

Regulations of Anguilla: 16/2023

Gazette Dated: 26 JUNE, 2023

PROCEEDS OF CRIME ACT, R.S.A. C. P98

CONFISCATION IN THE MAGISTRATE'S COURT REGULATIONS, 2023

Rules made by the governor in exercise of the powers conferred under section 168 of the Proceeds of Crime Act, R.S.A. c. P98.

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Interpretation

1. In these Regulations—

“Act” means the Proceeds of Crime Act.

Modification of Act

2. (1) In accordance with section 57 of the Act, the provisions of the Act relating to confiscation orders apply with respect to confiscation proceedings before, and confiscation orders made by, a Magistrate's Court, subject to the modifications made in these Regulations.

Confiscation Order by the Magistrate's Court

3. (1) A Magistrate's Court may make a confiscation order under section 14 of the Act in respect of an amount not exceeding \$100,000.

(2) Where on the evidence before a Magistrate, the Magistrate is satisfied that a confiscation order to be made by him will or likely to exceed the sum allowable under subsection (1), he shall commit the defendant to the High Court in respect of the offence or offences for which the defendant was convicted.

- (3) A committal under this section may be in custody or on bail.

Appeal

4. (1) If a Magistrate's Court makes a confiscation order, the Attorney-General or the defendant may appeal to the Court of Appeal in respect of the order.

(2) If a Magistrate's Court decides not to make a confiscation order, the Attorney-General, may appeal to the Court of Appeal against the decision.

(3) This section is not applicable to an order or decision made under section 28, 29, 36 or 37 of the Act unless the appellant is the defendant.

Court powers on appeal

5. (1) On an appeal under section 4(1), the Court of Appeal may confirm, set aside or vary the confiscation order.

(2) On an appeal under section 4(2), the Court of Appeal may confirm the decision, or if it believes the decision was wrong it may—

- (a) itself proceed under section 14 of the Act (ignoring subsections (1)); or

- (b) direct the Magistrate's Court to proceed afresh under section 14 of the Act.

(3) In proceeding afresh, a Magistrate's Court shall comply with any directions of the Court of Appeal.

(4) If the Court of Appeal makes or varies a confiscation order under these Regulations or the Magistrate's Court does so pursuant to a direction under these Regulations, the Court of Appeal or Magistrate's Court shall have regard to—

- (a) any fine imposed on the defendant in respect of the offence, or any of the offences, concerned; and

- (b) any order within section 22(1)(b) or (c) of the Act that has been made against the defendant in respect of the offence, or any of the offences, concerned, unless the order has already

been taken into account by the Magistrate's Court in determining what is the realisable property held by the defendant for the purposes of section 17(2) of the Act.

(5) If the Court of Appeal proceeds afresh under section 14 of the Act or the Magistrate's Court proceeds afresh under section 14 of the Act in accordance with a direction from the Court of Appeal, section 6 applies.

Proceeding afresh

6. (1) In this section—

“Court” means the Court of Appeal or the Magistrate's Court, as the case may be;

“relevant date” means the date on which the Court decided not to make a confiscation order.

(2) If the Court has already sentenced the defendant for the offence, or any of the offences, concerned, section 14 of the Act has effect as if his particular criminal conduct included conduct which constitutes offences which the Court has taken into consideration in deciding his sentence for the offence or offences concerned.

(3) If the Criminal Code compensation order has been made against the defendant in respect of the offence, or any offences, concerned—

- (a) the Court shall have regard to it; and
- (b) sections 22(3) and (4) of the Act do not apply.

(4) The Court shall take account of—

- (a) conduct occurring before the relevant date;
- (b) property obtained before that date; and
- (c) property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date.

(5) For the purposes of these Regulations—

- (a) the assumptions specified in section 18(2)(a) and (b) of the Act do not apply with regard to property first held by the defendant on or after the relevant date;
- (b) the assumption specified in section 18(2)(c) of the Act does not apply with regard to expenditure incurred by him on or after that date; and
- (c) the assumption specified in section 18(2)(d) of the Act does not apply with regard to property obtained, or assumed to have been obtained, by him on or after that date.

(6) Section 35 of the Act applies as it applies in the circumstances specified in that section.

(7) The relevant date is the date on which the Court decided not to make a confiscation order.

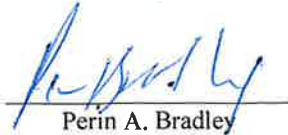
General modification

7. Part 2 of the Act, in the sections not otherwise expressly modified by the Regulations, for the word “Court” wherever it appears substitute the words “Magistrate's Court”.

Citation

8. These Regulations may be cited as the Confiscation in the Magistrate's Court Regulations, 2023.

Made by the Governor this 23rd day of June, 2023.



Perin A. Bradley
GOVERNOR OF ANGUILLA (ACTING)