, or

(c) to an authority recognised by the government of the country or territory concerned as the appropriate authority for receiving requests for assistance of that kind.

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(7) Alternatively, a request for assistance under this section may be sent to the Minister with a view to it being forwarded to a court, tribunal, government or authority mentioned in subsection (6).

(8) The Minister must forward the request for assistance to the court, tribunal, government or authority.

(9) In a case of urgency, a request for assistance under this section may be sent to the International Criminal Police Organisation (INTERPOL) for forwarding to the court, tribunal, government or authority mentioned in subsection (6).

(10) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to requests for assistance made by a judge under this section.

(11) "Evidence" includes documents, information in any other form and material.

Evidence overseas: restrictions on use.

110.(1) This section applies to evidence obtained by means of a request for assistance under section 107.

(2) The evidence must not be used for any purpose other than–

(a) for the purposes of carrying out the functions of the interim receiver or interim administrator, or

(b) for the purposes of proceedings under this Chapter of this Part in respect of property described in subsection (3) or any proceedings arising out of such proceedings.

(3) That property is–

(a) the property that is the subject of the interim receiving order, or

(b) other property that is recoverable property in respect of the same unlawful conduct.

(4) Subsection (2) does not apply if the court, tribunal, government or authority to whom the request for assistance was sent consents to the use.

(5) In subsection (1), the evidence may be received in evidence without being sworn to by anyone, insofar as that may be done without unfairness to any party.

Enforcement abroad: after recovery order.

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111.(1) This section applies if–

(a) a recovery order made by the Court has effect in relation to property, and

(b) the Attorney General or the trustee for civil recovery believes that the property is in a country or territory outside Gibraltar (the receiving country or territory).

(2) The Attorney General or trustee for civil recovery may send a request for assistance in relation to the property to the Minister with a view to it being forwarded under this section.

(3) The Minister may forward a request for assistance from the Attorney General to the government of the receiving country or territory.

(4) The Minister must forward a request for assistance from the trustee for civil recovery to the government of the receiving country or territory.

(5) A request for assistance is a request to the government of the receiving country or territory for assistance in connection with the management and disposal of the property and includes a request–

(a) to secure the detention, custody or preservation of the property;

(b) in the case of money, to secure that it is applied in accordance with the law of the receiving country or territory;

(c) in the case of property other than money, to secure that the property is realised and the proceeds are applied in accordance with the law of the receiving country or territory.

(6) A certificate purporting to be issued by or on behalf of the government of the receiving country or territory is admissible as evidence of the facts it states if it states–

(a) that property has been realised in pursuance of a request under this section,

(b) the date of realisation, and

(c) the proceeds of realisation.

Miscellaneous

Compensation.

112.(1) If, in the case of any property to which a property freezing order or an interim receiving order has at any time applied, the court does not in the course of the proceedings

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decide that the property is recoverable property or associated property, the person whose property it is may make an application to the court for compensation.

(2) Subsection (1) does not apply if the court–

(a) has made a declaration in respect of the property by virtue of section 104, or

(b) makes an order under section 99.

(3) If the court has made a decision by reason of which no recovery order could be made in respect of the property, the application for compensation must be made within the period of three months beginning with the date of the decision or, if any application is made for leave to appeal, with the date on which the application is withdrawn or refused or (if the application is granted) on which any proceedings on appeal are finally concluded,

(4) If the proceedings in respect of the property have been discontinued, the application for compensation must be made within the period of three months beginning with the discontinuance.

(5) If the court is satisfied that the applicant has suffered loss as a result of the order mentioned in subsection (1), it may require the Government to pay compensation to him.

(6) If, but for section 92(2), any right mentioned there would have operated in favour of, or become exercisable by, any person, he may make an application to the court for compensation.

(7) The application for compensation under subsection (6) must be made within the period of three months beginning with the vesting referred to in section 92(2).

(8) If the court is satisfied that, in consequence of the operation of section 92, the right in question cannot subsequently operate in favour of the applicant or (as the case may be) become exercisable by him, it may require the Attorney General to pay compensation to him.

(9) The amount of compensation to be paid under this section is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

Legal expenses excluded from freezing: required conditions.

113.(1) The Minister may by regulations specify the required conditions for the purposes of section 76(5) or 86(4).

(2) A required condition may (in particular)–

(a) restrict who may receive sums released in pursuance of the exclusion (by, for example, requiring released sums to be paid to professional legal advisers), or

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(b) be made for the purpose of controlling the amount of any sum released in pursuance of the exclusion in respect of an item of expenditure.

(3) A required condition made for the purpose mentioned in subsection (2)(b) may (for example)–

(a) provide for sums to be released only with the agreement of the Attorney General;

(b) provide for a sum to be released in respect of an item of expenditure only if the court has assessed the amount allowed by regulations under section 114 in respect of that item and the sum is released for payment of the assessed amount;

(c) provide for a sum to be released in respect of an item of expenditure only if–

(i) the Attorney General agrees to its release, or

(ii) the court has assessed the amount allowed by regulations under section 114 in respect of that item and the sum is released for payment of the assessed amount.

(4) Before making regulations under this section, the Minister must consult the Chief Justice and such persons as he considers appropriate.

Legal expenses: regulations for purposes of section 90 or 113.

114.(1) The Minister may by regulations–

(a) make provision for the purposes of section 90;

(b) make provision for the purposes of required conditions that make provision of the kind mentioned in section 113(3)(b) or (c).

(2) Regulations under this section may (in particular)–

(a) limit the amount of remuneration allowable to representatives for a unit of time worked;

(b) limit the total amount of remuneration allowable to representatives for work done in connection with proceedings or a step in proceedings;

(c) limit the amount allowable in respect of an item of expense incurred by a representative or incurred, otherwise than in respect of the remuneration of a representative, by a party to proceedings.

(3) Before making regulations under this section, the Minister must consult such persons as he considers appropriate.

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Financial threshold.

115.(1) At any time when an order specifying an amount for the purposes of this section has effect, the Attorney General may not start proceedings for a recovery order unless it reasonably believes that the aggregate value of the recoverable property which it wishes to be subject to a recovery order is not less than the specified amount.

(2) The power to make an order under subsection (1) is exercisable by the Minister.

(3) If the authority applies for a property freezing order or an interim receiving order before starting the proceedings, subsection (1) applies to the application instead of to the start of the proceedings.

(4) This section does not affect the continuation of proceedings for a recovery order which have been properly started or the making or continuing effect of a property freezing order or an interim receiving order which has been properly applied for.

Chapter 3
Recovery of Cash in Summary Proceedings

Searches

Searches.

116.(1) If a police officer or a customs officer is lawfully on any premises and has reasonable grounds for suspecting that there is on the premises cash–

(a) which is recoverable property or is intended by any person for use in unlawful conduct, and

(b) the amount of which is not less than the minimum amount,

he may search for the cash there.

(2) The powers specified in subsection (5) are exercisable if–

(a) the police officer or customs officer has reasonable grounds for suspecting that there is cash falling within subsection (6) in a vehicle, and

(b) it appears to the police officer or customs officer that the vehicle is under the control of a person (the suspect) who is in or in the vicinity of the vehicle.

(3) The powers are exercisable only if the vehicle is–

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(a) in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, or

(b) in any other place to which at that time people have ready access but which is not a dwelling.

(4) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the police offer or customs officer may exercise the powers under subsection (5) only if the officer has reasonable grounds for believing–

(a) that the suspect does not reside in the dwelling, and

(b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(5) The police officer or customs officer may, insofar as the officer thinks it necessary or expedient, require the suspect to–

(a) permit entry to the vehicle,

(b) permit a search of the vehicle.

(6) Cash falls within this subsection if–

(a) it is recoverable property or is intended by any person for use in unlawful conduct, and

(b) the amount of it is not less than the minimum amount.

(7) If a police officer or customs officer has reasonable grounds for suspecting that a person (the suspect) is carrying cash–

(a) which is recoverable property or is intended by any person for use in unlawful conduct, and

(b) the amount of which is not less than the minimum amount,

the officer may exercise the following powers.

(8) The officer may, insofar as he thinks it necessary or expedient, require the suspect–

(a) to permit a search of any article he has with him,

(b) to permit a search of his person.

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(9) An officer exercising powers by virtue of subsection (3)(b) may–

(a) in exercising powers by virtue of subsection (4), detain the vehicle for so long as is necessary for their exercise,

(b) in exercising powers by virtue of subsection (3)(b), detain the suspect for so long as is necessary for their exercise.

(10) The powers conferred by this section are exercisable only insofar as reasonably required for the purpose of finding cash.

(11) Cash means–

(a) notes and coins in any currency,

(b) postal orders,

(c) cheques of any kind, including travellers' cheques,

(d) bankers' drafts,

(e) bearer bonds and bearer shares,

found at any place in Gibraltar.

Prior approval.

117.(1) The powers conferred by section 116 may be exercised only with the appropriate approval unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(2) The appropriate approval means the approval of a magistrate or (if that is not practicable in any case) the approval of a senior officer.

(3) A senior officer means–

(a) in relation to the exercise of the power by a customs officer, a customs officer of at least the rank of Senior Customs Officer,

(b) in relation to the exercise of the power by a police officer, a police officer of at least the rank of inspector.

(4) If the powers are exercised without the approval of a magistrate in a case where–

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(a) no cash is seized by virtue of section 119, or

(b) any cash so seized is not detained for more than 48 hours (calculated in accordance with section 108),

the officer who exercised the powers must give a written report to the Commissioner of Police if the officer is a police officer, or to the Collector of Customs if the officer is a customs officer.

(5) The report must give particulars of the circumstances which led him to believe that–

(a) the powers were exercisable, and

(b) it was not practicable to obtain the approval of a magistrate.

Report on exercise of powers.

118.(1) The Commissioner of Police and the Collector of Customs must each publish an annual report as to the circumstances and manner in which the powers conferred by section 116 have been exercised, based on the reports that either has received pursuant to section 117(5).

(2) The annual report referred to in subsection (1) may be a joint annual report by the Commissioner of Police and the Collector of Customs.

Seizure and detention

Seizure of cash.

119.(1) A customs officer or a police officer may seize any cash if he has reasonable grounds for suspecting that it is–

(a) recoverable property, or

(b) intended by any person for use in unlawful conduct.

(2) A customs officer or a police officer may also seize cash part of which he has reasonable grounds for suspecting to be–

(a) recoverable property, or

(b) intended by any person for use in unlawful conduct,

if it is not reasonably practicable to seize only that part.

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(3) This section does not authorise the seizure of an amount of cash if it or, as the case may be, the part to which his suspicion relates, is less than the minimum amount.

Detention of seized cash.

120.(1) While the customs officer or police officer continues to have reasonable grounds for his suspicion, cash seized under section 119 may be detained initially for a period of 48 hours.

(2) The period of 48 hours mentioned in subsection (1) is to be calculated in accordance with subsection (3).

(3) In calculating a period of 48 hours in accordance with this subsection, no account shall be taken of–

(a) any Saturday or Sunday,

(b) Christmas Day,

(c) Good Friday,

(d) any day that is a bank holiday under the Banking and Financial Dealings Act within which the cash is seized.

(4) The period for which the cash or any part of it may be detained may be extended by an order made by the magistrates' court; but the order may not authorise the detention of any of the cash–

(a) beyond the end of the period of six months beginning with the date of the order,

(b) in the case of any further order under this section, beyond the end of the period of two years beginning with the date of the first order.

(5) A judge may also exercise the power of the court to make the first order under subsection (4) extending the period.

(6) An application for an order under subsection (4) may be made by a customs officer or a police officer and the court or judge may make the order if satisfied, in relation to any cash to be further detained, that either of the following conditions is met.

(7) The first condition is that there are reasonable grounds for suspecting that the cash is recoverable property and that either–

(a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in Gibraltar or elsewhere) proceedings against any person for an offence with which the cash is connected, or

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(b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(8) The second condition is that there are reasonable grounds for suspecting that the cash is intended to be used in unlawful conduct and that either–

(a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in Gibraltar or elsewhere) proceedings against any person for an offence with which the cash is connected, or

(b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

(9) An application for an order under subsection (4) may also be made in respect of any cash seized under section 119(2), and the magistrates' court or the Supreme Court may make the order if satisfied that–

(a) the condition in subsection (7) or (8) is met in respect of part of the cash, and

(b) it is not reasonably practicable to detain only that part.

(10) An order under subsection (4) must provide for notice to be given to persons affected by it.

Interest.

121.(1) If cash is detained under section 120 for more than 48 hours (calculated in accordance with section 120(2)), it is at the first opportunity to be paid into an interest-bearing account and held there; and the interest accruing on it is to be added to it on its forfeiture or release.

(2) In the case of cash detained under section 120 which was seized under section 119(2), the customs officer or police officer must, on paying it into the account, release the part of the cash to which the suspicion does not relate.

(3) Subsection (1) does not apply if the cash or, as the case may be, the part to which the suspicion relates is required as evidence of an offence or evidence in proceedings under this Chapter.

Release of detained cash.

122.(1) This section applies while any cash is detained under section 120.

(2) The magistrates' court or the Supreme Court may direct the release of the whole or any part of the cash if the following condition is met.

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(3) The condition is that the court is satisfied, on an application by the person from whom the cash was seized, that the conditions in section 120 for the detention of the cash are no longer met in relation to the cash to be released.

(4) A customs officer or a police officer may, after notifying the magistrates' court or the Supreme Court under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.

Forfeiture without court order

Forfeiture notice.

123.(1) Subsection (2) applies while any cash is detained in pursuance of an order under section 120(4) or (5) made by the magistrates' court.

(2) A senior officer may give a notice for the purpose of forfeiting the cash or any part of it if satisfied that the cash or part–

(a) is recoverable property, or

(b) is intended by any person for use in unlawful conduct.

(3) The Minister may make regulations about how a notice is to be given.

(4) The regulations may provide–

(a) for a notice to be given to such person or persons, and in such manner, as may be prescribed;

(b) for a notice to be given by publication in such manner as may be prescribed;

(c) for circumstances in which, and the time at which, a notice is to be treated as having been given.

(5) The regulations must ensure that where a notice is given it is, if possible, given to every person to whom notice of an order under section 120(10) in respect of the cash has been given.

(6) A senior officer means–

(a) a customs officer of at least the rank of Senior Customs Officer, or

(b) a police officer of at least the rank of inspector.

(7) A notice under this section is referred to in this Chapter as a forfeiture notice.

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Content.

124.(1) A forfeiture notice must–

(a) state the amount of cash in respect of which it is given,

(b) state when and where the cash was seized,

(c) confirm that the senior officer is satisfied as mentioned in section 123(2),

(d) specify a period for objecting to the proposed forfeiture and an address to which any objections must be sent, and

(e) explain that the cash will be forfeited unless an objection is received at that address within the period for objecting.

(2) The period for objecting must be at least 30 days starting with the day after the notice is given.

Effect.

125.(1) This section applies if a forfeiture notice is given in respect of any cash.

(2) The cash is to be detained until–

(a) the cash is forfeited under this section,

(b) the notice lapses under this section, or

(c) the cash is released under a power conferred by this Chapter.

(3) If no objection is made within the period for objecting, and the notice has not lapsed, the cash is forfeited (subject to section 127).

(4) If an objection is made within the period for objecting, the notice lapses.

(5) If an application is made for the forfeiture of the whole or any part of the cash under section 130, the notice lapses.

(6) If the cash or any part of it is released under a power conferred by this Chapter, the notice lapses or (as the case may be) lapses in relation to that part.

(7) An objection may be made by anyone, whether a recipient of the notice or not.

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(8) An objection means a written objection sent to the address specified in the notice; and an objection is made when it is received at the address.

(9) An objection does not prevent forfeiture of the cash under section 130.

(10) Nothing in this section affects the validity of an order under section 120(4).

Detention following lapse of notice.

126.(1) This section applies if–

(a) a forfeiture notice is given in respect of any cash,

(b) the notice lapses under section 125(4), and

(c) the period for which detention of the cash was authorised under section 120(4) has expired.

(2) The cash may be detained for a further period of up to 48 hours (calculated in accordance with section 120(2)).

(3) But if within that period either the Collector of Customs or the Commissioner of Police, a police officer decides that neither of the applications mentioned in subsection (4) ought to be made, the cash must be released.

(4) The applications are–

(a) an application for a further order under section 120(4);

(b) an application for forfeiture of the cash under section 130.

(5) If within that period an application is made for a further order under section 120(4) the cash may be detained until the application is determined or otherwise disposed of.

Application to set aside forfeiture.

127.(1) This section applies if any cash is forfeited in pursuance of a forfeiture notice.

(2) A person aggrieved by the forfeiture may apply to the magistrates' court for an order setting aside the forfeiture of the cash or any part of it.

(3) The application must be made before the end of the period of 30 days starting with the day on which the period for objecting ended.

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(4) The court may give permission for an application to be made after the 30-day period has ended if it thinks that there are exceptional circumstances to explain why the applicant–

(a) failed to object to the forfeiture within the period for objecting, and

(b) failed to make an application within the 30-day period.

(5) On an application under this section the court must consider whether the cash to which the application relates could be forfeited under section 130 (ignoring the forfeiture mentioned in subsection (1) above).

(6) If the court is satisfied that the cash to which the application relates or any part of it could not be forfeited under that section it must set aside the forfeiture of that cash or part.

(7) Where the court sets aside the forfeiture of any cash–

(a) it must order the release of that cash, and

(b) that cash is to be treated as never having been forfeited.

Release of cash subject to forfeiture notice.

128.(1) This section applies while any cash is detained under section 125 or 126.

(2) The magistrate or judge may direct the release of the whole or any part of the cash if the following condition is met.

(3) The condition is that the magistrate or judge is not satisfied, on an application by the person from whom the cash was seized, that the cash to be released-

(a) is recoverable property, or

(b) is intended by any person for use in unlawful conduct.

(4) A customs officer or police officer may release the cash or any part of it if satisfied that the detention of the cash to be released is no longer justified.

Application of forfeited cash.

129.(1) Cash forfeited in pursuance of a forfeiture notice, and any accrued interest on it, is to be paid into the Gibraltar Recovered Assets Fund.

(2) But it is not to be paid in-

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(a) before the end of the period within which an application under section 127 may be made (ignoring the possibility of an application by virtue of section 127(4)), or

(b) if an application is made within that period, before the application is determined or otherwise disposed of.

Forfeiture

Forfeiture.

130.(1) While cash is detained under section 120, 125 or 126, an application for the forfeiture of the whole or any part of it may be made to the magistrates' court by a customs officer or a police officer,

(2) The court may order the forfeiture of the cash or any part of it if satisfied that the cash or part–

(a) is recoverable property, or

(b) is intended by any person for use in unlawful conduct.

(3) But in the case of recoverable property which belongs to joint tenants, one of whom is an excepted joint owner, the order may not apply to so much of it as the court thinks is attributable to the excepted joint owner's share.

(4) Where an application for the forfeiture of any cash is made under this section, the cash is to be detained (and may not be released under any power conferred by this Chapter) until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.

Appeal against decision under section 130.

131.(1) Any party to proceedings for an order for the forfeiture of cash under section 130 who is aggrieved by an order under that section or by the decision of the magistrates' court not to make such an order may appeal that order or decision.

(2) An appeal under subsection (1) must be made before the end of the period of 30 days starting with the day on which the court makes the order or decision.

(3) The court hearing the appeal may make any order it thinks appropriate.

(4) If the court upholds an appeal against an order forfeiting the cash, it may order the release of the whole or any part of the cash.

Application of forfeited cash.

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132.(1) Cash forfeited under section 130, and any accrued interest on it is to be paid into the Gibraltar Recovered Assets Fund.

(2) But it is not to be paid in–

(a) before the end of the period within which an appeal under section 131 may be made, or

(b) if a person appeals under that section, before the appeal is determined or otherwise disposed of.

Supplementary

Victims and other owners.

133.(1) A person who claims that any cash detained under this Chapter, or any part of it, belongs to him may apply to the magistrates' court for the cash or part to be released to him.

(2) The application may be made in the course of proceedings under section 120 or 130 or at any other time.

(3) If it appears to the court concerned that–

(a) the applicant was deprived of the cash to which the application relates, or of property which it represents, by unlawful conduct,

(b) the property he was deprived of was not, immediately before he was deprived of it, recoverable property, and

(c) that cash belongs to him,

the court may order the cash to which the application relates to be released to the applicant.

(4) If–

(a) the applicant is not the person from whom the cash to which the application relates was seized,

(b) it appears to the court that that cash belongs to the applicant,

(c) the court is satisfied that the release condition is met in relation to that cash, and

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(d) no objection to the making of an order under this subsection has been made by the person from whom that cash was seized,

the court may order the cash to which the application relates to be released to the applicant or to the person from whom it was seized.

(5) The release condition is met–

(a) in relation to cash detained under section 120, if the conditions in that section for the detention of the cash are no longer met,

(b) in relation to cash detained under section 125 or 126, if the cash is not recoverable property and is not intended by a person for use in unlawful conduct, and

(c) in relation to cash detained under 130, if the court decides not to make an order under that section in relation to the cash.

Compensation.

134.(1) If cash is detained under this Chapter the person to whom the cash belongs or from whom it was seized may make an application to the magistrates' court for compensation if–

(a) the cash is not forfeited in pursuance of a forfeiture notice, and

(b) no forfeiture order is made in respect of the cash.

(2) If, for any period beginning with the first opportunity to place the cash in an interest-bearing account after the initial detention of the cash for 48 hours (calculated in accordance with section 120(2)), the cash was not held in an interest-bearing account while detained, the court may order an amount of compensation to be paid to the applicant.

(3) The amount of compensation to be paid under subsection (2) is the amount the court thinks would have been earned in interest in the period in question if the cash had been held in an interest-bearing account.

(4) If the court is satisfied that, taking account of any interest to be paid under section 121 or any amount to be paid under subsection (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the court may order compensation (or additional compensation) to be paid to him.

(5) The amount of compensation to be paid under subsection (4) is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(6) If the cash was seized by a customs officer, the compensation is to be paid by HM Customs.

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(7) If the cash was seized by a police officer, the compensation is to be paid out of the fund from which the expenses of the Royal Gibraltar Police are met.

(8) The Minister with responsibility for finance may by order amend subsection (6) or (7).

(9) If any cash is detained under this Chapter and part only of the cash is forfeited in pursuance of a forfeiture notice, this section has effect in relation to the other part.

(10) If a forfeiture order is made in respect only of a part of any cash detained under this Chapter, this section has effect in relation to the other part.

"The minimum amount".

135.(1) In this Chapter, the minimum amount is the amount in sterling specified in an order made by the Minister.

(2) For that purpose the amount of any cash held in a currency other than sterling must be taken to be its sterling equivalent, calculated in accordance with the prevailing rate of exchange.

Chapter 4
General

Recoverable property

Property obtained through unlawful conduct.

136.(1) Property obtained through unlawful conduct is recoverable property.

(2) If property obtained through unlawful conduct has been disposed of (since it was so obtained), it is recoverable property only if it is held by a person into whose hands it may be followed.

(3) Recoverable property obtained through unlawful conduct may be followed into the hands of a person obtaining it on a disposal by–

(a) the person who through the conduct obtained the property, or

(b) a person into whose hands it may (by virtue of this subsection) be followed.

Tracing property, etc.

137.(1) Where property obtained through unlawful conduct ("the original property") is or has been recoverable, property which represents the original property is also recoverable property.

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(2) If a person enters into a transaction by which–

(a) he disposes of recoverable property, whether the original property or property which (by virtue of this Chapter) represents the original property, and

(b) he obtains other property in place of it,

the other property represents the original property.

(3) If a person disposes of recoverable property which represents the original property, the property may be followed into the hands of the person who obtains it (and it continues to represent the original property).

Mixing property.

138.(1) Subsection (2) applies if a person's recoverable property is mixed with other property (whether his property or another's).

(2) The portion of the mixed property which is attributable to the recoverable property represents the property obtained through unlawful conduct.

(3) Recoverable property is mixed with other property if (for example) it is used–

(a) to increase funds held in a bank account,

(b) in part payment for the acquisition of an asset,

(c) for the restoration or improvement of land,

(d) by a person holding a leasehold interest in the property to acquire the freehold.

Recoverable property: accruing profits.

139.(1) This section applies where a person who has recoverable property obtains further property consisting of profits accruing in respect of the recoverable property.

(2) The further property is to be treated as representing the property obtained through unlawful conduct.

General exceptions.

140.(1) If–

(a) a person disposes of recoverable property, and

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(b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property,

the property may not be followed into that person's hands and, accordingly, it ceases to be recoverable.

(2) If recoverable property is vested, forfeited or otherwise disposed of in pursuance of powers conferred by virtue of this Part, it ceases to be recoverable.

(3) If-

(a) in pursuance of a judgment in civil proceedings (whether in Gibraltar or elsewhere), the defendant makes a payment to the claimant or the claimant otherwise obtains property from the defendant,

(b) the claimant's claim is based on the defendant's unlawful conduct, and

(c) apart from this subsection, the sum received, or the property obtained, by the claimant would be recoverable property,

the property ceases to be recoverable.

(4) If a payment is made to a person in pursuance of a restitution order or a person otherwise obtains any property in pursuance of such an order and, apart from this subsection, the sum received, or the property obtained, would be recoverable property, the property ceases to be recoverable.

(5) If–

(a) in pursuance of a requirement of the Financial Services Commission, an amount is paid to or distributed among any persons, and

(b) apart from this subsection, the sum received by them would be recoverable property,

the property ceases to be recoverable.

(6) Property is not recoverable while a restraint order applies to it.

(7) Property is not recoverable if it has been taken into account in deciding the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order.

(8) Where–

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(a) a person enters into a transaction to which section 137(2) applies, and

(b) the disposal is one to which subsection (1) or (2) applies,

this section does not affect the recoverability (by virtue of section 137(2)) of any property obtained on the transaction in place of the property disposed of.

Other exemptions.

141.(1) An order may provide that property is not recoverable or (as the case may be) associated property if–

(a) it is prescribed property, or

(b) it is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description.

(2) An order may provide that if property is disposed of in pursuance of a prescribed enactment or an enactment of a prescribed description, it is to be treated for the purposes of section 101 as if it had been disposed of in pursuance of a recovery order.

(3) An order under this section may be made so as to apply to property, or a disposal of property, only in prescribed circumstances; and the circumstances may relate to the property or disposal itself or to a person who holds or has held the property or to any other matter.

(4) In this section, an order means an order made by the Minister and prescribed means prescribed by the order.

Granting interests.

142.(1) If a person grants an interest in his recoverable property, the question whether the interest is also recoverable is to be determined in the same manner as it is on any other disposal of recoverable property.

(2) Accordingly, on his granting an interest in the property ("the property in question")–

(a) where the property in question is property obtained through unlawful conduct, the interest is also to be treated as obtained through that conduct,

(b) where the property in question represents in his hands property obtained through unlawful conduct, the interest is also to be treated as representing in his hands the property so obtained.

Insolvency

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Insolvency.

143.(1) Proceedings for a recovery order may not be taken or continued in respect of property to which subsection (3) applies unless the court gives leave and the proceedings are taken or (as the case may be) continued in accordance with any terms imposed by the court.

(2) An application for an order for the further detention of any cash to which subsection (3) applies may not be made under section 120 unless the court gives leave.

(3) This subsection applies to recoverable property, or property associated with it, if–

(a) it is an asset of a company being wound up in pursuance of a resolution for voluntary winding up,

(b) it is an asset of a company and a voluntary arrangement under Part 2 of the Insolvency Act 2011 has effect in relation to the company,

(c) an order under Part 13 of the Insolvency Act 2011 in relation to the appointment of interim trustee or interim receiver has effect in relation to the property,

(d) it is an asset of an individual and a voluntary arrangement under Part 2 of the Insolvency Act 2011 has effect in relation to him.

(4) An application under this section, or under any provision of the Insolvency Act 2011, for leave to take proceedings for a recovery order may be made without notice to any person.

(5) Subsection (4) does not affect any requirement for notice of an application to be given to any person acting as an insolvency practitioner or to the Official Receiver (whether or not acting as an insolvency practitioner).

Interpretation

Obtaining and disposing of property.

144.(1) References to a person disposing of his property include a reference-

(a) to his disposing of a part of it, or

(b) to his granting an interest in it,

(or to both); and references to the property disposed of are to any property obtained on the disposal.

(2) A person who makes a payment to another is to be treated as making a disposal of his property to the other, whatever form the payment takes.

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(3) Where a person's property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other.

(4) A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

General interpretation.

145.(1) In this Part–

"associated property" has the meaning given by section 73,

"cash" has the meaning given by section 116(6), 116 (7) or 116(11), as appropriate,

"dealing" with property includes disposing of it, taking possession of it or removing it from Gibraltar,

"excepted joint owner" has the meaning given by section 93(4),

"interest", in relation to land means any legal estate and any equitable interest or power,

"interest", in relation to property other than land, includes any right (including a right to possession of the property),

"interim receiving order" has the meaning given by section 81(2),

"the minimum amount" (in Chapter 3) has the meaning given by section 135,

"part", in relation to property, includes a portion,

"premises" has the same meaning as in section 2 of the Crimes Act 2011,

"property freezing order" has the meaning given by section 74(2),

"property obtained through unlawful conduct" has the meaning given by section 71,

"recoverable property" is to be read in accordance with sections 136 to 142,

"recovery order" means an order made under section 90,

"respondent" means–

(a) where proceedings are brought by the Attorney General by virtue of Chapter 2, the person against whom the proceedings are brought,

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(b) where no such proceedings have been brought but the Attorney General has applied for a property freezing order or an interim receiving order, the person against whom he intends to bring such proceedings,

"share", in relation to an excepted joint owner, has the meaning given by section 93(4),

"triable either way" has the same meaning as in section 2(1) of the Crimes Act 2011,

"unlawful conduct" has the meaning given by section 70,

"value" means market value.

(2) The following provisions apply for the purposes of this Part.

(3) For the purpose of deciding whether or not property was recoverable at any time (including times before commencement), it is to be assumed that this Part was in force at that and any other relevant time.

(4) Property is property wherever situated and includes–

(a) money,

(b) all forms of property, real or personal, heritable or moveable,

(c) things in action and other intangible or incorporeal property.

(5) Any reference to a person's property (whether expressed as a reference to the property he holds or otherwise) is to be read as follows.

(6) In relation to land, it is a reference to any interest which he holds in the land.

(7) In relation to property other than land, it is a reference–

(a) to the property (if it belongs to him), or

(b) to any other interest which he holds in the property.

(8) References to the satisfaction of the Attorney General's right to recover property obtained through unlawful conduct are to be read in accordance with section 102.

(9) Proceedings against any person for an offence are concluded when–

(a) the person is convicted or acquitted, or

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(b) the jury is discharged without a finding otherwise than in circumstances where the proceedings are continued without a jury.

PART VI
INVESTIGATIONS

Chapter 1
Introduction

Investigations.

146.(1) For the purposes of this Part a confiscation investigation is an investigation into–

(a) whether a person has benefited from his criminal conduct, or

(b) the extent or whereabouts of his benefit from his criminal conduct.

(2) For the purposes of this Part a civil recovery investigation is an investigation for the purpose of identifying recoverable property or associated property and includes investigation into–

(a) whether property is or has been recoverable property or associated property,

(b) who holds or has held property,

(c) what property a person holds or has held, or

(d) the nature, extent or whereabouts of property.

(3) But an investigation is not a civil recovery investigation to the extent that it relates to–

(a) property in respect of which proceedings for a recovery order have been started,

(b) property to which an interim receiving order applies, or

(c) property detained under section 120.

(4) For the purposes of this Part a detained cash investigation is an investigation for the purposes of Chapter 3 of Part 5 into–

(a) the derivation of cash detained under that Chapter or a part of such cash, or

(b) whether cash detained under that Chapter, or a part of such cash, is intended by any person to be used in unlawful conduct.

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(5) For the purposes of this Part a money laundering investigation is an investigation into whether a person has committed a money laundering offence.

(6) An appropriate person for the purposes of this Part is–

(a) the Attorney General, for the purposes of a civil recovery investigation;

(b) a police officer or customs officer, for the purposes of a detained cash investigation, a confiscation investigation or a money laundering investigation;

Orders and warrants sought for civil recovery investigations.

147. Where an application under this Part for an order or warrant specifies property that is subject to a civil recovery investigation, references in this Part to the investigation for the purposes of which the order or warrant is sought include investigation into–

(a) whether a person who appears to hold or to have held the specified property holds or has held other property,
(b) whether the other property is or has been recoverable property or associated property, and

(c) the nature, extent or whereabouts of the other property.

Offences of prejudicing investigation.

148.(1) This section applies if a person knows or suspects that an appropriate person is acting (or proposing to act) in connection with a confiscation investigation, a civil recovery investigation, a detained cash investigation or a money laundering investigation which is being or is about to be conducted.

(2) The person commits an offence if–

(a) he makes a disclosure which is likely to prejudice the investigation, or

(b) he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.

(3) A person does not commit an offence under subsection (2)(a) if–

(a) he does not know or suspect that the disclosure is likely to prejudice the investigation,

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(b) the disclosure is made in the exercise of a function under this Act or any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of this Act,

(c) the disclosure is of a matter within section 5(7) (Tipping-off) and the information on which the disclosure is based came to the person in the course of a business in the regulated sector, or

(d) he is a professional legal adviser and the disclosure falls within subsection (4).

(4) A disclosure falls within this subsection if it is a disclosure–

(a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or

(b) to any person in connection with legal proceedings or contemplated legal proceedings.

(5) But a disclosure does not fall within subsection (4) if it is made with the intention of furthering a criminal purpose.

(6) A person does not commit an offence under subsection (2)(b) if–

(a) he does not know or suspect that the documents are relevant to the investigation, or

(b) he does not intend to conceal any facts disclosed by the documents from any appropriate person or person carrying out the investigation.

(7) A person guilty of an offence under subsection (2) is liable–

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

(8) For the purposes of this section a business is in the regulated sector if it is engaged in relevant financial business under section 9.

Chapter 2
Production orders

Production orders.

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149.(1) A judge may, on an application made to him by an appropriate person, make a production order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) The application for a production order must state that–

(a) a person specified in the application is subject to a confiscation investigation, a civil recovery investigation or a money laundering investigation, or

(b) property specified in the application is subject to a civil recovery investigation or a detained cash investigation.

(3) The application must also state that–

(a) the order is sought for the purposes of the investigation;

(b) the order is sought in relation to material, or material of a description, specified in the application;

(c) a person specified in the application appears to be in possession or control of the material.

(4) A production order is an order either–

(a) requiring the person the application for the order specifies as appearing to be in possession or control of material to produce it to an appropriate person for him to take away, or

(b) requiring that person to give an appropriate person access to the material,

within the period stated in the order.

(5) The period stated in a production order must be a period of seven days beginning with the day on which the order is made, unless it appears to the judge by whom the order is made that a longer or shorter period would be appropriate in the particular circumstances.

Requirements for making of production order.

150.(1) These are the requirements for the making of a production order.

(2) There must be reasonable grounds for suspecting that–

(a) in the case of a confiscation investigation, the person the application for the order specifies as being subject to the investigation has benefited from his criminal conduct;

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(b) in the case of a civil recovery investigation–

(i) the person the application for the order specifies as being subject to the investigation holds recoverable property or associated property,

(ii) that person has, at any time, held property that was recoverable property or associated property at the time, or

(iii) the property the application for the order specifies as being subject to the investigation is recoverable property or associated property;

(c) in the case of a detained cash investigation into the derivation of cash, the property the application for the order specifies as being subject to the investigation, or a part of it, is recoverable property;

(d) in the case of a detained cash investigation into the intended use of cash, the property the application for the order specifies as being subject to the investigation, or a part of it, is intended by any person to be used in unlawful conduct;

(e) in the case of a money laundering investigation, the person the application for the order specifies as being subject to the investigation has committed a money laundering offence;

(3) There must be reasonable grounds for believing that the person the application specifies as appearing to be in possession or control of the material so specified is in possession or control of it.

(4) There must be reasonable grounds for believing that the material is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(5) There must be reasonable grounds for believing that it is in the public interest for the material to be produced or for access to it to be given, having regard to–

(a) the benefit likely to accrue to the investigation if the material is obtained;

(b) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

Order to grant entry.

151.(1) This section applies if a judge makes a production order requiring a person to give an appropriate person access to material on any premises.

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(2) The judge may, on an application made to him by an appropriate person and specifying the premises, make an order to grant entry in relation to the premises.

(3) An order to grant entry is an order requiring any person who appears to an appropriate person to be entitled to grant entry to the premises to allow him to enter the premises to obtain access to the material.

Further provisions.

152.(1) A production order does not require a person to produce, or give access to, privileged material.

(2) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings.

(3) A production order does not require a person to produce, or give access to, excluded material.

(4) A production order has effect in spite of any restriction on the disclosure of information (however imposed).

(5) An appropriate person may take copies of any material which is produced, or to which access is given, in compliance with a production order.

(6) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the order was made.

(7) But if an appropriate person has reasonable grounds for believing that–

(a) the material may need to be produced for the purposes of any legal proceedings, and

(b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

Computer information.

153.(1) This section applies if any of the material specified in an application for a production order consists of information contained in a computer.

(2) If the order is an order requiring a person to produce the material to an appropriate person for him to take away, it has effect as an order to produce the material in a form in which it can be taken away by him and in which it is visible and legible.

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(3) If the order is an order requiring a person to give an appropriate person access to the material, it has effect as an order to give him access to the material in a form in which it is visible and legible.

Government departments.

154.(1) A production order may be made in relation to material in the possession or control of a Government department.

(2) An order so made may require any officer of the department (whether named in the order or not) who may for the time being be in possession or control of the material to comply with it.

(3) An order containing such a requirement must be served as if the proceedings were civil proceedings against the department.

(4) If an order contains such a requirement–

(a) the person on whom it is served must take all reasonable steps to bring it to the attention of the officer concerned;

(b) any other officer of the department who is in receipt of the order must also take all reasonable steps to bring it to the attention of the officer concerned.

(5) If the order is not brought to the attention of the officer concerned within the period stated in the order (in pursuance of section 149(4)) the person on whom it is served must report the reasons for the failure to a judge.

Supplementary.

155.(1) An application for a production order or an order to grant entry may be made ex parte to a judge in chambers.

(2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to production orders and orders to grant entry.

(3) An application to discharge or vary a production order or an order to grant entry may be made to the court by–

(a) the person who applied for the order;

(b) any person affected by the order.

(4) The court–

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(a) may discharge the order;

(b) may vary the order.

(5) If a police officer or a customs officer applies for a production order or an order to grant entry, an application to discharge or vary the order need not be by the same officer.

(6) References to a person who applied for a production order or an order to grant entry must be construed accordingly.

(7) Production orders and orders to grant entry have effect as if they were orders of the court.

(8) Subsections (2) to (7) do not apply to orders made in Gibraltar for the purposes of a civil recovery investigation.

Search and seizure warrants

Search and seizure warrants.

156.(1) A judge may, on an application made to him by an appropriate person, issue a search and seizure warrant if he is satisfied that either of the requirements for the issuing of the warrant is fulfilled.

(2) The application for a search and seizure warrant must state that–

(a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or

(b) property specified in the application is subject to a civil recovery investigation or a detained cash investigation.

(3) The application must also state–

(a) that the warrant is sought for the purposes of the investigation;

(b) that the warrant is sought in relation to the premises specified in the application;

(c) that the warrant is sought in relation to material specified in the application, or that there are reasonable grounds for believing that there is material falling within section 157(6), (7), (9), (10) or (11) on the premises.

(4) A search and seizure warrant is a warrant authorising an appropriate person–

(a) to enter and search the premises specified in the application for the warrant, and

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(b) to seize and retain any material found there which is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the application is made.

(5) The requirements for the issue of a search and seizure warrant are–

(a) that a production order made in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant, or

(b) that section 157 is satisfied in relation to the warrant.

Requirements where production order not available.

157.(1) This section is satisfied in relation to a search and seizure warrant if–

(a) subsection (2) applies, and

(b) either the first or the second set of conditions is complied with.

(2) This subsection applies if there are reasonable grounds for suspecting that–

(a) in the case of a confiscation investigation, the person specified in the application for the warrant has benefited from his criminal conduct;

(b) in the case of a civil recovery investigation–

(i) the person specified in the application for the warrant holds recoverable property or associated property,

(ii) that person has, at any time, held property that was recoverable property or associated property at the time, or

(iii) the property specified in the application for the warrant is recoverable property or associated property;

(c) in the case of a detained cash investigation into the derivation of cash, the property specified in the application for the warrant, or a part of it, is recoverable property;

(d) in the case of a detained cash investigation into the intended use of cash, the property specified in the application for the warrant, or a part of it, is intended by any person to be used in unlawful conduct;

(e) in the case of a money laundering investigation, the person specified in the application for the warrant has committed a money laundering offence;

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(3) The first set of conditions is that there are reasonable grounds for believing that–

(a) any material on the premises specified in the application for the warrant is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought,

(b) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained, and

(c) it would not be appropriate to make a production order for any one or more of the reasons in subsection (4).

(4) The reasons are–

(a) that it is not practicable to communicate with any person against whom the production order could be made;

(b) that it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises;

(c) that the investigation might be seriously prejudiced unless an appropriate person is able to secure immediate access to the material.

(5) The second set of conditions is that–

(a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that the material falls within subsection (6), (7), (9), (10) or (11),

(b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained, and

(c) any one or more of the requirements in subsection (12) is met.

(6) In the case of a confiscation investigation, material falls within this subsection if it cannot be identified at the time of the application but it–

(a) relates to the person specified in the application, the question whether he has benefited from his criminal conduct or any question as to the extent or whereabouts of his benefit from his criminal conduct, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

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(7) In the case of a civil recovery investigation, material falls within this subsection if it cannot be identified at the time of the application but it–

(a) relates to the person or property specified in the application or to any of the questions listed in subsection (8), and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(8) Those questions are–

(a) where a person is specified in the application, any question as to–

(i) what property the person holds or has held,

(ii) whether the property is or has been recoverable property or associated property, or

(iii) the nature, extent or whereabouts of the property, and

(b) where property is specified in the application, any question as to–

(i) whether the property is or has been recoverable property or associated property,

(ii) who holds it or has held it,

(iii) whether a person who appears to hold or to have held it holds or has held other property,

(iv) whether the other property is or has been recoverable property or associated property, or

(v) the nature, extent or whereabouts of the specified property or the other property.

(9) In the case of a detained cash investigation into the derivation of cash, material falls within this subsection if it cannot be identified at the time of the application but it–

(a) relates to the property specified in the application, the question whether the property, or a part of it, is recoverable property or any other question as to its derivation, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

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(10) In the case of a detained cash investigation into the intended use of cash, material falls within this subsection if it cannot be identified at the time of the application but it–

(a) relates to the property specified in the application or the question whether the property, or a part of it, is intended by any person to be used in unlawful conduct, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(11) In the case of a money laundering investigation, material falls within this subsection if it cannot be identified at the time of the application but it–

(a) relates to the person specified in the application or the question whether he has committed a money laundering offence, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(12) The requirements are–

(a) that it is not practicable to communicate with any person entitled to grant entry to the premises;

(b) that entry to the premises will not be granted unless a warrant is produced;

(c) that the investigation might be seriously prejudiced unless an appropriate person arriving at the premises is able to secure immediate entry to them.

(13) An appropriate person for the purposes of this section is–

(a) the Attorney General, if the warrant is sought for the purposes of a civil recovery investigation;

(b) a police officer or customs officer, if the warrant is sought for the purposes of a detained cash investigation, a confiscation investigation or a money laundering investigation;

Further provisions: general.

158.(1) A search and seizure warrant does not confer the right to seize privileged material.

(2) Privileged material is any material which a person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the Supreme Court.

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(3) A search and seizure warrant does not confer the right to seize excluded material.

Further provisions: confiscation and money laundering.

159.(1) This section applies to–

(a) search and seizure warrants sought for the purposes of a confiscation investigation, a money laundering investigation or a detained cash investigation, and

(b) powers of seizure under them.

(2) In relation to such warrants and powers, the Minister may make an order, subject to any specified modifications, which applies the provisions of the Criminal Procedure and Evidence act 2011.

Further provisions: civil recovery and detained cash.

160.(1) This section applies to search and seizure warrants sought for the purposes of civil recovery investigations.

(2) An application for a warrant may be made ex parte to a judge.

(3) A warrant may be issued subject to conditions.

(4) A warrant continues in force until the end of the period of one month starting with the day on which it is issued.

(5) A warrant authorises the person it names to require any information which is held in a computer and is accessible from the premises specified in the application for the warrant, and which the named person believes relates to any matter relevant to the investigation, to be produced in a form–

(a) in which it can be taken away, and

(b) in which it is visible and legible.

(6) A warrant may include provision authorising a person who is exercising powers under it to do other things which–

(a) are specified in the warrant, and

(b) need to be done in order to give effect to it.

(7) Copies may be taken of any material seized under a warrant.

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(8) Material seized under a warrant may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the warrant was issued.

(9) But if there are reasonable grounds for believing that–

(a) the material may need to be produced for the purposes of any legal proceedings, and

(b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

Disclosure orders

Disclosure orders.

161.(1) A judge may, on an application made to him by the appropriate person, make a disclosure order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) An appropriate person for the purposes of this section is the Attorney General or a customs officer or a police officer.

(3) No application for a disclosure order may be made in relation to a detained cash investigation.

(4) The application for a disclosure order must state that–

(a) a person specified in the application is subject to a confiscation investigation which is being carried out by an appropriate person and the order is sought for the purposes of the investigation, or

(b) a person specified in the application or property specified in the application is subject to a civil recovery investigation and the order is sought for the purposes of the investigation.

(5) A disclosure order is an order authorising a police or customs officer give to any person police or customs officer considers has relevant information notice in writing requiring him to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, any or all of the following–

(a) answer questions, either at a time specified in the notice or at once, at a place so specified;

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(b) provide information specified in the notice, by a time and in a manner so specified;

(c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

(6) Relevant information is information (whether or not contained in a document) which police or customs officer concerned considers to be relevant to the investigation.

(7) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to him.

Requirements for making of disclosure order.

162.(1) These are the requirements for the making of a disclosure order.

(2) There must be reasonable grounds for suspecting that–

(a) in the case of a confiscation investigation, the person specified in the application for the order has benefited from his criminal conduct;

(b) in the case of a civil recovery investigation–

(i) the person specified in the application for the order holds recoverable property or associated property,

(ii) that person has, at any time, held property that was recoverable property or associated property at the time, or

(iii) the property specified in the application for the order is recoverable property or associated property;

(3) There must be reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(4) There must be reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Offences.

163.(1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed on him under a disclosure order.

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(2) A person guilty of an offence under subsection (1) is liable on summary conviction to–

(a) imprisonment for a term not exceeding six months,

(b) a fine not exceeding level 5 on the standard scale, or

(c) both.

(3) A person commits an offence if, in purported compliance with a requirement imposed on him under a disclosure order, he–

(a) makes a statement which he knows to be false or misleading in a material particular, or

(b) recklessly makes a statement which is false or misleading in a material particular.

(4) A person guilty of an offence under subsection (3) is liable–

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or

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

Statements.

164.(1) A statement made by a person in response to a requirement imposed on him under a disclosure order may not be used in evidence against him in criminal proceedings.

(2) But subsection (1) does not apply–

(a) in the case of proceedings under Part 2,

(b) on a prosecution for an offence under section 163(1) or (3),

(c) on a prosecution for an offence for perjury or false statements, or

(d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(d) against a person unless–

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

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by him or on his behalf in the proceedings arising out of the prosecution.

Further provisions.

165.(1) A disclosure order does not confer the right to require a person to answer any privileged question, provide any privileged information or produce any privileged document, except that a lawyer may be required to provide the name and address of a client of his.

(2) A privileged question is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings.

(3) Privileged information is any information which the person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings.

(4) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings.

(5) A disclosure order does not confer the right to require a person to produce excluded material.

(6) A disclosure order has effect in spite of any restriction on the disclosure of information (however imposed).

(7) A police or customs officer may take copies of any documents produced in compliance with a requirement to produce them which is imposed under a disclosure order.

(8) Documents so produced may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the investigation for the purposes of which the order was made.

(9) But if a police or customs officer has reasonable grounds for believing that–

(a) the documents may need to be produced for the purposes of any legal proceedings, and

(b) they might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

Supplementary.

166.(1) An application for a disclosure order may be made ex parte to a judge.

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(2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to disclosure orders.

(3) An application to discharge or vary a disclosure order may be made to the court by–

(a) the person who applied for the order;

(b) any person affected by the order.

(4) The court–

(a) may discharge the order;

(b) may vary the order.

(5) Subsections (2) to (3) do not apply to orders made for the purposes of a civil recovery investigation.

Unexplained wealth orders

Unexplained wealth orders.

166A.(1) The Supreme Court may, on an application made by the enforcement authority, make an unexplained wealth order in respect of any property if the court is satisfied that each of the requirements for the making of the order is fulfilled.

(2) An application for an order must-

(a) specify or describe the property in respect of which the order is sought; and

(b) specify the person whom the enforcement authority thinks holds the property ("the respondent") (and the person specified may include a person outside Gibraltar).

(3) In a case where the respondent is not an individual, the application may also specify a person who is a responsible officer of the respondent (and a person specified may include a person outside Gibraltar).

(4) An unexplained wealth order is an order requiring the respondent or any responsible person specified in the order (a "specified responsible officer") to provide a statement-

(a) setting out the nature and extent of the respondent's interest in the property in respect of which the order is made;

(b) explaining how the respondent or any other specified person obtained the property (including, in particular, how any costs incurred in obtaining it were met);

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(c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order; and

(d) setting out such other information in connection with the property as may be specified in the order.

(5) The order must specify-

(a) the form and manner in which the statement is to be given, including whether it is to be given in writing or by video recording;

(b) the person to whom it is to be given; and

(c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.

(6) The order may, in connection with requiring the respondent or any specified responsible officer to provide the statement mentioned in subsection (4), also require them to produce documents of a kind specified or described in the order and in a form and manner specified in the order.

(7) The respondent or any specified responsible officer must comply with the requirements imposed by an unexplained wealth order within whatever period the court may specify (and different periods may be specified in relation to different requirements).

(8) For the purposes of this Chapter, each of the following is a "responsible officer" of the respondent (in a case where the respondent is not an individual)-

(a) any director of the respondent, including any person occupying the position of a director, by whatever name called;

(b) any member of a body of the respondent equivalent to a board of directors;

(c) any other manager, secretary or similar officer of the respondent;

(d) where the respondent is a partnership, a partner or a member of the partnership;

(e) any person in accordance with whose directions or instructions the board of directors or equivalent body of the respondent are accustomed to act.

(9) A single unexplained wealth order can be made in respect of more than one item of property.

(10) In this Chapter, "enforcement authority" means-

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(a) the Royal Gibraltar Police;

(b) HM Customs;

(c) the Attorney General; or

(d) any other person designated by the Minister with responsibility for justice by Order.

Requirements for making of unexplained wealth order.

166B.(1) These are the requirements for the making of an unexplained wealth order in respect of any property.

(2) The Supreme Court must be satisfied that there is reasonable cause to believe that-

(a) the respondent holds the property; and

(b) the value of the property is greater than £50,000.

(3) The Supreme Court must be satisfied that there are reasonable grounds for suspecting-

(a) that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property; or

(b) that the property has been or represents property obtained through unlawful conduct (within the meaning given by section 71).

(4) The Supreme Court must be satisfied that-

(a) the respondent is a politically exposed person; or

(b) there are reasonable grounds for suspecting that –

(i) the respondent is, or has been, involved in serious crime (whether in Gibraltar or elsewhere); or

(ii) a person connected with the respondent is, or has been, so involved.

(5) It does not matter for the purposes of subsection (2)(a)-

(a) whether or not there are other persons who also hold the property;

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(b) whether the property was obtained by the respondent before or after the coming into force of this section.

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

(a) regard is to be had to any mortgage, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purposes of obtaining the property;

(b) it must be assumed by the court that, irrespective of the nature of his interest, the respondent obtained the property for a price equivalent to its market value;

(c) income is "lawfully obtained" if it is obtained lawfully under the laws of the country from where the income arises;

(d) "known" sources of the respondent's income are the sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application for the order;

(e) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining the property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest.

(7) In subsection (4)(a), "politically exposed person" means a person who is-

(a) an individual who is, or has been, entrusted with prominent public functions by an international organisation or by a State other than-

(i) Gibraltar or the United Kingdom; or

(ii) an EEA State;

(b) a family member of a person within paragraph (a);

(c) known to be a close associate of a person within that paragraph; or

(d) otherwise connected with a person within that paragraph.

(8) Section 20A applies for the purposes of determining-

(a) whether a person has been entrusted with prominent public functions (see the definition of "politically exposed person");

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(b) whether a person is a family member (see the definition of "family members");

(c) whether a person is known to be a close associate of another (see the definition of "persons known to be close associates").

(9) For the purposes of this section-

(a) section 166X applies in determining whether a person is involved in serious crime in Gibraltar or elsewhere;

(b) paragraph 9 of Schedule 4 to the Income Tax Act 2010 ("connected" persons) applies in determining whether a person is connected with another.

(10) Where the property in respect of which the order is sought comprises more than one item of property, the reference in subsection (2)(b) to the value of the property is to the total value of those items.

Effect of order: cases of non-compliance.

166C.(1) This section applies in a case where the respondent and the specified responsible officer (if any), between them, fail, without reasonable excuse, to comply with the requirements imposed by an unexplained wealth order in respect of any property before the end of the response period.

(2) The property is to be presumed to be recoverable property for the purposes of any proceedings taken in respect of the property under Part V, unless the contrary is shown.

(3) The presumption in subsection (2) applies in relation to property-

(a) only so far as relating to the respondent's interest in the property; and

(b) only if the value of that interest is greater than the sum specified in section 166B(2)(b).

(4) It is for the court hearing the proceedings under Part V in relation to which reliance is placed on the presumption to determine the matters in subsection (3).

(5) The "response period" is whatever period the court specifies under section 166A(7) as the period within which the requirements imposed by the order are to be complied with (or the period ending the latest, if more than one is specified in respect of different requirements).

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

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(a) a respondent or a specified responsible officer who purports to comply with the requirements imposed by an unexplained wealth order is not to be taken to have failed to comply with the order (see instead section 166D);

(b) where an unexplained wealth order imposes more than one requirement the respondent and the specified responsible officer (if any) are to be taken to have failed to comply with the requirements imposed by the order unless each of the requirements is complied with or is purported to be complied with.

(7) Subsections (8) and (9) apply in determining the respondent's interest for the purposes of subsection (3) in a case where the respondent to the unexplained wealth order-

(a) is connected with another person who is, or has been, involved in serious crime (see subsection (4)(b)(ii) of section 166B); or

(b) is a politically exposed person of a kind mentioned in paragraph (b), (c) or (d) of subsection (7) of that section (family member, known close associates etc of individual entrusted with prominent public functions).

(8) In a case within subsection (7)(a), the respondent's interest is to be taken to include any interest in the property of the person involved in serious crime with whom the respondent is connected.

(9) In a case within subsection (7)(b), the respondent's interest is to be taken to include any interest in the property of the person mentioned in subsection (7)(a) of section 166B.

(10) Where an unexplained wealth order is made in respect of property comprising more than one item of property, the reference in subsection (3)(b) to the value of the respondent's interest in the property is to the total value of the respondent's interest in those items.

Effect of order: cases of compliance or purported compliance.

166D.(1) This section applies in a case where, before the end of the response period (as defined by section 166C(5)), the respondent and the specified responsible officer (if any) between them comply, or purport to comply, with all the requirements imposed by an unexplained wealth order in respect of any property in relation to which the order is made.

(2) If an interim freezing order has effect in relation to the property (see section 166L), the enforcement authority must determine what enforcement or investigatory proceedings, if any, it considers ought to be taken in relation to the property.

(3) A determination under subsection (2) must be made within the period of 60 days starting with the day of compliance, or that period as it may be extended by virtue of section 166E or 166F (the "determination period").

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(4) If the determination under subsection (2) is that no further enforcement or investigatory proceedings ought to be taken in relation to the property, the enforcement authority must notify the Supreme Court of that fact as soon as reasonably practicable (and in any event before the end of the determination period).

(5) If there is no interim freezing order in effect in relation to the property, the enforcement authority may (at any time) determine what, if any, enforcement or investigatory proceedings it considers ought to be taken in relation to the property.

(6) A determination under this section to take no further enforcement or investigatory proceedings in relation to any property does not prevent such proceedings being taken subsequently (whether as a result of new information or otherwise and whether or not by the enforcement authority) in relation to the property.

(7) For the purposes of this section-

(a) references to the day of compliance are to the day on which the requirements imposed by the order are complied with (or, if the requirements are complied with over more than one day, the last of those days); and

(b) where an order requires the sending of information in writing to, or the production of documents at, an address specified in the order, compliance with the order (so far as relating to that requirement) occurs when the written information is received, or the documents are produced, at that address,

and in paragraphs (a) and (b) references to compliance include purported compliance.

(8) In this section "enforcement or investigatory proceedings" means any proceedings in relation to property taken under-

(a) Part IV (confiscation of the proceeds of criminal conduct);

(b) Part V (civil recovery of the proceeds etc. of unlawful conduct); or

(c) this Chapter.

Extension of period for making determination where interim freezing order has been made.

166E.(1) The Supreme Court may, on an application made by the enforcement authority, extend the determination period if satisfied that-

(a) the enforcement authority is working diligently and expeditiously towards making a determination under section 166D(2);

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(b) further time is needed for the authority to make that determination; and

(c) it is reasonable in all the circumstances for the period to be extended.

(2) The application must be made before the determination period would otherwise end.

(3) An extension of the determination period must end no later than the end of the period of 63 days beginning with the day after that on which the period would otherwise end.

(4) Where the determination period is extended under subsection (1), it may be further extended by the Supreme Court (and subsections (2) and (3) apply in relation to any further extension as they apply in relation to the first one).

(5) But the determination period as extended must not in total exceed the period of 186 days starting with the day of compliance (within the meaning given by section 166D(7)(a)).

Extension of period pending determination of proceedings etc.

166F.(1) Subsection (2) applies where-

(a) an application is made to the Supreme Court under section 166E for the extension (or further extension) of the determination period; and

(b) the period would (apart from that subsection) end before the court determines the application or it is otherwise disposed of.

(2) The determination period is extended from the time when it would otherwise end until-

(a) the court determines the application or it is otherwise disposed of; or

(b) if earlier, the end of the period of 31 days beginning with the day after that on which the period would otherwise have ended.

(3) Subsection (4) applies where-

(a) proceedings on an appeal in respect of a decision on an application under section 166E have been brought; and

(b) the determination period would (apart from that subsection) end before the proceedings are finally determined or otherwise disposed of.

(4) The determination period is extended from the time when it would otherwise end until-

(a) the proceedings are finally determined or otherwise disposed of; or

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(b) if earlier, the end of the period mentioned in subsection (2)(b).

(5) Subsection (6) applies where-

(a) an application is made to the court under section 166E for an extension of the determination period;

(b) the court refuses to grant the application; and

(c) the period would (apart from that subsection) end before the end of the 5 day period.

(6) The determination period is extended from the time when it would otherwise end until-

(a) the end of the 5 day period; or

(b) if proceedings on an appeal against the decision are brought before the end of the 5 day period, the time when those proceedings are brought.

(7) The "5 day period" is the period of 5 working days beginning with the day on which the court refuses to grant the application; and for these purposes "working day" means a day other than-

(a) a Saturday or a Sunday;

(b) Christmas Day or Good Friday; or

(c) a day which is a bank holiday under the Banking and Financial Dealings Act.

(8) The restriction on the overall extension of the determination period mentioned in section 166E(5) applies to an extension of the period in accordance with any provision of this section as it applies to an extension under an order of the court.

Offence.

166G.(1) A person commits an offence if, in purported compliance with a requirement imposed by an unexplained wealth order, the person-

(a) makes a statement that the person knows to be false or misleading in a material particular; or

(b) recklessly makes a statement that is false or misleading in a material particular.

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

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(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both;

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine, or to both.

Statements.

166H.(1) A statement made by a person in response to a requirement imposed by an unexplained wealth order may not be used in evidence against that person in criminal proceedings.

(2) Subsection (1) does not apply-

(a) in the case of proceedings under Part IV;

(b) on a prosecution for an offence under section 166G;

(c) on a prosecution for an offence for perjury or false statements; or

(d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(d) against a person unless-

(a) evidence relating to it is adduced; or

(b) a question relating to it is asked,

by the person or on the person's behalf in proceedings arising out of the prosecution.

Disclosure of information, copying of documents, etc.

166I.(1) An unexplained wealth order has effect in spite of any restriction on the disclosure of information (however imposed).

(2) But subsections (1) to (5) of section 165 (rights in connection with privileged information, questions and material) apply in relation to requirements imposed by an unexplained wealth order as they apply in relation to requirements imposed under a disclosure order.

(3) The enforcement authority may take copies of any documents produced by the respondent or any specified responsible officer in connection with complying with the requirements imposed by an unexplained wealth order.

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(4) Documents so produced may also be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with an investigation of a kind mentioned in section 146 in relation to the property in respect of which the unexplained wealth order is made.

(5) But if the enforcement authority has reasonable grounds to believe that the documents-

(a) may need to be produced for the purposes of any legal proceedings; and

(b) might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

Holding of property: trusts and company arrangements etc.

166J.(1) This section applies for the purposes of sections 166A and 166B.

(2) The cases in which a person (P) is to be taken to "hold" property include those where-

(a) P has effective control over the property;

(b) P is the trustee of a settlement in which the property is comprised;

(c) P is a beneficiary (whether actual or potential) in relation to such a settlement.

(3) A person is to be taken to have "effective control" over property if, from all the circumstances, it is reasonable to conclude that the person-

(a) exercises;

(b) is able to exercise; or

(c) is entitled to acquire,

direct or indirect control over the property.

(4) Where a person holds property by virtue of subsection (2) references to the person obtaining the property are to be read accordingly.

(5) References to a person who holds or obtains property include any body corporate, whether incorporated or formed under the law of Gibraltar or in a country or territory outside Gibraltar.

(6) For further provision about how to construe references to the holding of property, see section 183.

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Supplementary.

166K.(1) An application for an unexplained wealth order may be made without notice.

(2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to unexplained wealth orders.

(3) An application to discharge or vary an unexplained wealth order may be made by-

(a) the enforcement authority; or

(b) the respondent or any specified responsible officer.

(4) The court-

(a) may discharge the order;

(b) may vary the order.

(5) An unexplained wealth order may include a requirement that any application to discharge the order must be made by a specified date.

Application for interim freezing order.

166L.(1) This section applies where the Supreme Court makes an unexplained wealth order in respect of any property.

(2) The court may make an interim freezing order in respect of the property if the court considers it necessary to do so for the purposes of avoiding the risk of any recovery or confiscation order that might subsequently be obtained being frustrated.

(3) An interim freezing order is an order that prohibits the respondent to the unexplained wealth order, and any other person with an interest in the property, from in any way dealing with the property (subject to any exclusions under section 166N).

(4) An interim freezing order-

(a) may be made only on the application of the enforcement authority that applied for the unexplained wealth order to which the interim freezing order relates;

(b) must be made in the same proceedings as those in which the unexplained wealth order is made; and

(c) may be combined in one document with the unexplained wealth order.

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(5) If an application for an unexplained wealth order in respect of any property is made without notice, an application for an interim freezing order in respect of the property must also be made without notice.

Variation and discharge of interim freezing order.

166M.(1) The Supreme Court may at any time vary or discharge an interim freezing order.

(2) The Supreme Court must discharge an interim freezing order, so far as it has effect in relation to any property, in each of the following three cases.

(3) The first case is where-

(a) the applicable 48 hour period has ended; and

(b) a relevant application has not been made before the end of that period in relation to the property concerned.

(4) The second case is where-

(a) a relevant application has been made before the end of the applicable 48 hour period in relation to the property concerned; and

(b) proceedings on the application (including any on appeal) have been determined or otherwise disposed of.

(5) The third case is where the court has received a notification in relation to the property concerned under section 166D(4) (notification from enforcement authority of no further proceedings).

(6) The "applicable 48 hour period" is to be read as follows-

(a) in a case where the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order before the end of the response period, it is the period of 48 hours beginning with the day after the day with which the determination period (see section 166D) ends;

(b) in any other case, it is the period of 48 hours beginning with the day after the day with which the response period ends.

(7) In calculating a period of 48 hours for the purposes of subsection (6), no account is to be taken of-

(a) any Saturday or Sunday;

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(b) Christmas Day;

(c) Good Friday; or

(d) any day that is a bank holiday under the Banking and Financial Dealings Act.

(8) Section 166D(7) applies for the purposes of subsection (6) in determining whether a person complies, or purports to comply, with the requirements imposed by an unexplained wealth order and when such compliance, or purported compliance, takes place.

(9) Before exercising power under this section to vary or discharge an interim freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(10) Subsection (9) does not apply where the court is acting as required by subsection (2).

(11) In this section-

"relevant application" means an application for-

(a) a restraint order under section 59;

(b) a property freezing order; or

(c) an interim receiving order;

"response period" has the meaning given by section 166C(5).

Exclusions.

166N.(1) The power to vary an interim freezing order includes (amongst other things) power to make exclusions as follows-

(a) power to exclude property from the order; and

(b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may (amongst other things) make provision for the purpose of enabling any person-

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(a) to meet the person's reasonable living expenses; or

(b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that the person has incurred, or may incur, in respect of proceedings under this Chapter, it must ensure that the exclusion-

(a) is limited to reasonable legal expenses that the person has reasonably incurred or reasonably incurs;

(b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion; and

(c) is made subject to the same conditions as would be the required conditions (see section 113) if the order had been made under section 74 (in addition to any conditions under subsection (4)).

(6) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses in respect of proceedings under this Chapter must have regard to the desirability of the person being represented in any proceedings under this Chapter in which the person is a participant.

(7) If excluded property is not specified in the order it must be described in the order in general terms.

Restrictions on proceedings and remedies.

166O.(1) While an interim freezing order has effect-

(a) the Supreme Court may stay any action, execution or other legal process in respect of the property to which the order applies; and

(b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.

(2) If a court in which proceedings are pending in respect of any property is satisfied that an interim freezing order has been applied for or made in respect of the property, it may-

(a) stay the proceedings; or

(b) allow them to continue on any terms it thinks fit.

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(3) If an interim freezing order applies to a tenancy of any premises, a right of forfeiture in relation to the premises is exercisable-

(a) only with the leave of the Supreme Court; and

(b) subject to any terms that the court may impose.

(4) The reference in subsection (3) to a "right of forfeiture" in relation to premises is to the right of a landlord or other person to whom rent is payable to exercise a right of forfeiture by peaceable re-entry to the premises in respect of any failure by the tenant to comply with a term or condition of the tenancy.

(5) Before exercising a power conferred by this section, the court must (as well as giving the parties to any proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

Receivers in connection with interim freezing orders.

166P.(1) This section applies where the Supreme Court makes an interim freezing order on an application by the enforcement authority.

(2) The court may, on an application by the enforcement authority, by order appoint a receiver in respect of any property to which the interim freezing order applies.

(3) An application under subsection (2) may be made at the same time as the application for the interim freezing order or at any time afterwards.

(4) The application may be made without notice if the circumstances of the case are such that notice of the application would prejudice the right of the enforcement authority to obtain a recovery in respect of any property.

(5) In its application the enforcement authority must nominate a suitably qualified person for appointment as a receiver.

(6) The person nominated may be a member of staff of the enforcement authority.

(7) The enforcement authority may apply a sum received by it under section 103(2) in making payment of the remuneration and expenses of a receiver appointed under this section.

(8) Subsection (7) does not apply in relation to the remuneration of the receiver if that person is a member of staff of the enforcement authority (but it does apply in relation to such remuneration if the receiver is a person providing services under arrangements made by the enforcement authority).

Powers of receivers appointed under section 166P.

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166Q.(1) If the Supreme Court appoints a receiver under section 166P on an application by the enforcement authority, the court may act under this section on the application of the enforcement authority.

(2) The court may by order authorise or require the receiver-

(a) to exercise management powers in relation to any property in respect of which the receiver is appointed, including-

(i) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes,

(ii) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business,

(iii) incurring capital expenditure in respect of the property;

(b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it).

(3) The court may by order require any person in respect of whose property the receiver is appointed-

(a) to bring the property to a place in Gibraltar specified by the receiver or to place it in the custody of the receiver (if in either case the person is able to do so);

(b) to do anything the person is reasonably required to do by the receiver for the preservation of the property.

(4) The court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in that person's possession or control to a place in Gibraltar specified by the receiver or to place them in the custody of the receiver.

(5) Any prohibition on dealing with property imposed by an interim freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.

(6) Subsection (7) applies in a case where-

(a) the receiver deals with property that is not property in respect of which the receiver was appointed under section 166P; but

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(b) at the time of dealing with the property the receiver believed on reasonable grounds that he or she was entitled to do so by virtue of the appointment.

(7) The receiver is not liable to any person in respect of any loss or damage resulting from the receiver's dealing with the property.

(8) But subsection (7) does not apply to the extent that the loss or damage is caused by the receiver's negligence.

Supervision of section 166P receiver and variations.

166R.(1) Any of the following persons may at any time apply to the Supreme Court for directions as to the exercise of the functions of a receiver appointed under section 166P-

(a) the receiver;

(b) a party to the proceedings for the appointment of the receiver or the interim freezing order concerned;

(c) a person affected by an action taken by the receiver;

(d) a person who may be affected by an action proposed to be taken by the receiver.

(2) Before it gives directions under subsection (1) the court must give an opportunity to be heard to-

(a) the receiver;

(b) the parties to the proceedings for the appointment of the receiver and for the interim freezing order concerned;

(c) a person who may be interested in the application under subsection (1).

(3) The court may at any time vary or discharge-

(a) the appointment of a receiver under section 166P;

(b) an order under section 166Q; or

(c) directions under this section.

(4) Before exercising a power under subsection (3) the court must give an opportunity to be heard to-

(a) the receiver;

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(b) the parties to the proceedings for the appointment of the receiver, for the order under section 166Q or (as the case may be) for the directions under this section;

(c) the parties to the proceedings for the interim freezing order concerned;

(d) any person who may be affected by the court's decision.

Registration

166S. Section 83 (Registration) applies in relation to interim freezing orders as it applies in relation to property freezing orders under section 74.

Compensation.

166T.(1) Where an interim freezing order in respect of any property is discharged, the person to whom the property belongs may make an application to the Supreme Court for the payment of compensation.

(2) The application must be made within the period of three months beginning with the discharge of the interim freezing order.

(3) The court may order compensation to be paid to the applicant only if satisfied that-

(a) the applicant has suffered loss as a result of the making of the interim freezing order;

(b) there has been a serious default on the part of the enforcement authority that applied for the order; and

(c) the order would not have been made had the default not occurred.

(4) Where the court orders the payment of compensation-

(a) the compensation is payable by the enforcement authority that applied for the order; and

(b) the amount of compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

Enforcement abroad: enforcement authority.

166U(1). This section applies if-

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(a) the Supreme Court makes an unexplained wealth order in respect of any property;

(b) it appears to the enforcement authority that the risk mentioned in section 166L(2) applies in relation to the property; and

(c) the enforcement authority believes that the property is in a country or territory outside Gibraltar (the receiving country or territory).

(2) The enforcement authority may send a request for assistance in relation to the property to the Minister with responsibility for justice with a view to it being forwarded under this section.

(3) The Minister with responsibility for justice may forward the request for assistance to the government of the receiving country or territory.

(4) A request for assistance under this section is a request to the government of the receiving country or territory-

(a) to secure that any person is prohibited from dealing with the property;

(b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

Enforcement abroad: receiver.

166V.(1) This section applies if-

(a) an interim freezing order has effect in relation to property; and

(b) the receiver appointed under section 166P in respect of the property believes that it is in a country or territory outside Gibraltar (the receiving country or territory).

(2) The receiver may send a request for assistance in relation to the property to the Minister with responsibility for justice with a view to it being forwarded under this section.

(3) The Minister with responsibility for justice must forward the request for assistance to the government of the receiving country or territory.

(4) A request for assistance under this section is a request to the government of the receiving country or territory-

(a) to secure that any person is prohibited from dealing with the property;

(b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

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Costs orders.

166W.(1) This section applies in the following cases-

(a) the enforcement authority has made an application for an unexplained wealth order under section 166A;

(b) the enforcement authority has made an application for the determination period to be extended under section 166E;

(c) an application has been made to discharge or vary an unexplained wealth order;

(d) the enforcement authority has made an application for an interim freezing order under section 166L;

(e) an application has been made to discharge or vary an interim freezing order;

(f) an application has been made in the circumstances referred to in section 166O to-

(i) stay an action, execution or other legal process,

(ii) grant leave to levy distress,

(iii) stay proceedings in respect of property or allow them to continue, or

(iv) grant leave to exercise a right of forfeiture in relation to a tenancy;

(g) the enforcement authority has made an application for an order for the appointment of a receiver under section 166P;

(h) the enforcement authority has made an application for an order under section 166Q;

(i) an application has been made for directions to a receiver under section 166R;

(j) an application has been made to discharge or vary-

(i) the appointment of a receiver under section 166P,

(ii) an order under section 166Q, or

(iii) directions under section 166R;

(k) an application has been made for compensation under section 166T;

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(l) the Supreme Court has of its own motion exercised a power to do anything an application mentioned in paragraphs (a) to (k) may be made for;

(m) an application has been made for permission to appeal in relation to anything mentioned in paragraphs (a) to (l).

(2) The court may not make an order that any costs of proceedings relating to a case to which this section applies (including appeal proceedings) are payable by the enforcement authority to a respondent or a specified responsible officer in respect of the involvement of the respondent or the officer in those proceedings, unless-

(a) the enforcement authority acted unreasonably in making or opposing the application to which the proceedings relate, or in supporting or opposing the making of the order to which the proceedings relate, or

(b) the enforcement authority acted dishonestly or improperly in the course of the proceedings.

Involvement in serious crime.

166X.(1) For the purposes of section 166B, a person has been involved in serious crime in Gibraltar if he-

(a) has committed a serious offence in Gibraltar;

(b) has facilitated the commission by another person of a serious offence in Gibraltar; or

(c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in Gibraltar (whether or not such an offence was committed).

(2) In subsection (1) "a serious offence in Gibraltar" means an offence under the law of Gibraltar which, at the time when the court is considering the application or matter in question-

(a) is specified, or falls within a description specified, in Schedule 10; or

(b) is one which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it were so specified.

(3) For the purposes of section 166B, involvement in serious crime in Gibraltar is any one or more of the following-

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(a) the commission of a serious offence in Gibraltar;

(b) conduct which facilitates the commission by another person of a serious crime in Gibraltar;

(c) conduct which is likely to facilitate the commission, by the person whose conduct it is or another person, of a serious offence in Gibraltar (whether or not such an offence is committed).

(4) For the purposes of section 166B, a person has been involved in serious crime elsewhere than in Gibraltar if he-

(a) has committed a serious offence in a country outside Gibraltar;

(b) has facilitated the commission by another person of a serious offence in a country outside Gibraltar; or

(c) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in a country outside Gibraltar (whether or not such an offence was committed).

(5) In subsection (4) "a serious offence in a country outside Gibraltar" means an offence under the law of a country outside Gibraltar which, at the time when the court is considering the application or matter in question-

(a) would be an offence under the law of Gibraltar if committed in or as regards Gibraltar; and

(b) either-

(i) would be an offence which is specified, or falls within a description specified, in Schedule 10 if committed in or as regards Gibraltar; or

(ii) is conduct which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it meets the test in subparagraph (i).

(6) An act punishable under the law of a country outside Gibraltar constitutes an offence under that law for the purposes of subsection (5), however it is described in that law.

(7) In considering for the purposes of section 166B, whether a person has committed a serious offence-

(a) the court must decide that the person has committed the offence if-

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(i) he has been convicted of the offence; and

(ii) the conviction has not been quashed on appeal nor has the person been pardoned of the offence; but

(b) the court must not otherwise decide that the person has committed the offence.

(8) In deciding for the purposes of section 166B whether a person (the "respondent") facilitates the commission by another person of a serious offence, the court must ignore-

(a) any act that the respondent can show to be reasonable in the circumstances; and

(b) subject to this, his intentions, or any other aspect of his mental state, at the time.

(9) In deciding for the purposes of section 166B whether a person ("the respondent") conducts himself in a way that is likely to facilitate the commission by himself or another person of a serious offence (whether or not such an offence is committed), the court must ignore-

(a) any act that the respondent can show to be reasonable in the circumstances; and

(b) subject to this, his intentions, or any other aspect of his mental state, at the time.

(10) The Minister with responsibility for justice may by order amend Schedule 10.

(11) In this section-

"act" and "conduct" include omissions and statements; and

"country" includes territory.

Code of Practice.

166Y.(1) The Minister with responsibility for justice may issue a code of practice as to the exercise by the enforcement authority of its functions under sections 166A to 166X.

(2) The code must be published and comes into operation on the date of publication.

(3) The enforcement authority must comply with a code of practice which is in operation under this section in the exercise of any function it has under sections 166A to 166X.

(4) If the enforcement authority fails to comply with any provision of such a code of practice he is not by reason only of that failure liable in any criminal or civil proceedings.

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(5) But the code of practice is admissible in evidence in such proceedings and a court may take account of any failure to comply with its provisions in determining any question in the proceedings.

(6) The Minister with responsibility for justice may from time to time revise a code previously brought into operation under this section; and the preceding provisions of this section apply to a revised code as they apply to the code as first prepared.

Customer information orders

Customer information orders.

167.(1) A judge may, on an application made to him by an appropriate person, make a customer information order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) No application for a customer information order may be made in relation to a detained cash investigation.

(3) The application for a customer information order must state that–

(a) a person specified in the application is subject to a confiscation investigation, a civil recovery investigation or a money laundering investigation, or

(b) property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property.

(4) The application must also state that–

(a) the order is sought for the purposes of the investigation;

(b) the order is sought against the financial institution or financial institutions specified in the application.

(5) An application for a customer information order may specify–

(a) all financial institutions,

(b) a particular description, or particular descriptions, of financial institutions, or

(c) a particular financial institution or particular financial institutions.

(6) A customer information order is an order that a financial institution covered by the application for the order must, on being required to do so by notice in writing given by an

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appropriate person, provide any such customer information as it has relating to the person specified in the application.

(7) A financial institution which is required to provide information under a customer information order must provide the information to an appropriate person in such manner, and at or by such time, as an appropriate person requires.

(8) If a financial institution on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it.

Meaning of customer information.

168.(1) "Customer information", in relation to a person and a financial institution, is information whether the person holds, or has held, an account or accounts or any safe deposit box at the financial institution (whether solely or jointly with another) and (if so) information as to-

(a) the matters specified in subsection (2) if the person is an individual;

(b) the matters specified in subsection (3) if the person is a company or limited liability partnership or a similar body incorporated or otherwise established outside Gibraltar.

(2) The matters referred to in subsection (1)(a) are–

(a) the account number or numbers or the number of any safe deposit box;

(b) the person's full name;

(c) his date of birth;

(d) his most recent address and any previous addresses;

(e) in the case of an account or accounts, the date or dates on which he began to hold the account or accounts and, if he has ceased to hold the account or any of the accounts, the date or dates on which he did so;

(f) in the case of any safe deposit box, the date on which the box was made available to him and if the box has ceased to be available to him the date on which it so ceased;

(g) such evidence of his identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;

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(h) the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution jointly with him;

(i) the account number or numbers of any other account or accounts held at the financial institution to which he is a signatory and details of the person holding the other account or accounts.

(3) The matters referred to in subsection (1)(b) are–

(a) the account number or numbers or the number of any safe deposit box;

(b) the person's full name;

(c) a description of any business which the person carries on;

(d) the country or territory in which it is incorporated or otherwise established and any number allocated to it by virtue of section 15 of the Companies Act 2014 or corresponding legislation of any country or territory outside Gibraltar;

(e) any number assigned to it for the purposes of income or other tax;

(f) its registered office, and any previous registered offices by virtue of the Companies Act 2014 (or corresponding earlier legislation) or anything similar under corresponding legislation of any country or territory outside Gibraltar;

(g) its registered office, and any previous registered offices, under the Limited Liability Partnerships Act 2008 or anything similar under corresponding legislation of any country or territory;

(h) in the case of an account or accounts, the date or dates on which it began to hold the account or accounts and, if it has ceased to hold the account or any of the accounts, the date or dates on which it did so;

(i) in the case of any safe deposit box, the date on which the box was made available to it and if the box has ceased to be available to it the date on which it so ceased;

(j) such evidence of its identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;

(k) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account or any of the accounts.

(4) The Minister may by order provide for information of a description specified in the order–

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(a) to be customer information, or

(b) no longer to be customer information.

(5) A "safe deposit box" includes any procedure under which a financial institution provides a facility to hold items for safe keeping on behalf of another person.

Requirements for making of customer information order.

169.(1) These are the requirements for the making of a customer information order.

(2) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct.

(3) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that the person specified in the application–

(a) holds recoverable property or associated property, or

(b) has, at any time, held property that was recoverable property or associated property at the time.

(4) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.

(5) In the case of any investigation, there must be reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(6) In the case of any investigation, there must be reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Offences.

170.(1) A financial institution commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.

(2) A financial institution guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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(3) A financial institution commits an offence if, in purported compliance with a customer information order, it–

(a) makes a statement which it knows to be false or misleading in a material particular, or

(b) recklessly makes a statement which is false or misleading in a material particular.

(4) A financial institution guilty of an offence under subsection (3) is liable–

(a) on summary conviction, to a fine not exceeding the statutory maximum, or

(b) on conviction on indictment, to a fine.

Statements.

171.(1) A statement made by a financial institution in response to a customer information order may not be used in evidence against it in criminal proceedings.

(2) But subsection (1) does not apply–

(a) in the case of proceedings under Part 2,

(b) on a prosecution for an offence under section 170(1) or (3), or

(c) on a prosecution for some other offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless–

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

Disclosure of information.

172. A customer information order has effect in spite of any restriction on the disclosure of information (however imposed).

Supplementary.

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173.(1) An application for a customer information order may be made ex parte to a judge in chambers.

(2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to customer information orders.

(3) An application to discharge or vary a customer information order may be made to the court by–

(a) the person who applied for the order;

(b) any person affected by the order.

(4) The court–

(a) may discharge the order;

(b) may vary the order.

Account monitoring orders

Account monitoring orders.

174.(1) A judge may, on an application made to him by a police or customs officer, make an account monitoring order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) No application for an account monitoring order may be made in relation to a detained cash investigation.

(3) The application for an account monitoring order must state that-

(a) a person specified in the application is subject to a confiscation investigation, a civil recovery investigation or a money laundering investigation, or

(b) property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property.

(4) The application must also state that–

(a) the order is sought for the purposes of the investigation;

(b) the order is sought against the financial institution specified in the application in relation to account information of the description so specified.

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(5) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another).

(6) The application for an account monitoring order may specify information relating to–

(a) all accounts held by the person specified in the application for the order at the financial institution so specified,

(b) a particular description, or particular descriptions, of accounts so held, or

(c) a particular account, or particular accounts, so held.

(7) An account monitoring order is an order that the financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to an appropriate person in the manner, and at or by the time or times, stated in the order.

(8) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

Requirements for making of account monitoring order.

175.(1) These are the requirements for the making of an account monitoring order.

(2) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct.

(3) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that the person specified in the application holds recoverable property or associated property.

(4) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.

(5) In the case of any investigation, there must be reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(6) In the case of any investigation, there must be reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

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Statements.

176.(1) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings.

(2) But subsection (1) does not apply–

(a) in the case of proceedings for contempt of court, or

(b) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(b) against a financial institution unless-

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

Disclosure of information.

177. An account monitoring order has effect in spite of any restriction on the disclosure of information however imposed.

Supplementary.

178.(1) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.

(2) An application to discharge or vary an account monitoring order may be made to the court by–

(a) the person who applied for the order;

(b) any person affected by the order.

(3) The court–

(a) may discharge the order;

(b) may vary the order.

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(4) Account monitoring orders have effect as orders of the court.

Evidence overseas

Evidence overseas.

179.(1) This section applies if a person or property is subject to a civil recovery investigation or a detained cash investigation.

(2) A judge may request assistance under this section if–

(a) an application is made by a police or customs officer or a person subject to the investigation, and

(b) the judge thinks that there is relevant evidence in a country or territory outside Gibraltar.

(3) The assistance that may be requested under this section is assistance in obtaining outside Gibraltar relevant evidence specified in the request.

(4) Relevant evidence is–

(a) in relation to an application or request made for the purposes of a civil recovery investigation, evidence relevant for the purpose of identifying recoverable property or associated property, including evidence as to a matter described in section 146(2)(a) to (d);

(b) in relation to an application or request made for the purposes of a detained cash investigation, evidence as to a matter described in section 146(4)(a) or (b);

(5) A request for assistance under this section may be sent–

(a) to a court or tribunal which is specified in the request and which exercises jurisdiction in the place where the evidence is to be obtained,
(b) to the government of the country or territory concerned, or

(c) to an authority recognised by the government of the country or territory concerned as the appropriate authority for receiving requests for assistance of that kind.

(6) Alternatively, a request for assistance under this section may be sent to the Minister with a view to it being forwarded to a court, tribunal, government or authority mentioned in subsection (5).

(7) The Minister must forward the request for assistance to the court, tribunal, government or authority.

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(8) In a case of urgency, a request for assistance under this section may be sent to the International Criminal Police Organisation (INTERPOL) for forwarding to the court, tribunal, government or authority mentioned in subsection (5).

(9) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to requests for assistance made by a judge under this section.

(10) "Evidence" includes documents, information in any other form and material.

Evidence overseas: restrictions on use.

180.(1) This section applies to evidence obtained by means of a request for assistance under section 179.

(2) The evidence must not be used for any purpose other than-

(a) for the purposes of the investigation for which it was obtained, or

(b) for the purposes of proceedings described in subsection (3) or any proceedings arising out of such proceedings.

(3) Those proceedings are–

(a) if the request was made for the purposes of a civil recovery investigation, proceedings under Chapter 2 of Part 5 of this Act arising out of the investigation;

(b) if the request was made for the purposes of a detained cash investigation, proceedings under Chapter 3 of Part 5 of this Act arising out of the investigation;

(4) Subsection (2) does not apply if the court, tribunal, government or authority to whom the request for assistance was sent consents to the use.

Request for evidence in criminal proceedings and criminal investigations.

180A.(1) For the purposes of this section-

"coercive measure" means where a request has been made under this section and the Central Authority requires a warrant or order to provide the assistance sought;

"Strasbourg Convention" means the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime signed in Strasbourg on the 8th November 1990;

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"Warsaw Convention" means the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism signed on the 16th May 2005 in Warsaw;

"Strasbourg state" means a state or territory which has ratified or obtained extension of the Strasbourg Convention, and in the case of Gibraltar, it includes where Gibraltar has extension, or it is expected that extension will be obtained;

"Warsaw state" means a state or territory which has ratified or obtained extension of the Warsaw Convention, and in the case of Gibraltar, it includes where Gibraltar has extension, or it is expected that extension will be obtained.

(2) A judge may request assistance from a Strasbourg state or a Warsaw state outside Gibraltar, or both, under this section if–

(a) an application is made by-

(i) a police officer or customs officer for the purposes of a criminal investigation or criminal proceedings; or

(ii) a person subject to the criminal investigation or criminal proceedings;

(b) the judge thinks that there is evidence or information in a Strasbourg state or Warsaw state outside Gibraltar; and

(c) the conditions in subsection (3) are satisfied.

(3) The conditions referred to in subsection (2)(c) are that-

(a) a person is subject to criminal proceedings or a criminal investigation in Gibraltar in relation to an offence which-

(i) falls within the scope of the Strasbourg Convention or Warsaw Convention, as applied to the requesting state and requested state; and

(ii) is provided for under the laws of the requesting state and requested state in relation to coercive measures;

(b) the judge thinks that there is evidence or information in a Strasbourg state or Warsaw state outside Gibraltar which is relevant to the criminal proceedings or criminal investigation, and this evidence or information is likely to be of substantial value to the criminal proceedings or criminal investigation.

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(4) The request for assistance may include a request for an order which is the equivalent to orders made by a judge under sections 149, 151, 153, 154, 155, 156, 161, 166, 167, 173, 174 or 178 of this Act.

(5) The assistance that may be requested under this section is assistance in obtaining evidence or information specified in the request and located outside Gibraltar.

(6) A request for assistance under this section may be sent–

(a) to a court or tribunal which is specified in the request and which exercises jurisdiction in the place where the evidence is to be obtained;

(b) to the government of the Strasbourg state or Warsaw state concerned; or

(c) to an authority recognised by the government of the Strasbourg state or Warsaw state concerned as the appropriate authority for receiving requests for assistance of this kind.

(7) In a case of urgency, a request for assistance under this section may be sent to the International Criminal Police Organisation (INTERPOL) for forwarding to the court, tribunal, government or authority mentioned in subsection (6).

(8) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to requests for assistance made by a judge under this section.

Evidence under section 180A: restrictions on use.

180B.(1) This section applies to evidence obtained by means of a request for assistance under section 180A.

(2) The evidence must not be used for any purpose other than-

(a) for the purposes of the criminal investigation for which it was obtained; or

(b) for the purposes of criminal proceedings or any proceedings arising out of such proceedings.

(3) Subsection (2) does not apply if the court, tribunal, government or authority to whom the request for assistance was sent consents to the use.

Supplementary and Interpretation

"Document" and "excluded material".

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181. In this Part, unless the context otherwise requires, "document" and "excluded material" have the same meanings as in the Criminal Procedure and Evidence Act 2011, and "premises" has the same meaning as in section 2 of the Crimes Act 2011.

Power to vary monetary amounts.

181A. In order to take account of changes in the value of money, the Minister with responsibility for justice may by regulations substitute another sum for the time being specified in section 166B(2)(b).

Criminal conduct and criminal property.

182.(1) In this Act "criminal conduct" is conduct which–

(a) if it occurs in Gibraltar constitutes an offence in Gibraltar; or

(b) if it does not occur in Gibraltar would constitute an indictable offence in Gibraltar if it occurred there.

(1A) Property is criminal property if-

(a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly); and

(b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

(2) A person benefits from conduct if he obtains property or a pecuniary advantage as a result of or in connection with the conduct.

(2A) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

(3) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.

(4) If a person benefits from conduct his benefit is the property or pecuniary advantage obtained as a result of or in connection with the conduct.

(5) It is immaterial–

(za) who carried out the conduct;

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(zb) who benefited from it.

(a) whether conduct occurred before or after the passing of this Act, and

(b) whether property or a pecuniary advantage constituting a benefit from conduct was obtained before or after the passing of this Act.

Property and additional terms.

183.(1) In this Act "Property" means assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to or an interest in such assets.

(2) "Recoverable property" and "associated property" have the same meanings as in Part 5.

(3) The following rules apply in relation to property–

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

(a) property is obtained by a person if he obtains an interest in it;

(b) references to an interest, in relation to land are to any legal estate or equitable interest or power;

(c) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

(4) "financial institution" means a person carrying on a business in the regulated sector.

(5) But a person who ceases to carry on a business in the regulated sector is to continue to be treated as a financial institution for the purposes of any requirement under–

(a) a customer information order, or

(b) an account monitoring order,

to provide information which relates to a time when the person was a financial institution.

(5A) In this Act "third country" means a country or territory outside Gibraltar.

(6) "Recovery order", "interim receiving order" and "property freezing order have the same meanings as in Part 5.

(7) "Unlawful conduct" has the meaning given by section 70.

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(7A) In this Part-

"confiscation order" has the same meaning as in Part IV;

"interim freezing order" has the meaning given in section 166L(3);

"unexplained wealth order" has the meaning given in section 166A(4);

"settlement" has the meaning given by paragraph 9(9) of schedule 4 to the Income Tax Act 2010.

(7B) In this Part in relation to an interim freezing order or an unexplained wealth order, references to the enforcement authority are to the enforcement authority that is seeking, or (as the case may be) has obtained, the order.

(8) References to notice in writing include references to notice given by electronic means.

PART VII
GENERAL

Power to make subordinate legislation.

184.(1) The Government may make such rules, regulations or orders, or provide for such other statutory instruments as it considers necessary or useful to fulfil the purposes and objects of this Act.

(2) The power referred to in subsection (1) may be exercised for the purpose of implementing an international obligation.

(3) The Minister with responsibility for Finance may, by regulation, make, amend or replace regulations made under this Act regarding a Register of Ultimate Beneficial Owners within Gibraltar so as to make provision including-

(a) making such a register public, (in accordance with relevant international standards or obligations), either on the date of publication of such regulations or on such date as the Minister may determine by notice in the Gazette;

(b) setting out exemptions to disclosure in exceptional circumstances to persons or entities other than competent authorities or financial intelligence units;

(c) prescribing the manner in which access to the register is granted;

(d) prescribing any forms to be used;

(e) for any fees to be payable in respect of access to the register; and

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(f) for any matter incidental to any of the foregoing.

Power to amend the Act, and to make subordinate legislation, to implement conventions and international agreement.

184ZA.(1) The Government may by regulations amend this Act for the purpose of implementing in Gibraltar–

(a) an international agreement or convention connected with or relating to the prevention of abuse of financial systems or the prevention of money laundering, terrorist financing or proliferation financing, whether or not Gibraltar is a signatory;

(b) any international obligation or standard connected with or relating to the prevention of abuse of financial systems or the prevention of money laundering, terrorist financing or proliferation financing; or

(c) the recommendations (in any form and however described) of an international body established for the purposes of, or concerned with, the promotion, adoption, supervision or enforcement of the obligations or standards described in paragraph (b).

(2) The Government may make such rules, regulations or orders, or provide for such other statutory instruments as it considers necessary or useful to fulfil the purposes and objects described in subsection (1).

(3) The limitation in section 23(b) of the Interpretation and General Clauses Act shall not apply to any regulations made under this section.

Power to amend or modify the Act, and to make subordinate legislation, to implement the Treaty on Gibraltar and the European Union and other instruments.

184ZB.(1) For the purposes of this section, the "Treaty on Gibraltar and the European Union" has the meaning given in section 5 of the Treaty on Gibraltar and the European Union Act 2026.

(2) The Government may by regulations, rules or orders make any provision it considers appropriate to implement–

(a) the Treaty on Gibraltar and the European Union or any international agreement or convention referred to in the Treaty on Gibraltar and the European Union;

(b) any international obligation or standard mentioned in the Treaty on Gibraltar and the European Union or in the international agreement or convention; or

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(c) the recommendations (in any form and however described) of an international body or other body established for the purposes of, or concerned with, the promotion, adoption, supervision or enforcement of the obligations or standards described in paragraph (b).

(3) The Government may, by regulations, amend or modify this Act for any of the purposes referred to in subsection (2).

(4) Regulations, rules or orders under subsection (2), or regulations under subsection (2) may (among other things) be exercised by amending or modifying any provision made by or under an enactment, including this Act.

(5) Regulations, rules or orders under subsection (2), or regulations under subsection (3) may contain any consequential, supplementary, incidental, saving and transitional provisions as the Government considers necessary, appropriate or expedient.

(6) The limitation in section 23(b) of the Interpretation and General Clauses Act shall not apply to any regulations, rules or orders made under this section.

Corresponding provisions regulations.

184ZC.(1) The Government may by regulations make provision for the purposes of or in connection with preventing and combatting money laundering, terrorist financing and proliferation financing in Gibraltar, which corresponds, or is similar, to a provision of–

(a) the EU legislative acts specified in Annex 17 to the Treaty on Gibraltar and the European Union; or

(b) any EU regulations, EU directives, EU tertiary legislation or EU decisions based on those EU legislative acts.

(2) In this section "EU decision", "EU directive", "EU regulation" and "EU tertiary legislation" have the meaning given in section 3(1) of the European Union (Withdrawal) Act 2019.

(3) Regulations made under subsection (1) may, among other things–

(a) amend or modify any provision made by or under an enactment, including this Act; or

(b) make consequential, supplementary, incidental, saving and transitional provisions.

(4) The limitation in section 23(b) of the Interpretation and General Clauses Act does not apply to any regulations made under this section.

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Power to make subordinate legislation regarding external requests and orders.

184A.(1) Notwithstanding the generality of section 184, the Government may by Order-

(a) make provision for a prohibition on dealing with property which is the subject of an external request;

(b) make provision for the realisation of property for the purpose of giving effect to an external order.

(2) An Order under this section may include—

(a) provision about the functions of persons in relation to external requests and orders;

(b) provision about the registration of external orders;

(c) provision about the authentication of any judgment or order of an overseas court, and of any other document connected with such a judgment or order or any proceedings relating to it;

(d) provision about evidence (including evidence required to establish whether proceedings have been started or are likely to be started in an overseas court);

(e) provision to secure that any person affected by the implementation of an external request or the enforcement of an external order has an opportunity to make representations to a court in Gibraltar.

Power to make subordinate legislation regarding external investigations.

184B.(1) Notwithstanding the generality of section 184, the Government may by Order-

(a) make provision to enable orders to be made, and warrants to be issued, for the purposes of an external investigation;

(b) provision creating offences in relation to external investigations.

(2) An Order under this section may include—

(a) provision corresponding to any provision of Part VI (subject to any specified modifications);

(b) provision about the functions of persons in relation to external investigations;

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(c) provision about evidence (including evidence required to establish whether an investigation is being carried out in a country or territory outside Gibraltar).

Rules of court.

184C. Rules of court may make such provision as is necessary or expedient to give effect to an Order made under section 184A or 184B (including provision about the exercise of functions of a judge conferred or imposed by the Order).

Interpretation for the purposes of sections 184A, 184B and 184C.

184D.(1) For the purposes of sections 184A, 184B and 184C-

(a) an external request is a request by an overseas authority to prohibit dealing with relevant property (including property which was, or was intended to be, the instrumentalities of criminal conduct) which is identified in the request;

(b) an external order is an order which—

(i) is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct or was, or was intended to be, the instrumentalities of criminal conduct, and

(ii) is for the recovery of specified property or a specified sum of money;

(c) an external investigation is an investigation by an overseas authority into—

(i) whether property has been obtained as a result of or in connection with criminal conduct or was, or was intended to be, the instrumentalities of criminal conduct,

(ii) the extent or whereabouts of property obtained as a result of or in connection with criminal conduct, or

(iii) whether a money laundering offence has been committed.

(d) property is all property wherever situated and includes—

(i) money;

(ii) all forms of property, real or personal, heritable or moveable;

(iii) things in action and other intangible or incorporeal property.

(2) Property is obtained by a person if he obtains an interest in it.

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(3) References to an interest in relation to property other than land, include references to a right (including a right to possession).

(4) A person who obtains a pecuniary advantage as a result of or in connection with conduct is to be taken to obtain, as a result of or in connection with the conduct, a sum of money equal to the value of the pecuniary advantage.

(5) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other.

(6) Property is relevant property if there are reasonable grounds to believe that it may be needed to satisfy an external order which has been or which may be made.

(7) Criminal conduct is conduct which—

(a) constitutes an offence in Gibraltar, or

(b) would constitute an indictable offence in Gibraltar if it occurred in Gibraltar.

(8) An overseas court is a court of a country or territory outside Gibraltar.

(9) An overseas authority is an authority which has responsibility in a country or territory outside Gibraltar—

(a) for making a request to an authority in another country or territory (including Gibraltar) to prohibit dealing with relevant property,

(b) for carrying out an investigation into whether property has been obtained as a result of or in connection with criminal conduct, or

(c) for carrying out an investigation into whether a money laundering offence has been committed.

PART VIII
REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS, CONSEQUENTIAL AMENDMENTS

Repeals.

185.(1) The Crime (Money Laundering and Proceeds) Act 2007 is repealed.

(2) Part V of the Drug Trafficking Offences Act is repealed.

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Savings and transitional provisions.

186.(1) In this section a reference to the "repealed enactments" shall be construed as a reference to the enactments repealed by section 185.

(2) Any proceedings which have been instituted under the repealed enactments (including any appeal) which have not been concluded at the time of the coming into operation of this Act shall be continued as though the repealed enactments had not been repealed.

(3) Where proceedings for an offence committed under the repealed enactments have not been commenced at the commencement of this Act–

(a) if there is an equivalent offence under this Act proceedings must be brought under this Act;

(b) if there is no equivalent offence proceedings cannot be brought.

(4) Any regulation, rule, order, instruction direction, exemption, notice, permit, complaint or other legislative or non-legislative instrument made or issued by any person or body under the repealed enactments shall, if in force at the date of such repeal and unless a contrary intention appears, remain in force, so far as it is not inconsistent with this Act, until it has been revoked or amended by subsidiary legislation made under the provisions of this Act, and shall be deemed for all purposes to have been made thereunder.

Consequential amendments.

187.(1) A reference in any other Act to any repealed enactment is, to the extent possible, to be read as a reference to the corresponding provision of this Act.

(2) The Government may by order declare the consequential amendments to other enactments that are required as a result of the commencement of this Act.

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SCHEDULE 1

Repealed

SCHEDULE 2

Section 29(2)

PART I

The following are supervisory bodies–

(a) the Financial Services Commission;

(b) the Authority appointed under section 2(1) of the Financial Services (Investment and Fiduciary Services) Act;

(c) the Commissioner of Banking and the Banking Supervisor;

(d) the Commissioner of Insurance and the Insurance Supervisor;

(e) the Financial Secretary, or such other person or entity as may from time to time be designated by the Minister for Finance by notice in the Gazette in respect of relevant financial businesses to which section 9(1) applies and which are not supervised by a body listed in paragraphs (a) to (d) and (f) to (h).

(f) the Gambling Commissioner as defined in section 2 of the Gambling Act 2005;

(g) the Office of Fair Trading as defined in section 3 of the Fair Trading Act 2015 (in relation to businesses engaging in relevant financial business in accordance with sections 9(1)(h) (estate agents and letting agents), 9(1)(i) (art market participants) and 9(1)(m) (dealers in high value goods) of this Act);

(ga) HM Customs (in relation to businesses engaging in relevant financial business in accordance with section 9(1)(j) (art storage freeport operators) of this Act)

(h) the Legal Services Regulatory Authority.

PART II

(a) the Financial Services (Banking) Act, 1992;

(b) the Insurance Companies Act, 1987;

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(c) the Financial Services (Investment and Fiduciary Services) Act, 1989;

(d) the Companies Act 2014.

(e) the Insolvency Act 2011.

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SCHEDULE 3

Section 82

POWERS OF INTERIM RECEIVER

Seizure

1. Power to seize property to which the order applies.

Information

2.(1) Power to obtain information or to require a person to answer any question.

(2) A requirement imposed in the exercise of the power has effect in spite of any restriction on the disclosure of information (however imposed).

(3) An answer given by a person in pursuance of such a requirement may not be used in evidence against him in criminal proceedings.

(4) But an answer may not be used by virtue of sub-paragraph (4)(b) against a person unless–

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by him or on his behalf in the proceedings arising out of the prosecution.

Entry, search, etc.

3.(1) Power to–

(a) enter any premises in Gibraltar to which the interim order applies, and

(b) take any of the following steps.

(2) Those steps are–

(a) to carry out a search for or inspection of anything described in the order,

(b) to make or obtain a copy, photograph or other record of anything so described,

(c) to remove anything which he is required to take possession of in pursuance of the order or which may be required as evidence in the proceedings under Chapter 2 of Part 5.

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(3) The order may describe anything generally, whether by reference to a class or otherwise.

Supplementary

4.(1) An order making any provision under paragraph 2 or 3 must make provision in respect of legal professional privilege .

(2) An order making any provision under paragraph 3 may require any person–

(a) to give the interim receiver or administrator access to any premises which he may enter in pursuance of paragraph 3,

(b) to give the interim receiver or administrator any assistance he may require for taking the steps mentioned in that paragraph.

Management

5.(1) Power to manage any property to which the order applies.

(2) Managing property includes–

(a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes,

(b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business,

(c) incurring capital expenditure in respect of the property.

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SCHEDULE 4

Section 91

POWERS OF TRUSTEE FOR CIVIL RECOVERY

Sale

1. Power to sell the property or any part of it or interest in it.

Expenditure

2. Power to incur expenditure for the purpose of–

(a) acquiring any part of the property, or any interest in it, which is not vested in him,

(b) discharging any liabilities, or extinguishing any rights, to which the property is subject.

Management

3.(1) Power to manage property.

(2) Managing property includes doing anything mentioned in paragraph 5(2) of Schedule 3.

Legal proceedings

4. Power to start, carry on or defend any legal proceedings in respect of the property.

Compromise

5. Power to make any compromise or other arrangement in connection with any claim relating to the property.

Supplementary

6.(1) For the purposes of, or in connection with, the exercise of any of his powers–

(a) power by his official name to do any of the things mentioned in sub-paragraph (2),

(b) power to do any other act which is necessary or expedient.

(2) Those things are-

(a) holding property,

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(b) entering into contracts,

(c) suing and being sued,

(d) employing agents,

(e) executing a power of attorney, deed or other instrument.

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SCHEDULE 5

Section 106

CONNECTION WITH GIBRALTAR

Unlawful conduct

1. There is a connection where the unlawful conduct occurred entirely or partly in Gibraltar.

Property

2. There has been a connection where the property in question has been in Gibraltar, but only if it was recoverable property in relation to the unlawful conduct for some or all of the time it was there.

3. There is a connection where there is other property in Gibraltar that is recoverable property in relation to the unlawful conduct.

4. There has been a connection where, at any time, there has been other property in Gibraltar that, at the time, was recoverable property in relation to the unlawful conduct.

Person

5.(1) There is or has been a connection where a person described in sub-paragraph (2)–

(a) is linked to Gibraltar,

(b) was linked to Gibraltar at a time when the unlawful conduct, or some of the unlawful conduct, was taking place, or

(c) has been linked to Gibraltar at any time since that conduct took place.

(2) Those persons are–

(a) a person whose conduct was, or was part of, the unlawful conduct;

(b) a person who was deprived of property by the unlawful conduct;

(c) a person who holds the property in question;

(d) a person who has held the property in question, but only if it was recoverable property in relation to the unlawful conduct at the time;

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(e) a person who holds other property that is recoverable property in relation to the unlawful conduct;

(f) a person who, at any time, has held other property that was recoverable property in relation to the unlawful conduct at the time.

(3) A person is linked to Gibraltar if the person is–

(a) registered in the Register of Gibraltarians,

(b) a person domiciled, resident or present in Gibraltar,

(c) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(d) a person who, under the British Nationality Act 1981, is a British subject,

(e) a British protected person within the meaning of that Act,

(f) a body incorporated or constituted under the law of Gibraltar.

Property held on trust

6.(1) There is a connection where the property in question is property held on trust, or an interest in property held on trust, and–

(a) the trust arises under the law of Gibraltar,

(b) the trust is entirely or partly governed by the law of Gibraltar,

(c) one or more of the trustees is linked to Gibraltar, or

(d) one or more of the beneficiaries of the trust is linked to Gibraltar.

(2) A person is linked to Gibraltar if the person falls within paragraph 5(3).

(3) "Beneficiaries" includes beneficiaries with a contingent interest in the trust property and potential beneficiaries.

Interpretation

8. "the unlawful conduct" means–

(a) in a case in which the property in question was obtained through unlawful conduct, that conduct,

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(b) in a case in which the property in question represents property obtained through unlawful conduct, that conduct, or

(c) in a case in which it is shown that the property in question was obtained through unlawful conduct of one of a number of kinds or represents property so obtained.

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SCHEDULE 6

Section 16(3)

The following is a non-exhaustive list of factors and types of evidence of potentially lower risk referred to in section 16:

(1) Customer risk factors-

(a) public companies listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means), which impose requirements to ensure adequate transparency of beneficial ownership;

(b) public administrations or enterprises;

(c) customers that are resident in geographical areas of lower risk as set out in point (3).

(2) Product, service, transaction or delivery channel risk factors-

(a) life insurance policies for which the premium is low;

(b) insurance policies for pension schemes if there is no early surrender option and the policy cannot be used as collateral;

(c) a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages, and the scheme rules do not permit the assignment of a member's interest under the scheme;

(d) financial products or services that provide appropriately defined and limited services to certain types of customers, so as to increase access for financial inclusion purposes;

(e) products where the risks of money laundering and terrorist financing are managed by other factors such as purse limits or transparency of ownership (e.g. certain types of electronic money).

(3) Geographical risk factors (registration, establishment, residence in)-

(a) Gibraltar;

(b) third countries having effective AML/CFT systems;

(c) third countries identified by credible sources as having a low level of corruption or other criminal activity;

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(d) third countries which, on the basis of credible sources such as mutual evaluations, detailed assessment reports or published follow-up reports, have requirements to combat money laundering and terrorist financing consistent with the revised FATF Recommendations and effectively implement those requirements.

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SCHEDULE 7

Section 17(4)

The following is a non-exhaustive list of factors and types of evidence of potentially higher risk referred to in section 17:

(1) Customer risk factors-

(a) the business relationship is conducted in unusual circumstances;

(b) customers that are resident in geographical areas of higher risk as set out in point (3);

(c) legal persons or arrangements that are personal asset-holding vehicles;

(d) companies that have nominee shareholders or shares in bearer form;

(e) businesses that are cash-intensive;

(f) the ownership structure of the company appears unusual or excessively complex given the nature of the company's business;

(g) customer is a third country national who applies for residence rights or citizenship of a state in exchange of capital transfers, purchase of property or government bonds, or investment in corporate entities in that state;

(2) Product, service, transaction or delivery channel risk factors-

(a) private banking;

(b) products or transactions that might favour anonymity;

(c) non-face-to-face business relationships or transactions, without certain safeguards, such as electronic signatures identification means, relevant trust services as defined in the Electronic Identification Regulation or any other secure, remote or electronic, identification process regulated, recognised, approved or accepted by the EIR supervisory body;

(d) payment received from unknown or unassociated third parties;

(e) new products and new business practices, including new delivery mechanism, and the use of new or developing technologies for both new and pre-existing products;

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(f) transactions related to oil, arms, precious metals, tobacco products, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare scientific value, as well as ivory and protected species;

(3) Geographical risk factors-

(a) countries identified by credible sources, such as mutual evaluations, detailed assessment reports or published follow-up reports, as not having effective AML/CFT systems;

(b) countries identified by credible sources as having significant levels of corruption or other criminal activity;

(c) countries subject to sanctions, embargos or similar measures issued by, for example, the Union or the United Nations;

(d) countries providing funding or support for terrorist activities, or that have designated terrorist organisations operating within their country.

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SCHEDULE 8

Section 17(7)

ADDITIONAL MITIGATING MEASURES THAT MAY BE IMPOSED BY A DIRECTION

1. In this Schedule-

(a) "designated person" means any of the persons in relation to whom the direction is given; and

(b) "relevant person" means any of the persons to whom the direction is given.

2. The kinds of requirement that may be imposed by a direction under this Schedule are specified in-

(a) paragraph 5 (customer due diligence);

(b) paragraph 6 (ongoing monitoring);

(c) paragraph 7 (systematic reporting);

(d) paragraph 8 (limiting or ceasing business).

3. A direction may make different provision-

(a) in relation to different descriptions of designated person; and

(b) in relation to different descriptions of transaction or business relationship.

4. The requirements imposed by a direction must be proportionate having regard to all the circumstances.

Customer due diligence

5.(1) A direction may require a relevant person to undertake enhanced customer due diligence measures-

(a) before entering into a transaction or business relationship with a designated person; and

(b) during a business relationship with such a person;

(2) A direction pursuant to subparagraph (1) may require a relevant person to undertake specific measures identified or described in the direction.

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Ongoing Monitoring

6.(1) A direction may require a relevant person to undertake enhanced ongoing monitoring of any business relationship with a designated person.

(2) The direction may do either or both of the following-

(a) impose a general obligation to undertake enhanced ongoing monitoring;

(b) require a relevant person to undertake specific measures identified or described in the direction.

(3) "Ongoing monitoring" of a business relationship means:

(a) keeping up to date information and documents obtained for the purposes of customer due diligence measures; and

(b) scrutinising transactions undertaken during the course of the relationship (and, where appropriate, the source of funds for those transactions) to ascertain whether the transactions are consistent with the relevant person's knowledge of the designated person and their business.

Systematic reporting

7.(1) A direction may require a relevant person to provide such information and documents as may be specified in the direction relating to transactions and business relationships with designated persons.

(2) A direction pursuant to subparagraph (1) must specify how the direction is to be complied with, including-

(a) the person to whom the information and documents are to be provided; and

(b) the period within which, or intervals at which, information and documents are to be provided.

(3) The power conferred by this paragraph is not exercisable in relation to information or documents in respect of which there a claim to legal professional privilege.

(4) Subject to subparagraph (3), the exercise of the power conferred by this paragraph and the provision of information under it is not otherwise subject to any restriction on the disclosure of information, whether imposed by statute or otherwise.

Limiting or ceasing business

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8. A direction may require a relevant person not to enter into or continue to participate in-

(a) a specified transaction or business relationship with a designated person;

(b) a specified description of transactions or business relationships with a designated person; or

(c) any transaction or business relationship with a designated person.".

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SCHEDULE 9

Section 7(1ZA)

In Israel—
— Tel Aviv Stock Exchange

In Japan—
— Fukuoka Stock Exchange
— Nagoya Stock Exchange
— Osaka Securities Exchange
— Sapporo Securities Exchange
— Tokyo Stock Exchange

In Switzerland—
— BX Berne Exchange
— SIX Swiss Exchange

In the United Kingdom—
— London Stock Exchange

In the United States of America—
— BATS Exchange, Inc.
— BATS Y-Exchange, Inc.
— BOX Options Exchange LLC
— C2 Options Exchange, Incorporated
— Chicago Board Options Exchange, Incorporated
— Chicago Stock Exchange, Inc.
— EDGA Exchange, Inc.
— EDGX Exchange, Inc.
— International Securities Exchange, LLC
— ISE Gemini LLC
— Miami International Securities Exchange LLC
— NASDAQ OMX BX, Inc.
— NASDAQ OMX PHLX LLC
— The NASDAQ Stock Market LLC
— National Stock Exchange, Inc.
— New York Stock Exchange LLC
— NYSE Arca, Inc.
— NYSE MKT LLC.

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SCHEDULE 10

Section 166X

SERIOUS OFFENCES

Drug Trafficking

1.(1) An offence under any of the following provisions of the Crimes Act 2011-

(a) section 504(2) or (3);

(b) section 506(3);

(c) section 508;

(d) section 512

(e) section 515;

(f) section 518;

(g) section 522.

(2) An offence under section 15 or 80 of the Imports and Exports Act, 1986;

(3) An offence under section 104 or 105 of the Imports and Exports Act, 1986 if it is committed in connection with a prohibition or restriction on importation or exportation which has effect by virtue of section 503 of the Crimes Act 2011.

Slavery

2. An offence under section 191 or 191A of the Crimes Act 2011.

People trafficking

3. An offence under section 63 or 63A of the Immigration, Asylum and Refugee Act.

Terrorism

4. An offence for the time being listed in section 109 of the Terrorism Act 2018 (Offences to which Part 9 of the Act applies: terrorism offences.

Firearms offences

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5.(1) An offence under any of the following provisions of the Firearms Act-

(a) section 3(1);

(b) section 9(1);

(c) section 18(2).

(2) An offence under section 105 of the Imports and Exports Act, 1986 if it is committed in connection with a firearm or ammunition.

(3) In subparagraph (2) "firearm" and "ammunition" have the same meanings as in section 2 of the Firearms Act.

Prostitution and child sex

6. An offence under any of the following provisions of the Crimes Act 2011-

(a) section 226;

(b) section 263;

(c) section 264;

(d) section 265;

(e) section 267;

(f) section 268.

Armed robbery etc.

7.(1) An offence under section 398(1) of the Crimes Act 2011 where the use or threat of force involves a firearm, an imitation firearm or an offensive weapon.

(2) An offence at common law of an assault with intent to rob where the assault involves a firearm, imitation firearm or an offensive weapon.

(3) In this paragraph-

"firearm" has the meaning given by section 2 of the Firearms Act;

"imitation firearm" has the meaning given in section 24(6)(b) of that Act;

"offensive weapon" has the meaning given in section 2(1) of the Crimes Act 2011.

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Money laundering

8. An offence under section 2, 3 or 4 of this Act.

Fraud

9.(1) An offence under any of the following provisions of the Crimes Act 2011-

(a) section 415;

(b) section 425;

(c) section 419;

(d) section 420;

(e) section 421;

(f) section 422;

(2) An offence at common law of conspiracy to defraud.

Offences in relation to public revenue

10.(1) An offence under section 105 of the Imports and Exports Act, 1986 so far as not falling within paragraph 1(3) or 5(2).

(2) An offence under section 67(1) of the Income Tax Act 2010.

(3) An offence at common law of cheating in relation to public revenue.

Bribery

11. An offence under any of the following provisions of the Crimes Act 2011-

(a) section 566;

(b) section 567;

(c) section 571.

Counterfeiting

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12. An offence under any of the following provisions of the Crimes Act 2011-

(a) section 442;

(b) section 443;

(c) section 444;

(d) section 445.

Computer misuse

13. An offence under any of the following provisions of the Crimes Act 2011-

(a) section 362;

(b) section 363;

(c) section 364;

(d) section 365;

(e) section 366A;

(f) section 366.

Intellectual property

14.(1) An offence under the following provisions of the Intellectual Property (Copyright and Related Rights) Act 2005-

(a) section 128(1)(a), (b), (d)(iv) or (e);

(b) section 231(1)(a), (b), or (c)(iii).

(2) An offence under section 3 of the Merchandise Marks Act.

Environment

15.(1) An offence under regulation 3(1)(d) of the Marine Protection Regulations 2014.

(2) An offence under section 192D of the Public Health Act.

(3) An offence under section 3(1) and section 8 of the Control of Trade in Endangered Species Act 1998.

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Sanctions

16.(1) An offence under section 9 of the Sanctions Act 2019 if it is committed in relation to a financial sanction.

(2) An offence under paragraph 7 of Schedule 5 to the Terrorism Act 2018.

(3) An offence under section 25 of the Counter-Terrorism Act 2010 where the offence relates to a requirement of the kind mentioned in section 12 of that Act.

(4) An offence under section 26 of the Counter-Terrorism Act 2010.

(5) An offence under regulations made under section 16 of the Sanctions Act 2018.

(6) In this paragraph-

"financial sanction" means a measure imposing a prohibition or requirement for one of the purposes listed in section 21(1)(a) to (g) of the Sanctions Act 2019.

Inchoate offences

17.(1) An offence of attempting or conspiring the commission of an offence specified or described in this Schedule.

(2) An offence under sections 36 to 46 of the Crimes Act 2011 where the offence (or one of the offences) which the person in question intends or believes would be committed is an offence specified or described in this Schedule.

(3) An offence of aiding, abetting, counselling or procuring the commission of an offence specified or described in this Schedule.

(4) The references in subparagraphs (1) to (3) to offences specified or described in this Schedule do not include the offence at common law of conspiracy to defraud.

Earlier offences

18.(1) This Schedule (apart from paragraph 17(2)) has effect, in its application to conduct before the passing of this Act, as if the offences specified or described in this Schedule included any corresponding offences under the law in force at the time of the conduct.

(2) Paragraph 17(2) has effect, in its application to conduct before the passing of this Act, as if the offence specified or described in that provision were an offence of inciting the commission of an offence specified or described in this Schedule.

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Scope of offences

19. Where this Schedule refers to offences which are offences under the law of Gibraltar and another country, the reference is to be read as limited to the offences so far as they are offences under the law of Gibraltar.

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