



BERMUDA

CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (BERMUDA) ACT  
1994

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SUBSTANCES USEFUL FOR MANUFACTURING CONTROLLED DRUGS

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WHEREAS it is expedient—

- (a) to enable Bermuda to co-operate with other countries in criminal proceedings and investigations, and to join with other countries in implementing the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; and
- (b) to provide for the seizure, detention and forfeiture of drug trafficking money imported or exported in cash:

*[Words of enactment omitted]*

PART I  
PRELIMINARY

Short title

- 1 This Act may be cited as the Criminal Justice (International Co-operation) (Bermuda) Act 1994.

Interpretation

- 2 In this Act—

“the Commissioner” means the Commissioner of Police;

“Minister” means the Minister responsible for drug prevention.

*[Section 2 "Minister" deleted and substituted by BR 5/2011 para. 5 effective 25 February 2011]*

PART II  
CRIMINAL PROCEEDINGS AND INVESTIGATIONS  
*MUTUAL SERVICE OF PROCESS*

Service of overseas process in Bermuda

3 (1) This section has effect where the Attorney-General receives from the government of, or other authority in, a country or territory outside Bermuda—

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

together with a request for that process or document to be served on a person in Bermuda.

(2) The Attorney-General may cause the process or document to be served by post or, if the request is for personal service, direct the Commissioner to cause it to be served on the person concerned himself.

(3) Service by virtue of this section of any such process or document as is mentioned in subsection (1)(a) above does not impose any obligation under the law of Bermuda to comply with it.

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

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

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

Service of Bermudian process overseas

4 (1) Process of the following descriptions, that is to say—

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

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

(2) Service of any process outside Bermuda by virtue of this section does not impose any obligation under the law of Bermuda to comply with it, and accordingly failure to comply with any such process does not constitute contempt of any court nor is it a ground for issuing a warrant to secure the attendance of the person in question.

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

*Mutual provision of evidence*

Overseas evidence for use in Bermuda

5 (1) Where on an application made in accordance with subsection (2) below it appears to a magistrate or a Judge—

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

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

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

(3) The Attorney-General may himself issue a letter of request if—

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

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

- (a) to a court or tribunal specified in the letter and exercising jurisdiction in the place where the evidence is to be obtained; or

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(b) to an authority recognised by the government of the country or territory in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.

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

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

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

(8) In exercising any discretion conferred by law to exclude evidence in relation to a statement to which this subsection applies the court shall have regard—

(a) to whether it was possible to challenge the statement by questioning the person who made it; and

(b) if proceedings have been instituted, to whether the local law allowed the parties to the proceedings to be legally represented when the evidence was being taken.

(9) Subsection (8) applies to a statement contained in evidence taken pursuant to a letter of request.

Bermudian evidence for use overseas

6 (1) This section has effect where the Attorney-General receives—

(a) from a court or tribunal exercising jurisdiction in a country or territory outside Bermuda or a prosecuting authority in such a country or territory; or

(b) from another authority in such a country or territory which appears to him to have the function of making requests of the kind to which this section applies,

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

(2) If the Attorney-General is satisfied—

(a) that an offence under the law of the country or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed; and

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- (b) that proceedings in respect of that offence have been instituted in that country or territory or that an investigation into that offence is being carried on there,

he may, if he thinks fit, forthwith by a notice in writing nominate a court in Bermuda to receive such of the evidence to which the request relates as may appear to the court to be appropriate for the purpose of giving effect to the request.

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

- (a) the request is made pursuant to a treaty which is in force in relation to Bermuda; or
- (b) he is satisfied that the conduct constituting the offence would constitute an offence of the same or a similar nature if it had occurred in Bermuda.

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

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

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

*[Section 6 subsection (2) amended by 2018 : 51 s. 8 effective 10 August 2018]*

Bermudian evidence for use overseas - civil recovery proceedings

6A (1) This section has effect where the Attorney-General receives—

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

a request for assistance in obtaining evidence in Bermuda in connection with civil recovery proceedings that have been instituted, or a civil recovery investigation that is being carried on, in that country or territory.

(2) If the Attorney-General is satisfied—

- (a) that an investigation into unlawful conduct has commenced in the country or territory in relation to the proceeds of unlawful conduct to which the civil recovery proceedings relate;
- (b) that unlawful conduct, in that country or territory or elsewhere, has been established;

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- (c) that no criminal proceedings in respect of that unlawful conduct can commence or, if commenced, can continue because the person or persons involved in the unlawful conduct are unknown or, if known, have died or are at large,

he may, if he thinks fit, forthwith by a notice in writing nominate a court in Bermuda to receive such of the evidence to which the request relates as may appear to the court to be appropriate for the purpose of giving effect to the request.

(3) For the purpose of satisfying himself as to the matters mentioned in subsection (2) above, the Attorney-General shall regard as conclusive a certificate issued by such authority in the country or territory in question as appears to him to be appropriate.

(4) In this section—

“civil recovery investigation” has the meaning given in section 7 of the Proceeds of Crime Act 1997;

“civil recovery proceedings” means proceedings seeking the confiscation of property which is or represents the proceeds of unlawful conduct, where the person or persons involved have not been convicted of an offence to which the proceeds relate;

“evidence” includes documents and other articles;

“unlawful conduct” has the meaning given in section 36B of the Proceeds of Crime Act 1997.

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

*[Section 6A inserted by 2018 : 51 s. 8 effective 10 August 2018]*

Transfer of Bermudian prisoner to give evidence or assist investigation overseas

7 (1) The Attorney-General may, if he thinks fit, issue a warrant providing for any person (a “prisoner”) serving a sentence in a prison in Bermuda to be transferred to a country or territory outside Bermuda for the purpose—

- (a) of giving evidence in criminal proceedings there; or  
(b) of being identified in, or otherwise by his presence assisting, such proceedings or the investigation of an offence.

(2) No warrant shall be issued under this section in respect of a prisoner unless he has consented to being transferred as mentioned in subsection (1) above, and that consent may be given either—

- (a) by the prisoner himself; or  
(b) in circumstances in which it appears to the Attorney-General inappropriate, by reason of the prisoner’s physical or mental condition or his youth, for him to act for himself, by a person appearing to the Attorney-General to be an appropriate person to act on his behalf;

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but a consent once given is not capable of being withdrawn after the issue of the warrant.

(3) The effect of a warrant under this section is to authorise—

- (a) the taking of the prisoner to a place in Bermuda and his delivery at a place of departure from Bermuda into the custody of a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred; and
- (b) the bringing of the prisoner back to Bermuda and his transfer in custody to the place where he is liable to be detained under the sentence to which he is subject.

(4) Where a warrant has been issued in respect of a prisoner under this section he shall be deemed to be in legal custody at any time when, being in Bermuda or on board a ship registered in Bermuda, he is being taken under the warrant to or from any place or being kept in custody under the warrant.

(5) A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep him in custody has all the powers, authority, protection and privileges of a police officer.

(6) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a police officer and taken to any place to which he may be taken under the warrant issued under this section.

(7) This section applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying a fine as it applies to a prisoner, and the reference in subsection (3)(b) above to a sentence shall be construed accordingly.

Transfer of overseas prisoner to give evidence or assist investigation in Bermuda

8 (1) This section has effect where—

- (a) a witness order has been made or a witness summons issued in criminal proceedings in Bermuda in respect of a person (a “prisoner”) who is detained in custody in a country or territory outside Bermuda by virtue of a sentence or order of a court or tribunal exercising criminal jurisdiction in that country or territory; or
- (b) it appears to the Attorney-General that it is desirable for a prisoner to be identified in, or otherwise by his presence to assist, such proceedings or the investigation in Bermuda of an offence.

(2) If the Attorney-General is satisfied that the appropriate authority in the country or territory where the prisoner is detained will make arrangements for him to come to Bermuda to give evidence pursuant to the witness order or witness summons or, as the case may be, for the purpose mentioned in subsection (1)(b) above, he may issue a warrant under this section.

(3) A warrant shall not be issued under this section in respect of a prisoner unless he has consented to being brought to Bermuda to give evidence as aforesaid or, as the case

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may be, for the purpose mentioned in subsection (1)(b) above; but a consent once given is not capable of being withdrawn after the issue of the warrant.

- (4) The effect of the warrant is to authorise—
- (a) the bringing of the prisoner to Bermuda; and
  - (b) the taking of the prisoner to, and his detention in custody at, such place or places in Bermuda as are specified in the warrant; and
  - (c) the returning of the prisoner to the country or territory from which he has come.

(5) Subsections (4) to (7) of section 7 above have effect in relation to a warrant issued under this section as they have effect in relation to a warrant issued under that section.

(6) A person is not subject to the Bermuda Immigration and Protection Act 1956 in respect of his entry into or presence in Bermuda in pursuance of a warrant under this section, but if the warrant ceases to have effect while he is still in Bermuda he shall be treated for the purposes of that Act as if he has then illegally entered Bermuda.

Search etc. for material relevant to overseas investigation

8A (1) Part III of the Police and Criminal Evidence Act 2006 (powers of entry, search and seizure) shall have effect as if references to serious arrestable offences in section 8 of and Schedule 1 to that Act included any conduct which is an offence under the law of a country or territory outside Bermuda and would constitute a serious arrestable offence if it had occurred in Bermuda.

- (2) If, on an application made by a police officer a magistrate is satisfied—
- (a) that criminal proceedings have been instituted against a person in a country or territory outside Bermuda or that a person has been arrested in the course of a criminal investigation carried on there;
  - (b) that the conduct constituting the offence which is the subject of the proceedings or investigation would constitute an arrestable offence within the meaning of the said Act of 2006 if it had occurred in Bermuda; and
  - (c) that there are reasonable grounds for suspecting that there is on premises in Bermuda occupied or controlled by that person evidence relating to the offence other than items subject to legal privilege within the meaning of that Act,

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

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

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(4) No application for a warrant or order shall be made by virtue of subsection (1) or (2) except in pursuance of a direction given by the Attorney General in response to a request received—

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

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

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

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

*[Section 8A inserted by 2007:27 s.3 effective 25 September 2009; amended by 2008:18 s.28 & Schedule effective 8 September 2008]*

Enforcement of overseas forfeiture orders

9 (1) The Attorney-General may by order provide for the enforcement in Bermuda of any order which—

- (a) is made by a court in a country or territory outside Bermuda designated for the purposes of this section by the order; and
- (b) is for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which an offence to which this section applies has been committed, or which was used in connection with the commission of such an offence.

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

(3) An order under this section may include such supplementary and incidental provisions as appear to the Attorney-General to be necessary or expedient, and may apply for the purposes of the order (with such modifications as appear to the Attorney-General to be appropriate) any provisions relating to confiscation or forfeiture orders under any other enactment.

(4) An order under this section may make different provision for different cases.

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(5) An order under this section is subject to the negative resolution procedure as if it were a statutory instrument.

(6) This section applies to any offence which corresponds to or is similar to an offence under the Misuse of Drugs Act 1972 or would be a drug trafficking offence as defined by section 3 of the Proceeds of Crime Act 1997 [*title 8 item 29*] if it were committed in Bermuda.

*[Section 9 amended by 1997:34 effective 19 January 1998]*

*Supplementary*

Rules of court

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

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

(3) An order under section 9 above may authorise the making of rules of court for any purpose specified in the order.

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

Application to proceedings involving Regiment personnel

11 (1) Section 4 above applies also to a summons requiring a person charged with a civil offence to appear before a service court or to attend before such a court for the purpose of giving evidence in proceedings for such an offence; and a warrant may be issued under section 8 above where—

- (a) such a summons has been issued in respect of a prisoner within the meaning of that section; or
- (b) it appears to the Attorney-General that it is desirable for such a prisoner to be identified in, or otherwise by his presence to assist, such proceedings or the investigation of such an offence.

(2) Section 7 above applies also to a person serving a sentence of detention imposed by a service court or detained in custody awaiting trial by such a court.

(3) In this section—

“civil offence” has the meaning assigned to it in subsection (4) of section 40 of the Defence Act 1965 ;

“service court” means a court exercising jurisdiction in relation to a civil offence under the said section 40.

PART IIA  
INTERNATIONAL TREATIES AND AGREEMENTS  
*MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS*

Interpretation

11A In this Part, unless the context otherwise requires—

“information” means any fact, statement or record in any form that is relevant or material for the enforcement of any provision under this Part;

“request” means a request for assistance by a requesting state to a requested state, which is made in accordance with the terms of a treaty concluded by the requesting state and the requested state;

“requested state” means a party to a treaty under this Part that receives a request for assistance under the treaty;

“requesting state” means a party to a treaty under this Part that makes a request for assistance under the treaty;

“treaty” means a mutual legal assistance treaty or agreement in criminal matters that incorporates the exchange of information and the performance and enforcement of specified requirements with respect to legal assistance in criminal matters, entered into by the Government of Bermuda, as authorized by the Government of the United Kingdom, with another government of a foreign state.

*[Section 11A inserted by 2012 : 26 s. 2 effective 13 July 2012]*

Application

11B The provisions of this Part apply to any treaty entered into before or after the commencement of this Part.

*[Section 11B inserted by 2012 : 26 s. 2 effective 13 July 2012]*

Legal effect of Part

11C (1) This Part has effect for the purpose of enforcing the giving of assistance by persons in Bermuda in connection with the performance of the obligations assumed by Bermuda under a treaty.

(2) The Attorney-General, in performing his functions under this Act, is not restricted by any law or any rule of law relating to confidentiality except as expressly provided under this Act or in the applicable treaty.

(3) For the avoidance of doubt, nothing in this Act shall prevent the giving of assistance by persons in Bermuda, in connection with the obligations assumed by Bermuda under—

- (a) a lawful agreement; or

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(b) a treaty,

in the freezing or seizure of assets which are the subject of an agreement or a treaty.

*[Section 11C inserted by 2012 : 26 s. 2 effective 13 July 2012; subsection (3) inserted by 2013 : 30 s. 17 effective 8 November 2013]*

Duties of the Attorney-General

11D (1) The Attorney-General is the competent authority for Bermuda under the treaties and agreements to which this Part applies.

(2) The Attorney-General may provide assistance to any requesting state in accordance with the terms of the treaty with that state .

(3) For the purposes of this section, no person who—

(a) receives from a requesting state a request for assistance; or

(b) obtains information directly or indirectly for the purposes of subsection (3)  
(a),

shall disclose the request or the information to another person without the consent of the requesting state.

(4) Subsection (3) does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources, or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(5) Any person who discloses information in contravention of subsection (3) is guilty of an offence and is liable—

(a) on summary conviction to a fine of \$50,000 or to imprisonment for two years or to both; or

(b) on conviction on indictment, to imprisonment for ten years or an unlimited fine or both.

(6) This section shall have effect notwithstanding the provisions of the Public Access to Information Act 2010.

*[Section 11D inserted by 2012 : 26 s. 2 effective 13 July 2012; subsections (3)-(6) inserted by 2015 : 53 s. 23 effective 1 January 2016]*

Grounds for declining a request for assistance

11E (1) Notwithstanding section 27, the Attorney-General may, where he determines that the costs of a request shall be in excess of \$500, decline the request if the requesting state does not agree to pay the difference in the costs of providing the assistance, whether incurred by the Attorney-General or any other person.

(2) The Attorney-General may also decline a request for assistance if —

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- (a) with respect to information relating to an offence which is a summary offence under the laws of Bermuda, the information relates to a period that is more than 12 months after the offence was committed;
- (b) the request pertains to information in the possession or control of a person other than the person named in the request or it does not relate specifically to the affairs of that person named in the request;
- (c) the information is protected from disclosure under the laws of Bermuda on the grounds of legal professional privilege;
- (d) the requesting state would not be able to obtain the information—
  - (i) under its own laws for the purposes of the administration or enforcement of its criminal laws; or
  - (ii) in response to a valid request from the Attorney-General under the treaty;
- (e) the disclosure of the information would be contrary to public policy; or
- (f) the Attorney-General is not satisfied that the requesting state will keep the information confidential and will not disclose it to any person other than—
  - (i) a person or authority in its own jurisdiction for the purposes of the administration and enforcement of its criminal laws; or
  - (ii) a person employed or authorized by the government of the requesting state to oversee data protection.

*[Section 11E inserted by 2012 : 26 s. 2 effective 13 July 2012]*

Notification of refusal

11F Where the Attorney-General declines, in whole or in part, a request under this Part, he shall notify the requesting state and give reasons for his decision.

*[Section 11F inserted by 2012 : 26 s. 2 effective 13 July 2012]*

Power to require information

11G (1) The Attorney-General may, in response to a request for testimony or evidence to be given by a person in Bermuda, by notice in writing served on such person in Bermuda, require the person to provide the information relating to the testimony or evidence before a court nominated by the Attorney-General as provided in section 6(2).

(2) The provisions of section 6(2) shall, with the necessary modifications, apply to a request under this section.

- (3) Where a request for assistance by a requesting state so stipulates—
  - (a) the court shall obtain the information sought by the request in the form of depositions of witnesses;
  - (b) the court may require that original documents or copies of original documents be certified or authenticated,

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and in each case Schedule 1 shall have effect.

*[Section 11G inserted by 2012 : 26 s. 2 effective 13 July 2012]*

Statutory duty to provide information

11H (1) A person on whom a notice has been served under section 11G shall appear before the court and provide the information specified in the notice, within the period specified in it.

(2) The court may extend the time specified in the notice served by the Attorney-General if in its opinion the circumstances warrant.

*[Section 11H inserted by 2012 : 26 s. 2 effective 13 July 2012]*

Location or identification of persons or items

11I (1) Subject to subsection (2), the Attorney-General may consider a request to assist in locating, or identifying and locating—

- (a) a person who is believed to be in Bermuda;
- (b) item or items, as specified in the request, believed to be in Bermuda.

(2) Where, on receipt of a request under subsection (1), the Attorney-General is satisfied—

- (a) that the request relates to a criminal matter in the requesting state; and
- (b) that there are reasonable grounds for believing that the person or item to whom the request relates—
  - (i) is or might be concerned in, or could give or provide evidence or assistance relevant to, the criminal matter; and
  - (ii) is in Bermuda,

the Attorney-General may authorise, in writing, assistance in accordance with this section.

(3) The Attorney-General may authorise the giving of assistance under subsection (2) by forwarding the request to the police, public officer or other appropriate Government department in Bermuda, and the person or department requested shall use its best endeavours to locate or, as the case may be, identify and locate the person or item specified in the request, and shall report to the Attorney-General the outcome.

(4) On receipt of such report, the Attorney-General shall inform the requesting state of the result of the inquiries made pursuant to the request as provided in section 11N.

*[Section 11I inserted by 2012 : 26 s. 2 effective 13 July 2012]*

Transfer of persons in custody

11J (1) Subject to the provisions of this section, the Attorney-General may, in response to a request, authorise the transfer of a person in custody in Bermuda to the territory of the requesting state under such terms and conditions as he may deem appropriate.

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(2) The provisions of section 7, with the exception of subsection (2), shall apply, with the necessary modifications, to a transfer of a person in custody in Bermuda to the territory of the requesting state under this section.

(3) No warrant shall be issued pursuant to section 7 for the purposes of this section in respect of a person in custody unless—

- (a) the person has consented, in writing, to being transferred in accordance with the request referred to in subsection (1) and the consent has been communicated to the Attorney-General and to the requesting state;
- (b) the Attorney-General has consented to the transfer in writing and has communicated his consent to the person in custody and to the requesting state;
- (c) the requesting state has communicated its acceptance and observance of the terms and conditions of the transfer to the Attorney-General and to the person in custody.

(4) For the purposes of subsection (3)(a), consent may be given either—

- (a) by the person in custody himself; or
- (b) in circumstances in which it appears to the Attorney-General inappropriate, by reason of the physical or mental condition or youth of such person in custody, for him to act for himself, by a person appearing to the Attorney-General to be an appropriate person to act on his behalf,

but a consent once given is not capable of being withdrawn after the issue of the warrant.

*[Section 11J inserted by 2012 : 26 s. 2 effective 13 July 2012]*

Transit of persons in custody

11K (1) The Attorney-General may, in response to a request, authorise the transit through Bermuda of a person held in custody by the requesting state or a third state, whose personal appearance has been requested by the requesting state for purposes connected with a criminal investigation, prosecution or proceeding.

(2) The person in custody who has been authorised to transit through Bermuda under subsection (1), who is being transported in an aircraft or ship which lands or calls at a place in Bermuda, shall be kept in such custody while in transit in Bermuda as the Attorney-General may, in consultation with the Minister responsible for national security, direct in writing until his transportation is continued.

(3) Where—

- (a) a person is being held in custody pursuant to a direction under subsection (2); and
- (b) the person's transportation is not, in the opinion of the Attorney-General, continued within a reasonable time,

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the Attorney-General may, in consultation with the Minister responsible for national security, direct, in writing, that the person be transported in custody to the country from which the person was first transported, and such a direction shall be sufficient authority for that person's removal from Bermuda by such means as the Attorney-General directs.

(4) Where a person in custody who has been authorised to transit through Bermuda under subsection (1) is, pursuant to a direction of the Attorney-General, to be detained in a prison, the Prisons Act 1979, so far as applicable and with all necessary modifications, shall apply with respect to that person as if he were a person who has been sentenced to imprisonment for an offence against the law of Bermuda and is liable to be detained in a prison under such a sentence.

(5) For the purposes of enabling the grant of a temporary visa under the Bermuda Immigration and Protection Act 1956 to any person whom it is proposed to transit through Bermuda pursuant to this section, the Attorney-General may issue a certificate, in writing, that the person is to be transported through Bermuda pursuant to this section.

(6) The Attorney-General may, at any time, by notice in writing, cancel any certificate issued under subsection (5) in respect of any person who is in Bermuda for the purposes of being transported through Bermuda pursuant to this section if the Attorney-General is satisfied that that person's presence in Bermuda is no longer necessary for that purpose.

(7) The Attorney-General may provide in the regulations for such other matters as he may deem necessary for the better carrying out of the purposes of this section.

(8) Regulations made under subsection (7) shall be subject to the negative resolution procedure.

*[Section 11K inserted by 2012 : 26 s. 2 effective 13 July 2012]*

#### Assistance in forfeiture proceedings

11L (1) The Attorney-General may by order made pursuant to section 9 assist with a request to enforce a foreign forfeiture order if such order is in compliance with the provisions of section 9.

(2) Without limiting the provisions of section 9, a foreign forfeiture order shall not have effect for the purposes of this Act or any enactment referred to in section 9(3) until it is registered by the Supreme Court of Bermuda.

(3) The Attorney-General may under the order made under subsection (1) prescribe requirements to be satisfied before the court can register a foreign forfeiture order.

*[Section 11L inserted by 2012 : 26 s. 2 effective 13 July 2012]*

#### Production, search and seizure

11M (1) Where, on receipt of a request, the Attorney-General is satisfied that —

- (a) the request relates to a criminal matter in the requesting state; and

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- (b) there are reasonable grounds for believing that the item to which the request relates is relevant to the criminal matter and is located in Bermuda,

the Attorney-General, or an authorised officer directed by him, may apply to the Supreme Court for an order under subsection (3) or a warrant under subsection (4) in respect of specified premises.

(2) An application for a warrant referred to in subsection (4) in respect of any item in the possession of a financial institution shall not be made unless that item can be particularised.

(3) If, on such an application, the court is satisfied that the conditions referred to in subsection (7) are fulfilled, it may make an order that the person who appears to the court to be in possession of the item to which the application relates shall —

- (a) produce the item to an authorised officer for him to take away; or
- (b) give an authorised officer access to the item,

within seven days of the date of the order or such other period as the court considers appropriate.

(4) On an application referred to in subsection (1), the court may issue a warrant in writing authorizing the Attorney-General, or an authorised officer directed by him, to enter the premises, if necessary by force, at any time within 14 days commencing on the day of the issue of the warrant, and search them if the court is satisfied that the conditions in subsection (7) are fulfilled and that—

- (a) an order made under subsection (3) in relation to any item on the premises has not been complied with; or
- (b) the circumstances of the matter require that urgent action be taken.

(5) The Attorney-General, or an authorised officer directed by him, entering premises by virtue of a warrant under this section—

- (a) may take such other persons and equipment with him as he thinks necessary; and, on leaving the premises entered by virtue of a warrant under this section, shall, if they are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them;
- (b) may seize and remove any item whatsoever found there which he has reasonable cause to believe may contain information relevant to a request; and
- (c) shall prepare a list of the items seized, where anything has been seized, and, if so requested by a person showing himself either—
  - (i) to be the occupier of the premises; or
  - (ii) to have had possession or custody of those items immediately before the seizure,

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provide that person with a copy of that list.

(6) The Attorney-General may transfer the items seized to the requesting state in accordance with the terms of this Act and the applicable treaty, and may in writing state the conditions that are to apply to such transfer.

(7) The conditions to be fulfilled under subsections (3) and (4) are that—

- (a) there are reasonable grounds for suspecting that a specified person in Bermuda has carried on or has benefited from an offence relating to the item in respect of which the request is made;
- (b) there are reasonable grounds for believing that the item to which the application relates —
  - (i) is likely to be of substantial value (whether by itself or together with another item) to the criminal matter in respect of which the request is made; and
  - (ii) does not consist of or include items subject to legal privilege; and
- (c) the court is satisfied that it is not contrary to the public interest for the order or warrant to be issued.

*[Section 11M inserted by 2012 : 26 s. 2 effective 13 July 2012]*

#### Forwarding information or items to requesting state

11N (1) Where the Attorney-General obtains any information under sections 11G or 11I or causes a person to forfeit any item or seizes any item under sections 11L or 11M, he shall keep such information or such item forfeited or seized confidential other than for purposes of forwarding to the requesting state.

(2) The Attorney-General may forward or provide any item forfeited or seized under sections 11L or 11M to the requesting state after 20 days of the date of receipt of such item.

*[Section 11N inserted by 2012 : 26 s. 2 effective 13 July 2012]*

#### Offences and penalties

11O (1) A person commits an offence who fails to provide information as required by sections 11G or 11I or wilfully tampers with or alters such information so that it is not in its original form when received by the Attorney-General.

(2) A person commits an offence who, without lawful excuse, destroys or damages any information or items which the Attorney-General or the court, under this Part, has directed such person or another person to provide.

(3) A person who commits an offence under subsection (1) or (2) shall be liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months, or to both.

*[Section 11O inserted by 2012 : 26 s. 2 effective 13 July 2012]*

PART III

THE VIENNA CONVENTION

*SUBSTANCES USEFUL FOR MANUFACTURE OF CONTROLLED DRUGS*

Manufacture and supply of scheduled substances

12 (1) It is an offence for a person—

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

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

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

- (a) on summary conviction, to imprisonment for six months or a fine of \$3,000 or both;
- (b) on conviction on indictment, to imprisonment for fourteen years or an unlimited fine or both.

(3) In this section “a controlled drug” has the meaning that it has in the Misuse of Drugs Act 1972, and “unlawful production of a controlled drug” means the production of such a drug which is unlawful by virtue of section 5(1)(a) of that Act.

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

(5) The Minister may by order amend that Schedule (whether by addition, deletion or transfer from one Table to the other) but—

- (a) no such order shall add any substance to the Schedule unless—
  - (i) it appears to the Minister to be frequently used in or for the unlawful production of a controlled drug; or
  - (ii) it has been added to the Annex to the Vienna Convention under Article 12 of that Convention; and
- (b) such an order is subject to the affirmative resolution procedure.

Regulations about scheduled substances

13 (1) The Minister may by regulations make provision—

- (a) imposing requirements as to the documentation of transactions involving scheduled substances;
- (b) requiring the keeping of records and the furnishing of information with respect to such substances;
- (c) for the inspection of records kept pursuant to the regulations;

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- (d) for the labelling of consignments of scheduled substances.
- (2) Regulations made by virtue of subsection (1)(b) may, in particular, require—
  - (a) the notification of the proposed exportation of substances specified in Table I in Schedule 2 to this Act to such countries as may be specified in the regulations; and
  - (b) the production, in such circumstances as may be so specified, of evidence that the required notification has been given.
- (3) Regulations under this section may make different provision in relation to the substances specified in Table I and Table II in Schedule 2 to this Act respectively and in relation to different cases or circumstances.
- (4) Regulations under this section are subject to the negative resolution procedure.
- (5) A person who fails to comply with a requirement imposed by the regulations or, in purported compliance with such a requirement, furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular is guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for six months or a fine of \$3,000 or both;
  - (b) on conviction on indictment, to imprisonment for two years or an unlimited fine or both.
- (6) Information obtained pursuant to the regulations shall not be disclosed except for the purposes of criminal proceedings or of proceedings under the provisions of the Proceeds of Crime Act 1997 [*title 8 item 29*] relating to the confiscation of the proceeds of, or benefits from, drug trafficking.

[Section 13 amended by 1997:34 effective 19 January 1998]

*Proceeds of drug trafficking*

Concealing or transferring proceeds of drug trafficking

14 [Repealed]

[Section 14 repealed by 1997:34 effective 19 January 1998] [Note: The repeal of this section does not affect its continuing operation in relation to orders made thereunder.]

Interest on sums unpaid under confiscation orders

15 [Repealed]

[Section 15 repealed by 1997:34 effective 19 January 1998] [Note: The repeal of this section does not affect its continuing operation in relation to orders made thereunder.]

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*Offences at sea*

Offences on Bermuda-registered ships

16 Anything which would constitute a drug trafficking offence within the meaning of the Proceeds of Crime Act 1997 [*title 8 item 29*] if done on land in Bermuda constitutes that offence if done on a ship registered in Bermuda.

[Section 16 amended by 1997:34 effective 19 January 1998]

Ships used for illicit traffic

17 (1) This section applies to a ship registered in Bermuda, a dependent territory or a Convention state.

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

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

knowing or having reasonable grounds to suspect that the drug is intended to be imported, or has been exported, contrary to section 4(1) of the Misuse of Drugs Act 1972 or to the law of a state or a dependent territory.

(3) A certificate purporting to be issued by or on behalf of the government of a state or a dependent territory to the effect that the importation or export of a controlled drug is prohibited by the law of that state or territory shall be evidence of the matters stated.

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

- (a) in a case where the controlled drug is a Class A drug—
  - (i) on summary conviction, to imprisonment for six months or a fine of \$3,000 or both;
  - (ii) on conviction on indictment, to imprisonment for life or an unlimited fine or both;
- (b) in a case where the controlled drug is a Class B drug—
  - (i) on summary conviction, to imprisonment for six months or a fine of \$3,000 or both;
  - (ii) on conviction on indictment, to imprisonment for fourteen years or an unlimited fine or both;
- (c) in a case where the controlled drug is a Class C drug—
  - (i) on summary conviction, to imprisonment for three months or a fine of \$2,000 or both;
  - (ii) on conviction on indictment, to imprisonment for five years or an unlimited fine or both.

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(5) In this section “a controlled drug” has the same meaning as in the said Act of 1972, and an offence under this section shall be included in the offences to which section 29 of that Act (defences) applies.

(6) The Minister may make regulations dividing controlled drugs into Classes A, B and C for the purposes of subsection (4) above.

(7) Regulations under subsection (6) above are subject to the negative resolution procedure.

*[Section 17 amended by 1996:8 effective 26 March 1996]*

Enforcement powers

18 (1) The powers conferred on an enforcement officer by Schedule 3 to this Act are exercisable in relation to any ship to which section 16 or 17 above applies for the purpose of detecting and the taking of appropriate action in respect of the offences mentioned in those sections.

(2) Those powers shall not be exercised outside the territorial waters of Bermuda in relation to a ship registered in a Convention state except with the authority of the Minister; and he shall not give his authority unless that state has in relation to that ship—

(a) requested the assistance of Bermuda for the purpose mentioned in subsection (1) above; or

(b) authorised Bermuda to act for that purpose.

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

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

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

(6) The powers conferred by that Schedule shall not be exercised in the territorial waters of a state or dependent territory without the authority of the Minister, and he shall not give his authority unless that state or territory has consented to the exercise of those powers.

*[Section 18 amended by 1996:8 effective 26 March 1996]*

Enforcement powers of Convention state in territorial waters

18A (1) Subject to this section, a Convention state may, under an agreement made or which may be made by or on behalf of Bermuda, exercise in relation to a ship in the

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territorial waters of Bermuda, powers corresponding to those conferred on enforcement officers by Schedule 3.

- (2) A Convention state may exercise those powers in relation to—
- (a) any ship, when so authorised by an enforcement officer of Bermuda who is embarked on an enforcement vessel of the Convention State;
  - (b) any ship which is pursued into the territorial waters of Bermuda by an enforcement vessel of the Convention state, or
  - (c) a ship other than a ship registered in Bermuda,

for the purpose of detecting and taking appropriate action in respect of drug offences.

(3) A Convention state shall, before exercising the powers referred to in subsections (2)(b) and (c),—

- (a) give advance notice of its proposed action in relation to the ship to an enforcement officer of Bermuda;
- (b) where it was not practical to do so at the time, notify such officer of any action taken in relation to the ship as soon as possible after its occurrence.

(4) A Convention state shall not exercise the powers referred to in subsections (2)(b) and (c) unless an enforcement vessel of Bermuda is not immediately available to exercise enforcement powers in relation to the ship.

*[Section 18A inserted by 1999:20 s.2 effective 5 July 1999]*

#### Jurisdiction and prosecutions

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

(2) No such proceedings shall be instituted except by or with the consent of the Director of Public Prosecutions.

(3) Without prejudice to subsection (2) above no proceedings for an offence under section 17 above alleged to have been committed outside the territorial waters of Bermuda on a ship registered in a Convention state shall be instituted except in pursuance of the exercise with the authority of the Minister of the powers conferred by Schedule 3 to this Act.

*[Section 19 subsection (2) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]*

#### *Supplementary*

#### Application of ancillary provisions of Misuse of Drugs Act 1972

20 (1) The Misuse of Drugs Act 1972 is amended as follows.

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(2) In section 16(1) (prohibition direction on practitioner etc. in consequence of conviction) there are inserted next before the words “the Minister” the words “or under section 12 or 13 of the Criminal Justice (International Co-operation) (Bermuda) Act 1994”.

(3) In section 23 (offences by corporations) after the words “any offence under this Act” there are inserted the words “or Part III of the Criminal Justice (International Co-operation) (Bermuda) Act 1994”.

(4) In section 25 (entry on premises; search; seizure) after subsection (3) there is inserted the following subsection—

“(3A) The powers conferred by subsection (1) shall be exercisable also for the purposes of the execution of Part III of the Criminal Justice (International Co-operation) (Bermuda) Act 1994, and subsection (3) shall apply also to offences under section 12 or 13 of that Act, taking references (whether direct or indirect) in those subsections to controlled drugs as references to scheduled substances within the meaning of that Part.”.

Interpretation of Part III

21 (1) In this Part of this Act—

“Convention state” means a state which is a party to the Vienna Convention;

“dependent territory” has the meaning given to that expression by section 50(1) of the British Nationality Act 1981 (U.K.);

“enforcement vessel of a Convention state” means a warship or other ship of that state or territory, authorised by the state or territory to be on its service other than its commercial service, clearly identifiable as being on such service and having on board law enforcement officials of that state or territory and includes any boat or aircraft carried on such ship;

“enforcement vessel of Bermuda” means a vessel operated by the Bermuda Police Service or by the Customs Department;

“scheduled substance” has the meaning given in section 12(4) above;

“ship” includes any vessel used in navigation;

“the Vienna Convention” means the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed in Vienna on 20th December 1988.

(2) *[Repealed by 1997:34]*

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

*[Section 21 amended by 1996:8 effective 26 March 1996; by 1997:34 effective 19 January 1998; in subsection (1) “enforcement vessel of a Convention state” and “enforcement vessel of Bermuda” inserted by 1999:20 s.3 effective 5 July 1999]*

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PART IV

DRUG TRAFFICKING MONEY IMPORTED OR EXPORTED IN CASH

Seizure and detention

22 *[Repealed]*

*[Section 22 amended by 1996:8 effective 26 March 1996; and repealed by 1997:34 effective 19 January 1998]*

*[Note: The repeal of this section does not affect its continuing operation in relation to orders made thereunder.]*

Forfeiture

23 *[Repealed]*

*[Section 23 repealed by 1997:34 effective by 19 January 1998]*

*[Note: The repeal of this section does not affect its continuing operation in relation to orders made thereunder.]*

Interest

24 *[Repealed]*

*[Section 24 repealed by 1997:34 effective by 19 January 1998]*

*[Note: The repeal of this section does not affect its continuing operation in relation to orders made thereunder.]*

Procedure

25 *[Repealed]*

*[Section 25 repealed by 1997:34 effective by 19 January 1998]*

*[Note: The repeal of this section does not affect its continuing operation in relation to orders made thereunder.]*

Interpretation of Part IV

26 *[Repealed]*

*[Section 26 amended by 1996:8 effective 26 March 1996; and repealed by 1997:34 effective 19 January 1998]*

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PART V  
GENERAL

Expenses and receipts

27 (1) Any expenses incurred by the Attorney-General or the Minister under this Act shall be defrayed out of money provided by the Legislature.

(2) Any money representing cash forfeited under Part IV of this Act or accrued interest on any such money shall be paid into the Consolidated Fund.

Non-prosecution of witnesses

27A (1) Subject to the written consent of the Director of Public Prosecutions, a witness, expert or other person who, at the request of prosecuting authorities in Bermuda, consents to—

- (a) give evidence in a proceeding in Bermuda; or
- (b) assist in an investigation, prosecution or judicial proceeding in Bermuda,

shall be afforded safe conduct, and shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty, in Bermuda, in respect of acts, omissions or convictions prior to his departure from the requested State Party.

(2) Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he—

- (a) has been officially informed that his presence is no longer required by prosecuting authorities;
- (b) (although having an opportunity to leave without condition) has, nevertheless remained voluntarily in Bermuda; or
- (c) having left Bermuda, has returned of his or her own free will.

(3) In this section—

“State Party” means any country or territory, and includes Bermuda.

*[Section 27A inserted by 2013 : 30 s. 18 effective 8 November 2013]*

Consequential and other amendments

28 (1) The enactments mentioned in Schedule 4 to this Act have effect with the amendments there specified, being amendments consequential on or otherwise relating to the provisions of this Act.

(2) *[Repealed]*

*[Section 28 amended by 1997:34 effective 19 January 1998]*

Commencement

29 *[omitted]*

SCHEDULE 1

(Section 6(6))

BERMUDIAN EVIDENCE FOR USE OVERSEAS: PROCEEDINGS OF  
NOMINATED COURT

*SECURING ATTENDANCE OF WITNESSES*

1 The court has the like powers for securing the attendance of a witness for the purpose of the proceedings as it has for the purpose of other proceedings before the court.

*POWER TO ADMINISTER OATHS*

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

*PRIVILEGES OF WITNESSES*

3 (1) A person is not compelled to give in the proceedings any evidence which he could not be compelled to give—

(a) in criminal proceedings in Bermuda; or

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

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

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

(4) Without prejudice to sub-paragraph (1) above a person is not compelled under this Schedule to give any evidence if his doing so would be prejudicial to the security of Bermuda; and a certificate signed by or on behalf of the Governor acting in his discretion to the effect that it would be so prejudicial for that person to do so is conclusive evidence of that fact.

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

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

*TRANSMISSION OF EVIDENCE*

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

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

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

*SUPPLEMENTARY*

5 For the avoidance of doubt it is hereby declared that sections 56 to 61 of the Evidence Act 1905 (relating to bankers' books) apply to the proceedings as they apply to other proceedings before the court.

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

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SCHEDULE 2

(Sections 12 and 13)

SUBSTANCES USEFUL FOR MANUFACTURING CONTROLLED DRUGS

TABLE I

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

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

TABLE II

ACETIC ANHYDRIDE  
ACETONE  
ANTHRANILIC ACID  
ETHYL ETHER  
PHENYLACETIC ACID  
PIPERIDINE

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

SCHEDULE 3

(Section 18)

ENFORCEMENT POWERS IN RESPECT OF SHIPS

*PRELIMINARY*

- 1 (1) In this Schedule “an enforcement officer” means—
- (a) a customs officer or a police officer; and
  - (b) any other person of a description specified in an order made for the purposes of this Schedule by the Minister.
- (2) An order under sub-paragraph (1)(b) above is subject to the affirmative resolution procedure.
- (3) In this Schedule “the ship” means the ship in relation to which the powers in this Schedule are exercised.

*POWER TO STOP, BOARD, DIVERT AND DETAIN*

- 2 (1) An enforcement officer may stop the ship, board it and, if he thinks it necessary for the exercise of his functions, require it to be taken to a port in Bermuda and detain it there.
- (2) Where an enforcement officer is exercising his powers with the authority of the Minister given under section 18(2) of this Act the officer may require the ship to be taken to a port in the Convention state in question or, if that state has so requested, in any other country or territory willing to receive it.
- (3) For any of those purposes he may require the master or any member of the crew to take such action as may be necessary.
- (4) If an enforcement officer detains a vessel he shall serve on the master a notice in writing stating that it is to be detained until the notice is withdrawn by the service on him of a further notice in writing signed by an enforcement officer.

*POWER TO SEARCH AND OBTAIN INFORMATION*

- 3 (1) An enforcement officer may search the ship, anyone on it and anything on it including its cargo.
- (2) An enforcement officer may require any person on the ship to give information concerning himself or anything on the ship.
- (3) Without prejudice to the generality of those powers an enforcement officer may—
- (a) open any containers;

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

*POWERS IN RESPECT OF SUSPECTED OFFENCE*

4 If an enforcement officer has reasonable grounds to suspect that an offence mentioned in section 16 or 17 of this Act has been committed on a ship to which that section applies he may—

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

*ASSISTANTS*

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

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

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

*USE OF REASONABLE FORCE*

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

*EVIDENCE OF AUTHORITY*

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

*PROTECTION OF OFFICERS*

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

*OFFENCES*

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

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

(2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine of \$3,000.

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SCHEDULE 4

(Section 28(1))

CONSEQUENTIAL AND OTHER AMENDMENTS

[omitted]

[Assent Date: 13 December 1994]

[Operative Date: 1 July 1996]

[This Act was brought into operation on 1 July 1996]

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*Amended by:*

1996 : 8  
1997 : 34  
1999 : 8  
1999 : 20  
2007 : 27  
2008 : 18  
BR 5 / 2011  
2012 : 26  
2013 : 30  
2015 : 53  
2018 : 51]