



REPUBLIC OF NAURU

# PROCEEDS OF CRIME (AMENDMENT) ACT 2023

---

No. 4 of 2023

---

An Act to amend the *Proceeds of Crime Act 2004* and for other related purposes.

Certified: 7 June 2023

## Table of Provisions

1	Short title.....	3
2	Commencement.....	3
3	Amendment of the Proceeds of Crime Act 2004.....	3
4	Amendment of Section 3.....	3
5	Insertion of new Section 4A.....	4
6	Amendment of Section 16.....	5
7	Amendment of Part 2.....	5
8	Amendment of Section 17.....	5
9	Amendment of Section 20.....	5
10	Amendment of Section 21.....	6
11	Amendment of Section 23.....	6
12	Insertion of new Division 2A.....	6
13	Amendment of Section 27.....	11
14	Amendment of Section 28.....	11
15	Amendment of Section 34.....	11
16	Amendment of Section 35.....	12

17	Insertion of new Section 35A .....	13
18	Amendment of Section 36.....	14
19	Insertion of new Section 36A .....	14
20	Amendment of Section 37.....	14
21	Amendment of Section 38.....	15
22	Amendment of Section 39.....	15
23	Amendment of Section 44.....	15
24	Amendment of Section 48.....	15
25	Deletion of Section 49.....	16
26	Amendment of Section 50.....	17
27	Amendment of Section 51.....	18
28	Amendment of Section 57.....	18
29	Insertion of new Section 84A .....	18
30	Amendment of Section 85.....	19
31	Amendment of Section 86.....	20
32	Amendment of Section 87.....	21
33	Amendment of Section 96.....	21
34	Insertion of new Sections 96A and 96B .....	22
35	Amendment of Section 97.....	24
36	Amendment of Section 98.....	24
37	Amendment of Section 107.....	24
38	Insertion of new Sections 108 and 109 .....	24
39	Transitional provision .....	25

Enacted by the Parliament of Nauru as follows:

**1 Short title**

This Act may be cited as the *Proceeds of Crime (Amendment) Act 2023*.

**2 Commencement**

This Act commences on the date it is certified by the Speaker.

**3 Amendment of the Proceeds of Crime Act 2004**

The *Proceeds of Crime Act 2004* is amended by the provisions of this Act.

**4 Amendment of Section 3**

Section 3 is amended:

(a) in the definition of '**production order**' by deleting '80' and substituting with '78';

(b) in the definition of '**serious offence**':

(i) by deleting '12 months' and substituting with '2 years';

(ii) by deleting 'or' at the end of paragraph (a); and

(iii) by inserting the following new paragraphs:

*'(c) financial crime and criminal conduct under the Anti-Money Laundering and Targeted Financial Sanctions Act 2023; or*

*(d) offences under the Counter Terrorism and Transnational Organised Crime Act 2004;';*

(c) in the definition of '**tainted property**' by:

(i) deleting 'or' at the end of paragraph (b); and

(ii) inserting the following new paragraphs:

*'(d) criminal property under the Anti-Money Laundering and Targeted Financial Sanctions Act 2023; or*

*(e) terrorist property under the Counter Terrorism and Transnational Organised Crime Act 2004;';*

(d) in the definition of '*Financial Intelligence Unit*' by deleting '*has the same meaning given by the Anti-Money Laundering Act 2008*' and substituting with '*means the Financial Intelligence Unit continued in existence under the Anti-Money Laundering and Targeted Financial Sanctions Act 2023*'; and

(e) by inserting the following definition in its correct alphabetical order:

**'effective control'** has the meaning given by Section 4A;

**'Minister'** means the Minister for Justice and Border Control;'

## 5 Insertion of new Section 4A

A new Section 4A is inserted immediately after Section 4 as follows:

### **'4A Meaning of "effective control"**

- (1) *Property may be subject to the effective control of a person whether or not the person has:*
  - (a) *a legal or equitable estate or interest in the property; or*
  - (b) *a right, power or privilege in connection with the property.*
- (2) *Property that is held on trust for the ultimate benefit of a person is taken to be under the effective control of the person.*
- (3) *The property is taken to be under the effective control of a person if:*
  - (a) *property is initially owned by such person; and*
  - (b) *within 6 years either before or after an application for a restraining order or a confiscation order is made, the property is disposed of to another person without sufficient consideration.*
- (4) *In determining whether or not property is subject to the effective control of a person, the effect of any order made in relation to the property under this Act is to be disregarded.*
- (5) *In determining whether or not property is subject to the effective control of a person, regard may be had to:*
  - (a) *shareholdings in debentures over or directorships of a corporation that has an interest whether direct or indirect in the property;*
  - (b) *a trust that has a relationship to the property; and*
  - (c) *family, domestic and business relationships between persons having an interest in the property or in companies of the kind referred to in paragraph (a) or trusts of the kind referred to in paragraph (b) and other persons.*

(6) *For the purposes of this Section, family relationships include but are not limited to the following:*

(a) *relationships between de-facto partners;*

(b) *relationships of child and parent; or*

(c) *relationships traced through relationships mentioned in paragraphs (a) and (b).*

(7) *To avoid doubt, property may be subject to the effective control of more than one person.'*

**6 Amendment of Section 16**

Section 16 is deleted and substituted as follows:

**'16 Nauruan land is excluded from forfeiture order**

*A forfeiture order shall not be made against any piece of land in the Republic.'*

**7 Amendment of Part 2**

Part 2 of the Act is amended by deleting the heading of Division 2 and substituting with:

**'DIVISION 2 - FORFEITURE ORDERS FOR TAINTED PROPERTY UPON CONVICTION**

**8 Amendment of Section 17**

Section 17 is amended by inserting a new subsection (2A) after subsection (2) as follows:

*'(2A) The Supreme Court may infer in the absence of evidence to the contrary that:*

(a) *such property had been intended for use in, or had been used in or in connection with, the commission of a serious offence if it had been in the person's possession at the time of, or immediately after, the commission of the serious offence for which the person was convicted; or*

(b) *the property was derived, obtained or realised as a result of the commission of the serious offence if it was acquired by the person before, during or within a reasonable time after the period of the commission of the serious offence for which the person was convicted.'*

**9 Amendment of Section 20**

Section 20 is amended:

- (a) in subsection (3) by deleting '6' and substituting with '12'; and
- (b) in subsection (5) by deleting 'reasonable written notice' and substituting with 'notice within 14 days'.

**10 Amendment of Section 21**

Section 21 is amended by deleting subsection (2) substituting as follows:

*'(2) Where a person:*

*(a) is taken to have absconded in connection with an offence; or*

*(b) is dead,*

*the Court may order that the property or part of it as the Court specifies in the order, be forfeited to the Republic.'*

**11 Amendment of Section 23**

Section 23 is amended by:

- (a) deleting 'or' at the end of paragraph (c);
- (b) deleting the comma at the end of paragraph (d) and substituting with '; or'; and
- (c) inserting a new paragraph (e) as follows:

*'(e) has been substantially diminished in value or rendered worthless,'*

**12 Insertion of new Division 2A**

A new Division 2A is inserted in Part 2 immediately after Division 2 as follows:

***'DIVISION 2A — FORFEITURE OF RESTRAINED PROPERTY UPON CONVICTION OF SERIOUS OFFENCE***

***25A Forfeiting restrained property without a forfeiture order where a person has been convicted of serious offence***

*(1) The Supreme Court shall order that property is forfeited to the Republic at the end of the period applying under subsection (3) where:*

*(a) a person is convicted of a serious offence;*

*(b) either:*

- (i) *at the end of that period, the property is covered by a restraining order under Division 3 of Part 3 against the person that relates to the offence; or*
    - (ii) *the property was covered by such a restraining order against the person, but the order was revoked under Section 57; and*
  - (c) *the property is not subject to an order under Section 53(3) or 66(3) excluding the property from forfeiture under this Part.*
- (2) *This Section applies notwithstanding that:*
- (a) *the restraining order was made before or after the person's conviction of serious offence; or*
  - (b) *immediately before forfeiture, the property is the person's property or another person's property.*
- (3) *The period at the end of which the property shall be forfeited is the 6-month period commencing on the day a person is convicted of a serious offence.*

**25B Notice of date of forfeiture under this Part**

- (1) *The Secretary for Justice in relation to the restraining order referred to in Section 25A (1) shall, before property is forfeited under this Part, take reasonable steps to give any person who has or claims to have, or who the Secretary for Justice reasonably believes may have, an interest in the property a written notice stating:*
- (a) *the date on which the property shall be forfeited under this Part unless it is excluded from forfeiture;*
  - (b) *the effect of Section 25C; and*
  - (c) *that the person may be able to apply for an order under one of the following Sections in relation to the property:*
    - (i) *Section 25C;*
    - (ii) *Section 25E; or*
    - (iii) *Section 53(3).*
- (2) *The Secretary for Justice is not required to give a notice to a person if the person has made:*
- (a) *an application for an extension order in relation to the property; and*

- (b) *an application under Section 25D, 53(3) or 66(3) in relation to the property.*

**25C      *Making an extension order extending the period before property is forfeited***

- (1) *The Supreme Court may in relation to an order made under Section 25A(1) make an order extending the period under Section 25A(3) where:*

- (a) *an application for the order is made before the period under Section 25A(3) lapses;*

- (b) *the applicant has also applied to the Court under:*

- (i) *Section 53(3) or 66(3) to exclude property from the restraining order; or*

- (ii) *Section 25D to exclude the property that is covered by the restraining order from forfeiture under this Part; and*

- (c) *the Court is satisfied that the applicant made the application under Section 25D, 53(3) or 66(3) within 14 days of having acquired or with reasonable diligence ought to have acquired the knowledge.*

- (2) *The extended period that is specified shall end no later than 12 months from the day a person is convicted of the serious offence.*

- (3) *The extension order stops being in force where the application under Section 25D, 53(3) or 66(3) is determined before the end of the:*

- (a) *6-month period referred to in Section 25A(3); or*

- (b) *specified extended period.*

- (4) *Where the Supreme Court makes the extension order, the Secretary for Justice shall take reasonable steps to give any person who has or claims to have, or whom the Secretary for Justice reasonably believes may have, an interest in the property to which the order relates, a written notice stating:*

- (a) *the date on which the property shall be forfeited under this Part, in accordance with the extension order, unless it is excluded from forfeiture; and*

- (b) *the effect of subsections (2) and (3).*

**25D      *Excluding property from forfeiture under this Part***



- (1) *The Supreme Court shall, in relation to an order referred to in Section 25A(1), make an order excluding particular property from forfeiture under this Part where:*
  - (a) *a person applies for an order under this Section;*
  - (b) *the Court is satisfied that the person who applied has an interest in property covered by the restraining order;*
  - (c) *another person has been convicted of a serious offence to which the restraining order relates;*
  - (d) *the Court is satisfied that the interest of the person who made the application, in the property, is neither proceeds of the serious offence nor an instrument of the serious offence; and*
  - (e) *the Court is satisfied that the interest of the person who applied in the property was lawfully acquired.*
- (2) *An order under this Section cannot be made in relation to property if the property has already been forfeited under this Part.*
- (3) *The person shall give written notice to the Secretary for Justice of both the application and the grounds on which the order is sought.*
- (4) *The Secretary for Justice may appear and adduce evidence at the hearing of the application.*
- (5) *Subject to subsection (6), the Secretary for Justice shall give the applicant notice of any grounds on which the Director proposes to contest the application.*
- (6) *The notice required under subsection (5) shall be given by the Secretary for Justice within 14 days of receiving the application.*

**25E      *Compensating for proportion of property not derived or realised from commission of any offence***

- (1) *The Supreme Court in relation to a restraining order referred to in Section 25A(1) shall, make an order that complies with subsection (2) where:*
  - (a) *a person has applied for an order under this Section;*
  - (b) *the Court is satisfied that such person has an interest in property covered, or that was at any time covered, by the restraining order;*
  - (c) *another person has been convicted of a serious offence to which the restraining order relates;*
  - (d) *the Court is satisfied that a proportion of the value of such person's interest was not derived or realised, directly or indirectly, from the commission of any offence; and*

- (e) *the Court is satisfied that such person's interest is not an instrument of any offence.*
- (2) *An order under this Section shall:*
  - (a) *specify the proportion found by the Supreme Court under subsection (1)(d); and*
  - (b) *direct the Republic, once the property has vested absolutely in it, to:*
    - (i) *where the property has not been disposed of—dispose of the property; and*
    - (ii) *pay such person an amount equal to that proportion of the difference between the amount received from disposing of the property and the sum of any payments of the kind referred to in Section 100(4)(e) in connection with the forfeiture.*
- (3) *Subject to subsection (4), an application under this Section may be made at any time.*
- (4) *The Supreme Court may give the person leave to apply where the Court is satisfied that:*
  - (a) *the person had:*
    - (i) *been given a notice under Section 25C(1) in relation to the property; or*
    - (ii) *not been given such a notice for the purposes of Section 25C(2);*
  - (b) *the person did not make the application under subsection (3) before such forfeiture;*
  - (c) *the person had a good reason for not making the application before the forfeiture; or*
  - (d) *the person now has evidence relevant to the application that was not available before the forfeiture.*
- (5) *The person shall give written notice to the Secretary for Justice of both the application and the grounds on which the order is sought.*
- (6) *The Secretary for Justice may appear and adduce evidence at the hearing of the application.*
- (7) *Subject to subsection (9), the Secretary for Justice shall give the applicant notice of any grounds on which the Director proposes to contest the application.*

- (8) *The notice required under subsection (8) shall be given after the Secretary for Justice has had a reasonable opportunity to conduct examinations in relation to the application.*
- (9) *The application shall not be heard until the Secretary for Justice has had a reasonable opportunity to conduct examinations in relation to the application.'*

**13 Amendment of Section 27**

Section 27 amended by inserting the following new subsections after subsection (4):

- '(5) Where evidence is given at the hearing of the application that the value of the person's property at any time after the commission of the serious offence exceeded the value of the person's property before the commission of the offence, then the Supreme Court shall, subject to subsection (6) treat the value of the benefit as being not less than the amount of that excess.*
- (6) Where, after evidence of the kind referred to in subsection (5) is given, the person satisfies the Supreme Court that the whole or part of the excess was due to causes unrelated to the commission of the serious offence, subsection (5) does not apply to the excess or that part.*
- (7) For the purposes of this Section:*
  - (a) 'tainted property' includes property that is held by a person but under the effective control of another person; and*
  - (b) 'derives an advantage' includes reducing or avoiding a cost or loss.'*

**14 Amendment of Section 28**

Section 28 is amended by

*'(3A) Where:*

- (a) the person tenders to the Supreme Court a statement as to any matters relevant to determining the amount that might be realised at the time the pecuniary penalty order is made; and*
- (b) the Secretary for Justice accepts to any extent any allegation in the statement,*

*the Supreme Court may, for the purposes of that determination, treat the acceptance of the Secretary for Justice as conclusive of the matters to which it relates'.*

**15 Amendment of Section 34**

Section 34 is deleted and substituted as follows:

**'34 Discharge of pecuniary penalty order**

*A pecuniary penalty order is discharged:*

- (a) where the conviction of the serious offence or activities in reliance on which the order was made is or is taken to be quashed and no conviction for the serious offence or activities is substituted;*
- (b) where the order is quashed; or*
- (c) on the satisfaction of the order by payment of the amount due under the order in accordance with any written law.'*

**16 Amendment of Section 35**

Section 35 is deleted and substituted as follows:

**'35 Warrant to search land for tainted property**

*(1) Where a police officer has reasonable grounds for suspecting that there is or may be, tainted property of a particular kind:*

- (a) on a person;*
- (b) otherwise than in a person's immediate power or control; or*
- (c) upon land or any building on such land,*

*the police officer may file before a Resident Magistrate information on oath setting out those grounds and apply for the issue of a warrant to search the person, the land or the building.*

*(2) Where an application is made for a warrant to search a person or the land the Resident Magistrate may subject to subsection (3) issue a warrant authorising a police officer, with such assistance and by such force as is necessary and reasonable:*

- (a) to search the person for property of that kind;*
- (b) to enter upon the land or in or upon any premises and to search the land or premises for property of that kind; and*
- (c) to seize property found in the course of the search that the police officer believes on reasonable grounds to be property of that kind.*

*(3) The warrant shall state:*

- (a) *the purpose for which it is issued including, in respect of tainted property, a reference to the nature of the relevant serious offence;*
  - (b) *a description of the kind of property authorised to be seized;*
  - (c) *a time at which the warrant ceases to be in force; and*
  - (d) *whether entry is authorised to be made at any time of the day or night or during specified hours.*
- (4) *Where during the course of searching under the warrant, a police officer finds:*
- (a) *property that the police officer believes on reasonable grounds to be tainted property of a type not specified in the warrant or tainted property in relation to other serious offences; or*
  - (b) *any property the police officer believes on reasonable grounds will serve as evidence as to the commission of a serious offence,*

*the police officer may seize that property.*

- (5) *Where by reason of urgency a police officer considers it necessary to do so, he or she may make application for a search warrant under Section 35A by telephone or by other means of communication and:*
- (a) *a Resident Magistrate to whom an application for the issue of a warrant is made by telephone or other means of communication may sign a warrant where he or she is satisfied that it is necessary to do so;*
  - (b) *the Resident Magistrate granting the search warrant shall inform the police officer of the terms of the warrant so signed and the police officer shall complete a form of warrant in the terms furnished by the Resident Magistrate; and*
  - (c) *the police officer to whom a warrant is granted by telephone or other means of communication shall, no later than the next working day following the execution of the warrant give the Resident Magistrate a duly sworn information and the form of warrant completed by the police officer.<sup>1</sup>.*

Sections 35A is inserted immediately after Section 35 as follows:

**‘35A Search and seizure without warrant**

- (1) *A police officer may:*
  - (a) *search a person for tainted property;*
  - (b) *enter upon land or upon or into premises and search the land or premises for tainted property; and*
  - (c) *in the exercise of power under subsections (a) and (b), seize any property found in the course of the search that the police officer believes on reasonable grounds to be tainted property.*
- (2) *Any search or seizure under subsection (1)(a), (b) or (c) shall be made with the consent of the person or the occupier of the land or premises under Section 41 or a warrant issued under Section 35.*
- (3) *Where a police officer may search a person under this Part, he or she may also search any property in the immediate power or control of the person.’.*

**18 Amendment of Section 36**

Section 36 is amended by deleting the Section Heading and substituting with **‘Police may seize any tainted property not included in the warrant’.**

**19 Insertion of new Section 36A**

A new Section 36A is inserted immediately after Section 36 as follows:

**‘36A Duty of police officer seizing property**

*A police officer who seizes property under this Part shall:*

- (a) *detain the property seized;*
- (b) *make a written inventory of the properties seized;*
- (c) *where possible, require the person who has the power or control to countersign the inventory to verify the accuracy of the property seized; and*
- (d) *take reasonable care to ensure that the property is preserved or secured.’.*

**20 Amendment of Section 37**

Section 37 is amended:

(a) in subsection (2) by deleting *'The'* and substituting with *'Subject to subsection (3), the'*; and

(b) by inserting a new subsection (3) after subsection (2) as follows:

*'(3) The court shall not make an order for the return of the property where the property becomes part of the evidence for the purposes of a proceeding relating to any serious offence.'*

**21 Amendment of Section 38**

Section 38 is amended:

(a) in subsection (1)(c), by deleting *'48 hours'* and substituting with *'28 days'*; and

(b) in subsection (2), by deleting *'48 hours'* and substituting with *'28 days'*.

**22 Amendment of Section 39**

Section 39(1)(b) is amended by deleting *'14 days'* and substituting with *'28 days'*.

**23 Amendment of Section 44**

Section 44 is amended:

(a) in subsection (2) by deleting *'The'* and substituting with *'Subject to subsection (3)'*; and

(b) inserting a new subsection (3) as follows:

*'(3) The court shall not make an order for the return of the property where the property becomes part of the evidence for the purposes of a proceeding relating to any serious offence.'*

**24 Amendment of Section 48**

Section 48 is deleted and substituted as follows:

**'48 Restraining order**

(1) *The Secretary for Justice may apply to the Supreme Court for a restraining order against:*

(a) *any tainted property held by a person charged or convicted of a serious offence; or*

(b) *any specified tainted property held by a person other than the person convicted of a serious offence.*

(2) *An application for a restraining order under subsection (1)(a) or (b) may be made ex parte and shall be in writing and be accompanied by an affidavit stating:*

- (a) *where the person has been convicted of a serious offence, the serious offence for which he or she was convicted, the date of the conviction, the court before which the conviction was obtained and whether an appeal has been lodged against the conviction;*
  - (b) *where the person has not been convicted of a serious offence, for which he or she is charged and the grounds for believing that he or she committed such serious offence;*
  - (c) *a description of the tainted property in respect of which the restraining order is sought;*
  - (d) *the name and address of the person who is believed to be in possession of the tainted property;*
  - (e) *the grounds for the belief that the property is tainted property in relation to the offence or that the person derived a benefit directly or indirectly from the commission of the offence;*
  - (f) *where the application seeks a restraining order against property of a person other than the person suspected of committing the serious offence, the grounds for the belief that the property is tainted property in relation to the offence and is subject to the effective control of the person suspected of committing the serious offence; and*
  - (g) *the grounds for the belief that a forfeiture order may be or is likely to be made under this Act in respect of the tainted property.*
- (3) *An application for a restraining order under subsection (1) for tainted property that is terrorist property may be made ex parte and shall be in writing and be accompanied by an affidavit stating:*
- (a) *a description of the property in respect of which the restraining order is sought;*
  - (b) *the name and address of the person who is believed to be in possession of the property;*
  - (c) *that the property is terrorist property or believed to be; and*
  - (d) *the grounds for the belief that a forfeiture order may be or is likely to be made under this Act in respect of the property.’.*

**25 Deletion of Section 49**

Section 49 is deleted.



**Amendment of Section 50**

Section 50 is amended:

- (a) in subsection (1) by deleting paragraphs (a) to (d) and substituting with the following paragraphs:

*'(a) the defendant has been convicted of a serious offence, or has been charged or is about to be charged with a serious offence;*

*(b) where the defendant has not been convicted of a serious offence, there are reasonable grounds for believing that the defendant committed the serious offence;*

*(c) there are reasonable grounds to believe that the property is tainted property in relation to a serious offence or that the defendant derived a benefit directly or indirectly from the commission of the serious offence;*

*(d) where the application seeks a restraining order against property of a person other than the person suspected of committing a serious offence, there are reasonable grounds for believing that the property is tainted property in relation to an offence and that the property is subject to the effective control of the person suspected of committing the serious offence; and*

*(e) there are reasonable grounds for believing that a forfeiture order may be or is likely to be made under this Act in respect of the property.'* ;

- (b) by inserting the following new subsection (2A) after subsection (2) :

*'(2A) Where the Administrator is given a direction in relation to any property, he or she may apply to the Supreme Court for directions on any question respecting the management or preservation of the property under his or her control.'* ;

- (c) by inserting the following new subsection (6A) after subsection (6) as follows:

*'(6A) An application under Section 48 shall be served on all persons interested in the application or such of them as the Supreme Court thinks expedient and all such persons shall have the right to appear at the hearing and be heard.'*; and

- (d) by inserting the following new subsections after subsection (7):

*'(8) When the application is made under Section 48 on the basis that a person is about to be charged, any order made by the court shall lapse if the person is not charged:*

- (a) *within 28 days, where the offence is an offence against the law of the Republic; or*
  - (b) *within 6 months, where the offence is an offence against the law of a foreign State.*
- (9) *When the application is made under Section 48 on the basis that a person is about to be charged and the person absconds, any order made by the Supreme Court shall lapse where the person is not charged within 6 months.*
- (10) *Upon application, the Supreme Court may extend the period:*
- (a) *in the case of the period referred to in subsection (8)(a), by another 28 days; and*
  - (b) *in the case of the period referred to in subsection (8)(b) or (9), by another 6 months.*
- (11) *The period under subsection (8)(a) may be extended twice.'*

**27 Amendment of Section 51**

Section 51 is deleted and substituted as follows:

**'51 Republic not required to give undertaking**

*For the purposes of making an order under Section 50 or any other Part of this Act, the Republic shall not be required to give an undertaking as to damages or costs.'*

**28 Amendment of Section 57**

Section 57 is amended by:

- (a) deleting the current heading and substituting with '**Variation, Discharge or dissolution of restraining order on provision of security or undertakings**'; and
- (b) inserting a new subsection (3) as follows:

*'(3) A person who has an interest in property in respect of which a restraining order was made may at any time apply to the Supreme Court for an order.'*

**29 Insertion of new Section 84A**

A new Section 84A is inserted immediately after Section 84 as follows:

**'84A Powers to search for and seize documents relevant to locating property**

- (1) *Subject to subsection (2), a police officer may:*

- (a) *enter upon land or upon or into premises; and*
  - (b) *search the land or premises for any property-tracking document;*
  - (c) *seize any document found in the course of that search that the police officer believes on reasonable grounds to be a relevant document in relation to tainted property; and*
  - (d) *any other document storage device including storage in electronic and digital database device.*
- (2) *The entry, search and seizure shall be made:*
- (a) *with the consent of the occupier of the land or the premises;*  
*or*
  - (b) *under a warrant issued under Section 85.'*

**30            Amendment of Section 85**

Section 85 is deleted and substituted as follows:

**'85            Application for search warrant**

- (1) *Where a police officer has reasonable grounds to believe that a person:*
- (a) *has been or will be involved in the commission of serious offence; or*
  - (b) *has or will have possession of control of any property-tracking document,*
- the police officer may file an application supported by information on oath to the court for a search warrant in respect of land or any building on such land.*
- (2) *If an application is made for a warrant to search land or building, the court may, subject to subsection (3), issue a warrant authorising a police officer with such assistance and by such force as is reasonable to:*
- (a) *enter upon the land or any building on such land to search for any property-tracking document; and*
  - (b) *seize any property-tracking document found in the course of the search that the police officer believes on reasonable grounds to be such documents.*
- (3) *The Judge shall not issue a warrant unless he or she is satisfied that:*

- (a) *a production order has been given in respect of the document and has not been complied with;*
  - (b) *a production order in respect of the document is not likely to be effective;*
  - (c) *the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the police officer does not gain immediate access to the document without any notice to any person; or*
  - (d) *the document involved cannot be identified or described with sufficient particularity to enable a production order to be obtained.*
- (4) *The warrant shall state:*
- (a) *the purpose for which it is issued, including a reference to the nature of the relevant offence, if any;*
  - (b) *a description of the kind of documents authorised to be seized;*
  - (c) *a time at which the warrant ceases to be in force; and*
  - (d) *whether entry is authorised to be made at any time of the day or night or during specified hours.*
- (5) *Where during the course of searching under the warrant, a police officer finds:*
- (a) *a property-tracking document that the police officer believes on reasonable grounds to relate to other serious offence or to terrorist property; or*
  - (b) *any thing that the police officer believes on reasonable grounds will afford evidence as to the commission of serious offence, the police officer may seize that property or thing and the warrant shall be deemed to authorise such seizure.'*

**31 Amendment of Section 86**

Section 86 is deleted and substituted as follows:

**'86 Foreign State requesting assistance**

*The provisions of this Division apply with appropriate modifications, where:*

- (a) *a foreign State requests assistance to locate or seize a property-tracking document; and*

- (b) *the Minister has under a relevant written law authorised the giving of assistance to the foreign State.*'.

**32 Amendment of Section 87**

Section 87 is deleted and substituted as follows:

**'87 Monitoring orders**

- (1) *The Secretary for Justice may apply ex parte, supported by an affidavit to the court for a monitoring order directing a reporting entity to give information to a police officer.*
- (2) *A monitoring order shall:*
- (a) *direct a reporting entity to disclose information obtained by the institution about transactions conducted through an account held by a particular person with the institution;*
  - (b) *not have retrospective effect; and*
  - (c) *apply for a period of a maximum of 3 months from the date the order is granted.*
- (3) *The Judge shall not issue a monitoring order unless he or she is satisfied that there are reasonable grounds for suspecting that:*
- (a) *the person in respect of whose account the order is sought:*
    - (i) *has committed or was involved in the commission, or is about to commit or be involved in the commission of, a serious offence; or*
    - (ii) *has benefited directly or indirectly, or is about to benefit directly or indirectly from the commission of the serious offence; or*
  - (b) *the account is relevant to identifying, locating or quantifying terrorist property.*'.

**33 Amendment of Section 96**

Section 96 is deleted and substituted as follows:

**'96 Cross-border movement of currency and certain other items**

- (1) *This Section applies to any person who is about to leave or has arrived in the Republic with more than \$5,000 in:*
- (a) *cash on his or her person or in his or her luggage;*

- (b) *bearer negotiable instruments on his or her person or in his or her luggage; or*
  - (c) *precious metals or precious stones, gold, silver, diamonds or sapphire on his or her person or in his or her luggage.*
- (2) *The person shall make a declaration in the form prescribed by regulations to an authorised officer before leaving or on arrival in the Republic.*
  - (3) *A person who fails to make a declaration or makes a declaration that the person knows is false or misleading in a material particular, commits a strict liability offence and shall be liable to a fine not exceeding \$20,000 or an imprisonment term not exceeding 2 years or to both.*
  - (4) *An authorised officer may, with any assistance as is reasonable and necessary and with use of force as is necessary, take action under subsection (5) where a person:*
    - (a) *is about to leave the Republic or has arrived in the Republic;*  
*or*
    - (b) *is about to board or leave, or has boarded or left, any ship or aircraft in the Republic.*
  - (5) *For the purpose of determining whether a person has with or on him or her any currency, bearer negotiable instruments or precious metals or precious stones of the kind referred to in subsection (1), the authorised officer may:*
    - (a) *examine any article which the person has with him or her or in his or her luggage; and*
    - (b) *where the officer has reasonable grounds to suspect that an offence under subsection (3) may have been or is being committed, search the person.*
  - (6) *An authorised officer, and any person assisting that officer, may stop, board and search any ship, aircraft or conveyance for the purposes of exercising the powers conferred by subsection (5).*
  - (7) *The Cabinet may make regulations to prescribe requirements and procedures for ensuring compliance with this Section.’.*

**34 Insertion of new Sections 96A and 96B**

New Sections 96A and 96B are inserted as follows:

**‘96A Cross-border movement of currency and certain other items- individuals-cargo and mail**

- (1) *This Section applies to the physical transportation in and out of the Republic of:*
  - (a) *cash with a value of more than \$5,000;*
  - (b) *bearer negotiable instruments with a value of more than \$5,000; or*
  - (c) *precious metals or precious stones including gold, silver, diamonds or sapphire with a value of more than \$5,000.*
- (2) *The person transporting the cash, bearer negotiable instruments, precious metals or precious stones shall make a declaration in the form as may be prescribed before the cash, bearer negotiable instruments, precious metals or precious stones leaves the Republic or on arrival in the Republic.*
- (3) *A person who fails to make a declaration or makes a declaration that the person knows is false or misleading in a material particular commits a strict liability offence and shall be liable:*
  - (a) *in the case of an individual, to a fine not exceeding \$20,000 or an imprisonment term not exceeding 2 years or to both; or*
  - (b) *in the case of a body corporate, to a fine not exceeding \$50,000; and*
  - (c) *to the forfeiture of any cash, bearer negotiable instruments or precious metals, stones including gold, silver, diamonds or sapphire intended to be transported in and out of the Republic.*
- (4) *Where an authorised officer has reasonable grounds to suspect that subsection (3) has been contravened, the officer may search the mail or cargo for the purpose of determining whether it contains any currency, bearer negotiable instruments or precious metals or precious stones of the kind referred to in subsection (1):*
  - (a) *engage such assistance as is reasonable and necessary; and*
  - (b) *use such force as is necessary.*
- (5) *An authorised officer, and any person assisting that officer, may stop, board and search any ship, aircraft or conveyance for the purposes of exercising the powers conferred by subsection (4).*

**96B Reporting of declaration etc to the FIU**

*Without limiting Section 96A(4), where an authorised officer suspects on reasonable grounds that:*

(a) a declaration has not been made as required under Section 96 or 96A; or

(b) a false or misleading declaration was made,

*the authorised officer shall report the matter to the FIU after receiving the declaration or forming the suspicion.*

**35 Amendment of Section 97**

Section 97 is deleted and substituted as follows:

**‘97 Seizure of currency, bearer negotiable instruments or precious metals or stones**

*An authorised officer or a customs officer may seize and detain any currency, bearer negotiable instrument, or precious metals or stones including gold, silver, diamonds or sapphire that are being imported into or exported from the Republic, whether or not they are found in a search under Section 96 or 96A, where there are reasonable grounds for believing that:*

(a) *they are derived from tainted property;*

(b) *they are intended by any person for use in the commission of a serious offence;*

(c) *there has been a failure to make a declaration under Section 96 or 96A; or*

(d) *a false or misleading declaration has been made under Section 96 or 96A.’.*

**36 Amendment of Section 98**

Section 98(1) is amended by deleting ‘48 hours’ and substituting ‘28 days’.

**37 Amendment of Section 107**

Section 107 is deleted and substituted as follows:

**‘107 Appeal by the Republic’**

*The Secretary for Justice may in accordance with the rules of the court appeal any order made under any Part of this Act or made under any provision of this Act.’.*

**38 Insertion of new Sections 108 and 109**

New Sections 108 and 109 are inserted after Section 107 as follows:

**‘108 Application of this Act to Anti-Money Laundering and Targeted Financial Sanctions Act 2023 and Counter Terrorism and Transnational Organised Crime Act 2004**



- (1) *This Act applies to the process, procedure and enforcement of the confiscation, forfeiture, determination of competing interest of persons or disposal of criminal property or terrorist property under the Anti-Money Laundering and Targeted Financial Sanctions Act 2023 and Counter Terrorism and Transnational Organised Crime Act 2004.*
- (2) *The references to the offences and description of property which is the subject of a proceeds of crime described under the Anti-Money Laundering and Targeted Financial Sanctions Act 2023 and Counter Terrorism and Transnational Organised Crime Act 2004 mutatis mutandis apply to the reference to any tainted property under this Act, for the purposes of this Act.’.*

## **109 Regulations**

- (1) *The Cabinet may make regulations to prescribe matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act.*
- (2) *Without limiting the generality of subsection (1), regulations may be made for the following purposes of:*
  - (a) *determining whether or not the amount of currency exceeds any prescribed amount, the manner and method of determining whether any currency denominated in a foreign currency is taken to be the equivalent in the domestic currency;*
  - (b) *prescribing forms for this Act;*
  - (c) *the management and disposal of property that is subject to an order made under this Act; or*
  - (d) *prescribing matters necessary for the implementation of Sections 96 and 96A.’.*

## **39 Transitional provision**

Any regulations, order, action, matter proceedings or decision made or initiated under a provision amended by this Act shall continue to have effect as if it were made under the provisions of the Proceeds of Crime Act 2004, as amended by this *Proceeds of Crime (Amendment) Act 2023*.