

立法會 *Legislative Council*

立法會LS118/01-02號文件

《聯合國(反恐怖主義措施)條例草案》委員會文件

條例草案第18條所訂有關修訂附表2及3的權力

在法案委員會2002年6月6日會議上，議員就條例草案第18條提出疑問。根據該條文，保安局局長可藉在憲報刊登的公告修訂附表2及3。議員要求助理法律顧問擬備文件，載述其在會議席上就現行法例中與附表2及3相若的條文，以及修訂該等條文的機制所提出的意見。

附表2

2. 條例草案附表2的條文與《聯合國制裁(阿富汗)規例》(第537章，附屬法例)附表所訂條文(隨附於立法會LS118/01-02(01)號文件)相若。該規例由行政長官根據《聯合國制裁條例》(第537章)第3條，按照中華人民共和國外交部的指示，並在諮詢行政會議後制定。

3. 《聯合國制裁條例》第3(5)條訂明，《釋義及通則條例》(第1章)第34及35條不適用於根據該條例訂立的規例。因此，立法會不能根據該等條文，藉決議修訂或廢除該規例。對該規例作出的任何修訂，均須以行政長官諮詢行政會議後制定的修訂規例提出，而立法會亦不能根據上述條文，藉決議修訂或廢除有關的修訂規例。

附表3

4. 條例草案附表3第2條實質上與《危險藥物條例》(第134章)第52條(隨附於立法會LS118/01-02(02)號文件)相若。附表3第3、4及5條亦實質上與《販毒(追討得益)條例》(第405章)第24C、24E及24F條(隨附於立法會LS118/01-02(03)號文件)相若。對此等現行條文作出的任何修訂，均須以提交修訂法案的方式作出。

連附件

立法會秘書處
助理法律顧問
黃思敏
2002年6月11日

7. 准許的批予

行政長官除非是按照聯合國安全理事會的決議行事，否則不得批予第 2(1) 或 3(1) 條所提述的准許。

8. 例外情況

- (1) 第 2 條不適用於委員會以人道主義需要為由而事先批准的任何飛行。
- (2) 第 3 條不適用於委員會以人道主義需要為由而事先授權的任何行動。
- (3) 任何人如聲稱第 (1) 或 (2) 款適用，須事先提出令行政長官信納為證明該事實的證據。

9. 行政長官的權力的行使

(1) 行政長官可按其認為適當的範圍及在附加其認為適當的限制及條件下，將他根據本規例所具有的任何權力或職能轉授予任何經他批准的人或屬經他批准的類別或種類的人，或授權將該等權力或職能轉授予該等人士，而本規例中對行政長官的提述須據此解釋。

(2) 在符合第 7 條的規定下，第 2(1) 或 3(1) 條所提述的准許可屬一般的或特別的准許，可附加或不附加條件，可予以限制使其有效期若非獲得續期則會在指明日期屆滿，並可由行政長官更改或撤銷。

附表

[第 5 及 6 條]

證據及資料

1. (1) 在不損害本規例其他條文或其他法律的條文的原則下，行政長官(或獲授權人員)可要求任何在特區或居於特區的人，向行政長官(或該獲授權人員)提供他管有或控制的任何資料，或向行政長官(或該獲授權人員)提交他管有或控制的任何文件，而上述資料或文件是行政長官(或該獲授權人員)為確保本規例獲遵從或為偵查規避本規例的情況而需要的，而被要求的人須在該要求所指明的時間內及按該要求所指明的方式遵從該要求。

(2) 第 (1) 款不得視為規定代表任何人的大律師或律師將其以該身分所獲得的受保密權涵蓋的通訊披露。

(3) 凡任何人因沒有根據本條應要求提供資料或提交文件而被定罪，裁判官或法庭可作出命令，規定該人在該命令所指明的期間內提供有關資料或提交有關文件。

7. Grant of permission

No permission referred to in section 2(1) or 3(1) shall be granted except in accordance with a resolution of the Security Council of the United Nations.

8. Exceptions

(1) Nothing in section 2 shall apply to any flight that has been approved in advance by the Committee on the ground of humanitarian need.

(2) Nothing in section 3 shall apply to any action that has been authorized in advance by the Committee on the ground of humanitarian need.

(3) A person who claims that subsection (1) or (2) applies shall produce evidence in advance to prove that fact to the satisfaction of the Chief Executive.

9. Exercise of powers of the Chief Executive

(1) The Chief Executive may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorize the delegation of any of his powers or functions under this Regulation to any person, or any class or description of persons, approved by him, and references in this Regulation to the Chief Executive shall be construed accordingly.

(2) Subject to section 7, any permission referred to in section 2(1) or 3(1) may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked by the Chief Executive.

SCHEDULE

[ss. 5 & 6]

EVIDENCE AND INFORMATION

1. (1) Without prejudice to any other provision of this Regulation or any provision of any other law, the Chief Executive (or an authorized officer) may request any person in or resident in the HKSAR to furnish to the Chief Executive (or to that authorized officer) any information, or to produce to the Chief Executive (or to that authorized officer) any document, that the person has in his possession or control and that the Chief Executive (or that authorized officer) may require for the purpose of securing compliance with or detecting evasion of this Regulation, and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in subsection (1) shall be taken to require any person who has acted as counsel or solicitor for any person to disclose any privileged communication made to him in that capacity.

(3) Where a person is convicted of failing to furnish information or produce a document when requested to do so under this section, the magistrate or court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

[附屬法例]

(4) 本條所賦予要求任何人提交文件的權力，包括就如此提交的文件取得副本或摘錄的權力，以及要求該人(如該人是法人團體，則要求該法人團體的現任或已卸任的高級人員或正受僱於該法人團體的人)就上述文件提供解釋的權力。

2. (1) 如任何裁判官或法官根據任何警務人員、海關人員或獲授權人員經宣誓而作的告發而信納——

- (a) 有合理理由懷疑有人已經或正在犯本規例所訂的罪行，或(就本規例所規管的任何事宜而言)犯任何與海關有關的成文法則所訂的罪行，並有合理理由懷疑該罪行的證據，可在該告發指明的處所或在如此指明的任何載具、船舶或飛機中發現；或
- (b) 任何須根據第1條提交但尚未被提交的文件，可在任何上述處所或在任何上述載具、船舶或飛機中發現，

則他可批出搜查令授權任何警務人員或海關人員，連同任何其他在搜查令中指名的人及其他警務人員或海關人員，於自手令簽發日期起計的1個月內，隨時進入該告發中指明的處所或如此指明的載具、船舶或飛機所在的處所(視屬何情況而定)，以及搜查上述處所或載具、船舶或飛機(視屬何情況而定)。

(2) 任何藉上述手令獲授權搜查處所、載具、船舶或飛機的人，可搜查在該處所、載具、船舶或飛機中發現的人，或他有合理理由相信不久前離開或即將進入該處所、載具、船舶或飛機的人，並可檢取該處所、載具、船舶或飛機中或在有關的人身上發現，而他有合理理由相信是犯第(1)款所述罪行的證據的文件或物件，或他有合理理由相信是根據第1條理應已提交的文件，並就上述文件或物件採取看來是必需的其他步驟，以保存上述文件或物件和防止其被干擾；

但依據任何根據本條發出的手令對任何人作搜查，只可由與該人性別相同的人進行。

(3) 任何人憑藉本條獲賦權進入任何處所、載具、船舶或飛機，可為此目的而使用合理所需的武力。

(4) 根據本條管有的文件或物件，可予保留3個月；如在該段期間內就第(1)款所述述的罪行有任何與該等文件或物件有關的法律程序展開，則可保留至該等法律程序結束為止。

(5) 任何人依據本附表所指的要求而提供的資料或提交的文件(包括所提交文件的副本或摘錄)，以及根據第(2)款自任何人處檢取的文件，不得被披露，但以下情況則除外——

(a) 在該人的同意下作出披露；

但僅以另一人的受僱人或代理人的身分取得該資料或管有該文件的人不得給予本段所指的同意，但該項同意可由本身有權享有該資料或管有該文件的人給予；

- (b) 向任何本可根據本附表獲賦權要求該資料或文件向其提供或提交的人作出披露；
- (c) 在行政長官授權下向聯合國的任何機關或向任何任職於聯合國的人或向中華人民共和國以外任何地方的政府作出披露，而目的是協助聯合國或該政府確使由聯合國安全理事會就塔利班而決定的措施獲遵從或偵查規避該等措施的情況，但該資料或文件須是在作出指示的機關批准的情況下經由作出指示的機關轉交的；或
- (d) 為了就本規例所訂的罪行或(就本規例所規管的任何事宜而言)任何與海關有關的成文法則所訂的罪行提起任何法律程序而作出披露，或為了該等法律程序的目的而作出披露。

[Subsidiary]

(4) The power conferred by this section to request any person to produce documents shall include the power to take copies of or extracts from any document so produced and to request that person or, where that person is a body corporate, any person who is a present or past officer of, or is employed by, the body corporate to provide an explanation of such document.

2. (1) If any magistrate or judge is satisfied by information on oath given by any police officer, customs officer or authorized officer—

- (a) that there is reasonable ground for suspecting that an offence under this Regulation or, with respect to any of the matters regulated by this Regulation, an offence under any enactment relating to customs has been or is being committed and that evidence of the commission of the offence is to be found on any premises specified in the information or in any vehicle, ship or aircraft so specified; or
- (b) that any document that ought to have been produced under section 1 and that has not been so produced is to be found on any such premises or in any such vehicle, ship or aircraft,

he may grant a search warrant authorizing any police officer or customs officer, together with any other persons named in the warrant and any other police or customs officers, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises or, as the case may be, the vehicle, ship or aircraft.

(2) A person authorized by any such warrant to search any premises or any vehicle, ship or aircraft may search every person who is found in, or whom he has reasonable ground to believe to have recently left or to be about to enter, those premises or that vehicle, ship or aircraft and may seize any document or article found on the premises or in the vehicle, ship or aircraft or on such person that he has reasonable ground to believe to be evidence of the commission of an offence referred to in subsection (1) or any other document that he has reasonable ground to believe ought to have been produced under section 1 and may take in relation to any such document or article any other steps that may appear necessary for preserving it and preventing interference with it:

Provided that no person shall in pursuance of any warrant issued under this section be searched except by a person of the same sex.

(3) Where, by virtue of this section, a person is empowered to enter any premises, vehicle, ship or aircraft, he may use such force as is reasonably necessary for that purpose.

(4) Any document or article of which possession is taken under this section may be retained for a period of 3 months or, if within that period there are commenced any proceedings for an offence referred to in subsection (1) to which it is relevant, until the conclusion of those proceedings.

(5) No information furnished or document produced (including any copy of or extract made of any document produced) by any person in pursuance of a request made under this Schedule, and no document seized under subsection (2) shall be disclosed except—

- (a) with the consent of the person by whom the information was furnished or the document was produced or the person from whom the document was seized;

Provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this paragraph but that such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right;

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced;
- (c) on the authority of the Chief Executive, subject to the information or document being transmitted through and with the approval of the instructing authority, to any organ of the United Nations or to any person in the service of the United Nations or to the Government of any place outside the People's Republic of China for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to the Taliban decided upon by the Security Council of the United Nations; or
- (d) with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under this Regulation or, with respect to any of the matters regulated by this Regulation, for an offence under any enactment relating to customs.

[附屬法例]

3. 任何人——

- (a) 無合理辯解而拒絕或沒有在指明的時間 (如無指明的時間, 則為一段合理的時間) 內按指明的方式遵從由任何獲賦權根據本附表提出要求的人所提出的要求;
- (b) 故意向根據本附表行使其權力的人提供虛假資料或虛假解釋;
- (c) 在其他方面故意妨礙任何根據本附表行使其權力的人; 或
- (d) 意圖規避本附表的條文的施行而銷毀、破損、毀損、隱藏或移去任何文件,

即屬犯罪。

[Subsidiary]

3. Any person who—

- (a) without reasonable excuse refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule by any person who is empowered to make it;
 - (b) intentionally furnishes false information or a false explanation to any person exercising his powers under this Schedule;
 - (c) otherwise intentionally obstructs any person in the exercise of his powers under this Schedule; or
 - (d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,
- shall be guilty of an offence.

- (a) 由根據本條例獲授權或獲發許可證製造、獲取、供應或管有危險藥物的人備存登記冊及其他紀錄，並由該等人提供資料；
- (b) 保留該等登記冊及紀錄以及依據本條例或為施行本條例而備存、發出或作出的其他文件；
- (c) 有關處方的規定；
- (d) 容載危險藥物的包裹及瓶子上的標記；
- (e) 根據第 18 條發出的許可證的有效期；
- (f) 根據第 18 條發出許可證時應繳付的費用；
- (g) 憑本條例、根據本條例或為施行本條例而規定的任何文件（許可證或證明書除外）的格式。

(2) 根據本條訂立的規例可規定違反其內指明的條文，即屬犯罪，並可規定可處罰款不超過 \$450,000 及監禁不超過 3 年。（由 1996 年第 201 號法律公告修訂）

52. 獲授權人員的權力

(1) 為施行本條例，任何警務人員及海關人員可——

- (a) 截停、登上及搜查任何已抵達香港的船舶、航空器、車輛或火車（戰用船艦或軍用航空器除外），並可在其逗留香港期間一直留在其上；
- (b) 搜查任何抵達香港的人，或任何從香港起程離境的人；
- (c) 搜查任何進口入香港或將從香港出口的物品；
- (d) 截停、登上及搜查任何船舶、航空器、車輛或火車，如果他有理由懷疑其內有可予扣押的物件；
- (e) 如並非合理切實可行獲得根據第 (1E) 款發出的手令，則無須有該手令而進入及搜查任何場所或處所，如果他有理由懷疑其內有可予扣押的物件；或（由 1994 年第 62 號第 8 條修訂）
- (f) 截停及搜查任何人，以及搜查該人的財物，如——
 - (i) 他有理由懷疑該人實際保管有可予扣押的物件；或

- (a) the keeping of registers and other records by persons authorized by or licensed under this Ordinance to manufacture, procure, supply or possess dangerous drugs, and the furnishing of information by such persons;
- (b) the preservation of such registers and records and of other documents kept, issued or made pursuant to or for the purposes of this Ordinance;
- (c) requirements with respect to prescriptions;
- (d) the marking of packages and bottles containing dangerous drugs;
- (e) the period for which a licence issued under section 18 is valid;
- (f) the fees payable on the issue of a licence under section 18;
- (g) the form of any document, other than a licence or certificate, required by, under or for the purposes of this Ordinance.

(2) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties therefor not exceeding a fine of \$450,000 and imprisonment for 3 years. (Amended L.N. 201 of 1996)

✓ 52. Powers of authorized officers

(1) For the purposes of this Ordinance, any police officer and any member of the Customs and Excise Service may—

- (a) stop, board and search any ship, aircraft, vehicle or train which has arrived in Hong Kong (not being a ship of war or a military aircraft), and remain thereon as long as it remains in Hong Kong;
- (b) search any person arriving in Hong Kong or about to depart from Hong Kong;
- (c) search any thing imported into or to be exported from Hong Kong;
- (d) stop, board and search any ship, aircraft, vehicle or train if he has reason to suspect that there is therein an article liable to seizure;
- (e) without a warrant issued under subsection (1E) where it would not be reasonably practicable to obtain such a warrant, enter and search any place or premises if he has reason to suspect that there is therein an article liable to seizure; or (Amended 62 of 1994 s. 8)
- (f) stop and search any person, and search the property of any person, if—
 - (i) he has reason to suspect that such person has in his actual custody an article liable to seizure; or

(ii) 該人被發現在任何發現有可予扣押物件的船舶、航空器、車輛、火車、場所或處所之內。

(1A) 為能根據第(1)(f)(i)款對某人進行搜查，督察級或以上的警務人員或督察級或以上的海關人員可要求註冊醫生或根據《護士註冊條例》(第 164 章)註冊或登記或被當作註冊或登記的護士，檢查該人的體腔。(由 1982 年第 40 號第 3 條增補)

(1B) 根據第(1A)款被要求檢查某人的體腔的醫生或護士可探查該人的直腸、陰道、耳朵及任何其他體腔。(由 1982 年第 40 號第 3 條增補)

(1C) 醫生或護士應警務人員或海關人員根據第(1A)款提出的要求對某人進行檢查，如該人員看來是合法地執行其職責，則該醫生或護士並無責任查詢該警務人員或海關人員的作為是否合法或是否在該人員職責範圍之內。(由 1982 年第 40 號第 3 條增補)

(1D) 有關人員如將根據或已根據第(1A)款就某人向醫生或護士提出要求，則警務人員或海關人員可扣留該人，扣留時間為容許醫生或護士根據本條完成檢查該人體腔所合理需要者。(由 1982 年第 40 號第 3 條增補)

(1E) 凡裁判官有鑑於某人的誓詞而覺得有合理理由懷疑任何地方有根據本條例可予扣押的物件，或有人就該等物件犯了或即將會犯違反本條例的規定的罪行，裁判官可藉其向任何警務人員或任何海關人員指令的手令，賦權予該警務人員或海關人員於日間或晚間進入手令上指名的地方及在該處搜查任何該等物件，並將任何該等物件扣押、移走或扣留。(由 1994 年第 62 號第 8 條增補)

(2) 為達到根據第(1)款搜查船舶或航空器的目的——

- (a) 香港海關關長或警務處處長可簽署書面命令，扣留一艘船舶不超過 12 小時，或扣留航空器不超過 6 小時；及 (由 1985 年第 40 號第 9 條修訂)
- (b) 政務司司長可簽署書面命令，延長扣留一艘船舶或航空器；如屬船舶，則延長不超過 12 小時，如屬航空器，則延長不超過 6 小時。

(ii) such person is found in any ship, aircraft, vehicle, train, place or premises in which an article liable to seizure is found.

(1A) For the purposes of enabling a person to be searched under subsection (1)(f)(i), a police officer of or above the rank of inspector or a member of the Customs and Excise Service of or above the rank of inspector may request a registered medical practitioner or nurse registered or enrolled or deemed to be registered or enrolled under the Nurses Registration Ordinance (Cap. 164), to examine the body cavities of that person. (Added 40 of 1982 s. 3)

(1B) A medical practitioner or nurse requested to examine the body cavities of a person under subsection (1A) may search the rectum, vagina, ears and any other body cavity of that person. (Added 40 of 1982 s. 3)

(1C) A medical practitioner or nurse carrying out an examination of a person at the request, under subsection (1A), of a police officer or member of the Customs and Excise Service who appears to be lawfully engaged in the performance of his duty shall not be bound to inquire whether or not the police officer or member is acting lawfully or within the scope of his duty. (Added 40 of 1982 s. 3)

(1D) A police officer or member of the Customs and Excise Service may detain a person in respect of whom a request is to be or has been made to a medical practitioner or nurse under subsection (1A) for such time as may reasonably be necessary to permit a medical practitioner or nurse to complete an examination of the body cavities of that person under this section. (Added 40 of 1982 s. 3)

(1E) Where it appears to any magistrate upon the oath of any person that there is reasonable cause to suspect that in any place there is an article liable to seizure under this Ordinance, or with respect to which an offence has been committed or is about to be committed against the provisions of this Ordinance, the magistrate may, by his warrant directed to any police officer or to any member of the Customs and Excise Service, empower such officer or member by day or by night to enter the place named in the warrant and there to search for and seize, remove and detain any such article. (Added 62 of 1994 s. 8)

(2) For the purpose of enabling a ship or aircraft to be searched under subsection (1)—

- (a) the Commissioner of Customs and Excise or the Commissioner of Police may by order in writing under his hand detain a ship for not more than 12 hours or an aircraft for not more than 6 hours; and (Amended 40 of 1985 s. 9)
- (b) the Chief Secretary for Administration may, by order in writing under his hand, detain a ship or aircraft for further periods of not more than 12 hours in the case of a ship or not more than 6 hours in the case of an aircraft. (Amended L.N. 362 of 1997)

任何根據本款發出的命令須述明命令從何時開始生效及其有效期。(由 1997 年第 362 號法律公告修訂)

(3) 任何公職人員如有理由懷疑任何物品是可予扣押的物件，可將該物品扣押、移走及扣留。

(4) 任何獲署長書面授權的公職人員可連根拔除、扣押、移走及毀滅任何大麻屬植物或鴉片罌粟。

(5) 為施行本條例，任何獲署長書面授權的公職人員可——

(a) 進入、檢查及搜查任何由以下人士佔用的場所或處所——

(i) 憑藉第 22(1)(a)、(b) 或 (c) 或 (5A) 條或憑藉第 24(1) 條獲授權的人；(由 1992 年第 2 號第 11 條修訂)

(ii) 某人所獲的上述授權已根據第 33 條被撤銷，而該項撤銷獲暫緩執行；

(iii) 僱用上述人士的人；或

(iv) 根據本條例獲發許可證的人；

(b) 要求出示及檢查任何依據本條例的規定或為其目的而備存或作出的任何登記冊、紀錄、簿冊、處方或其他文件，或有關由上述的人或其代表處理危險藥物的任何其他文件；及

(c) 檢查上述的人所管有的危險藥物存貨。

(6) 為施行本條例，任何獲署長書面授權的公職人員可——

(a) 進入、檢查及搜查附表 2 指明的醫院或院所，或為該等醫院或院所目的而佔用的任何場所或處所；

(b) 要求出示及檢查任何依據本條例的規定或為其目的而在該等醫院或院所內備存或作出的登記冊、紀錄、簿冊、處方或其他文件，或有關為該等醫院或院所目的而處理危險藥物的任何其他文件；及

(c) 檢查在任何該等醫院或院所或任何該等場所或處所內的任何危險藥物存貨。

(7) 署長根據本條作出授權，可指名授予一名警務人員、海關人員或公職人員，亦可授予當其時擔任署長指明職級或公職的警務人員、海關人員或其他公職人員，並可擴至第 (2)、(4) 或 (5) 款所指明的全部權力，或署長所指明的某些權力。

Any order made under this subsection shall state the times from which and for which the order is effective.

(3) Any public officer may seize, remove and detain any thing if he has reason to suspect that such thing is an article liable to seizure.

(4) Any public officer authorized in writing by the Director may uproot, seize, remove and destroy any plant of the genus cannabis or the opium poppy.

(5) For the purposes of this Ordinance, any public officer authorized in writing by the Director may—

(a) enter, inspect and search any place or premises occupied by—

(i) a person authorized by virtue of section 22(1)(a), (b) or (c) or (5A) or by virtue of section 24(1); (*Amended 2 of 1992 s. 11*)

(ii) a person whose authorization as aforesaid has been withdrawn under section 33 and the withdrawal suspended;

(iii) a person by whom any such person as aforesaid is employed; or

(iv) a person to whom a licence has been issued under this Ordinance;

(b) require the production of, and inspect, any register, record, book, prescription or other document kept or made pursuant to the requirements, or for the purposes, of this Ordinance or any other document relating to dealings in a dangerous drug by or on behalf of any such person as aforesaid; and

(c) inspect any stocks of a dangerous drug in the possession of any such person as aforesaid.

(6) For the purposes of this Ordinance, any public officer authorized in writing by the Director may—

(a) enter, inspect and search a hospital or institution specified in the Second Schedule or any place or premises occupied for the purposes of any such hospital or institution;

(b) require the production of, and inspect, any register, record, book, prescription or other document kept or made in any such hospital or institution pursuant to the requirements, or for the purposes, of this Ordinance or any other document relating to dealings in a dangerous drug for the purposes of such hospital or institution; and

(c) inspect any stocks of a dangerous drug in any such hospital or institution or in any such place or premises.

(7) An authorization given by the Director under this section may be given to a police officer, member of the Customs and Excise Service or public officer by name or may be given to any police officer, member of the Customs and Excise Service or other public officer for the time being holding such rank or public office as the Director may specify, and may extend to all the powers specified in subsection (2), (4) or (5), as the case may be, or to such of those powers as the Director may specify.

(8) 任何公職人員可——

- (a) 破啟他獲本條賦權進入及搜查的任何場所或處所的內外門戶；
- (b) 強行登上他獲本條賦權登上及搜查的任何船舶、航空器、車輛或火車；
- (c) 使用武力移走阻撓他獲本條賦權進行進入、搜查、檢查、扣押、移走或扣留的任何人或物品；
- (d) 扣留每一名在他獲本條賦權搜查的任何場所或處所內發現的人，直至該場所或處所被搜查完畢；及
- (e) 扣留每一名在他獲本條賦權搜查的任何船舶、航空器、車輛或火車上的人，並阻止任何人接近或登上該船舶、航空器、車輛或火車，直至該船舶、航空器、車輛或火車被搜查完畢。

(9) (a) (i) 根據本條檢查某人體腔，除非得到該人同意，否則須由一名與該人相同性別的醫生或護士進行。

(ii) 凡一名女子根據第(i)節同意由一名異性醫生或護士檢查其體腔，進行檢查時須有另一女子在場。

(b) 除(a)段另有規定外，根據本條搜查女子，必須由女子進行。

(c) 任何人如提出反對，便不得在公眾場所根據本條搜查該人。(由1982年第40號第3條代替)

(9A) 凡本條例的條文(包括第56條)在若無本款的規定下，是本可適用於根據本條扣押的物品的，則如該物品已以其被懷疑為“可予扣押的物件”的定義中(d)段提述的指明財產為理由而被扣押，本條例的條文不適用於該物品。(由1995年第89號第35條增補)

(9B) 為免生疑問，現聲明：即使第(9A)款所提述的物品經根據《販毒(追討得益)條例》(第405章)第24C(4)條獲得發還，該款亦不得妨礙本條例的條文(包括本條及第56條)於該物品發還時或發還後的任何時候適用於該物品。(由1995年第89號第35條增補)

(10) 在本條中——

“可予扣押的物件”(article liable to seizure)指——

- (a) 任何在第55條中提述的危險藥物；

(8) Any public officer may—

- (a) break open any outer or inner door of or in any place or premises which he is empowered by this section to enter and search;
- (b) forcibly board any ship, aircraft, vehicle or train which he is empowered by this section to board and search;
- (c) remove by force any person or thing who or which obstructs any entry, search, inspection, seizure, removal or detention which he is empowered by this section to make;
- (d) detain every person found in any place or premises which he is empowered by this section to search until the same has been searched; and
- (e) detain every person on board any ship, aircraft, vehicle or train which he is empowered by this section to search, and prevent any person from approaching or boarding such ship, aircraft, vehicle or train, until it has been searched.

(9) (a) (i) An examination of the body cavities of a person under this section shall, unless that person otherwise consents, be carried out by a medical practitioner or nurse of the same sex as that person.

(ii) Where a female has consented, under sub-paragraph (i), to an examination of her body cavities by a medical practitioner or nurse of the opposite sex, such examination shall be in the presence of another female.

(b) Subject to paragraph (a), no female shall be searched under this section except by a female.

(c) No person shall be searched under this section in a public place if he objects to being so searched. (Replaced 40 of 1982 s. 3)

(9A) The provisions of this Ordinance (including section 56) which could, but for this subsection, apply to a thing seized under this section shall not apply to the thing if it has been so seized on the ground that it is suspected to be specified property referred to in paragraph (d) of the definition of “article liable to seizure”. (Added 89 of 1995 s. 35)

(9B) For the avoidance of doubt, it is hereby declared that where a thing referred to in subsection (9A) is released under section 24C(4) of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), that subsection shall not operate to prevent the application of the provisions of this Ordinance (including this section and section 56) to that thing at any time on or after such release. (Added 89 of 1995 s. 35)

(10) In this section—

“article liable to seizure”(可予扣押的物件) means—

- (a) any dangerous drug referred to in section 55;

- (b) 根據本條例可予沒收或根據相應法律可予沒收或充公的金錢或物品；
(由 1995 年第 89 號第 35 條修訂)
- (c) 任何屬於或包含有以下罪行的證據的物品——
 - (i) 本條例或相應法律所訂罪行；
 - (ii) 《販毒(追討得益)條例》(第 405 章)所指的販毒罪行；(由 1995 年第 89 號第 35 條代替)
- (d) 《販毒(追討得益)條例》(第 405 章)第 IVA 部所指的指明財產；(由 1995 年第 89 號第 35 條增補)

“香港海關關長”(Commissioner of Customs and Excise)包括香港海關副總監及香港海關助理總監；(由 1985 年第 40 號第 9 條增補。由 1997 年第 362 號法律公告修訂)

“警務處處長”(Commissioner of Police)包括警務處副處長或警務處助理處長。

53. 沒有遵從根據第 52 條提出的要求 及阻撓獲授權人員

任何人如——

- (a) 沒有遵從公職人員根據第 52(5)(b) 或 (6)(b) 條提出的要求；或
- (b) 阻撓公職人員行使第 52 條授予他的任何權力，

即屬犯罪，經定罪後，可處罰款 \$1,000 及監禁 6 個月。

53A. 交出旅行證件

(1) 裁判官在接獲警務處處長或香港海關關長的申請，可用書面通知要求一名被指控或受懷疑曾犯指明罪行而屬於一項調查對象的人，向警務處處長或香港海關關長交出他所管有的任何旅行證件。(由 1985 年第 40 號第 9 條修訂；由 1997 年第 362 號法律公告修訂)

- (2) 根據第 (1) 款提出的申請書中所載事項，須由申請人誓言證明。
- (3) 根據第 (1) 款發出的通知書須面交送達收件人。
- (4) 獲送達根據第 (1) 款發出的通知書的人，須立即遵照該通知書辦理。

- (b) any money or thing liable to forfeiture under this Ordinance or forfeiture or confiscation under a corresponding law;
(Amended 89 of 1995 s. 35)
- (c) any thing which is or contains evidence of—
 - (i) an offence under this Ordinance or a corresponding law;
 - (ii) a drug trafficking offence within the meaning of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405);
(Replaced 89 of 1995 s. 35)
- (d) any specified property within the meaning of Part IVA of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405);
(Added 89 of 1995 s. 35)

“Commissioner of Customs and Excise” (香港海關關長) includes a Deputy Commissioner of Customs and Excise and an Assistant Commissioner of Customs and Excise; (Added 40 of 1985 s. 9. Amended L.N. 362 of 1997)

“Commissioner of Police” (警務處處長) includes a deputy or assistant commissioner of police.

53. Failure to comply with requirement under section 52 and obstruction of authorized officer

Any person who—

- (a) fails to comply with a requirement of a public officer under section 52(5)(b) or (6)(b); or
- (b) obstructs a public officer in the exercise of any power conferred on him by section 52,

shall be guilty of an offence and shall be liable on conviction to a fine of \$1,000 and to imprisonment for 6 months.

53A. Surrender of travel document

(1) A magistrate may, on the application of the Commissioner of Police or the Commissioner of Customs and Excise, by written notice require a person who is the subject of an investigation in respect of a specified offence alleged or suspected to have been committed by him to surrender to the Commissioner of Police or Commissioner of Customs and Excise any travel document in his possession. (Amended 40 of 1985 s. 9)

(2) The matter of an application under subsection (1) shall be substantiated by the oath of the applicant.

(3) A notice under subsection (1) shall be served personally on the person to whom it is addressed.

(4) A person on whom a notice under subsection (1) is served shall comply with such notice forthwith.

24C. 經扣押的財產可予扣留的期限

(1) 經扣押的財產如是輸入香港的財產，其扣留期限不得超過 10 個工作日，而如是自香港輸出的財產，則其扣留期限不得超過 7 個工作日，但如在該期限屆滿前，有根據第 (2) 款發出的命令批准繼續扣留該財產，則屬例外。

(2) 法院可應獲授權人的申請發出命令，批准繼續扣留經扣押的財產，但法院須信納——

- (a) 有合理理由懷疑該財產為指明財產；及
- (b) 在對該財產的來源或如何獲得作進一步的調查，或考慮提起(不論是在香港或其他地方)以下訴訟之際，扣留該財產是有理由的——
 - (i) 針對任何人就與該財產有關的罪行而提起的訴訟；或
 - (ii) 可導致該財產遭充公或以其他方式沒收的訴訟。

(3) 根據第 (2) 款發出的命令須批准在其指明的期限(該期限不得超過由該命令發出之日起計的 3 個月)內繼續扣留該命令所關乎的經扣押的財產，而法院在獲授權人向其提出申請後，如信納第 (2)(a) 及 (b) 款所指的事項，可在該期限後不時發出命令批准繼續扣留該財產，但——

- (a) 在根據本款發出的命令內所指明的扣留期限不得超過由該命令發出之日起計的 3 個月；及
 - (b) 扣留期限共計不得超過由根據第 (2) 款發出的命令之日起計的 2 年。
- (4) 在經扣押的財產根據第 (2) 或 (3) 款發出的命令被扣留期間，如——
- (a) 法院應——
 - (i) 財產從其處被扣押的人；
 - (ii) 輸入或輸出財產的人或有代表代其輸入或輸出財產的人；或
 - (iii) 在其他方面對該財產有權益的人，
 提出的申請而信納並沒有或再沒有第 (2) 款所指的扣押該財產的理由；或
 - (b) 法院應獲授權人提出的申請而信納再沒有理由將該財產扣押，
- 則法院可在任何時間指示把該財產發還。

✓ 24C. Period for which seized property may be detained

(1) Seized property shall not be detained for a period of more than 10 working days in the case of such property being imported into Hong Kong, or 7 working days in the case of such property being exported from Hong Kong, unless, before the expiration of that period, the continued detention of such property is authorized by an order under subsection (2).

(2) A court may, upon application made to it by an authorized officer, by order authorize the continued detention of seized property where it is satisfied that—

- (a) there are reasonable grounds for suspecting that such property is specified property; and
- (b) such detention of such property is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in Hong Kong or elsewhere) of proceedings—
 - (i) against any person in relation to an offence with which such property is connected; or
 - (ii) which may result in the forfeiture or other confiscation of such property.

(3) An order under subsection (2) shall authorize the continued detention of the seized property to which it relates for such period, not exceeding 3 months beginning with the date of the order, as is specified in the order and a court, upon application made to it by an authorized officer and if satisfied as to the matters referred to in subsection (2)(a) and (b), may thereafter from time to time by order authorize the further detention of such property but so that—

- (a) no period of detention specified in an order under this subsection shall exceed 3 months beginning with the date of the order; and
- (b) the total period of detention shall not exceed 2 years from the date of the order under subsection (2).

(4) At any time while seized property is being detained by an order under subsection (2) or (3) a court may direct its release if satisfied—

- (a) on an application made by—
 - (i) the person from whom it was seized;
 - (ii) a person by or on whose behalf it was being imported or exported; or
 - (iii) a person who otherwise has an interest in it, that there are no, or are no longer, any such grounds for its detention as are referred to in subsection (2); or
- (b) on an application made by an authorized officer, that its detention is no longer justified.

(5) 倘在經扣押的財產憑藉根據第 (2) 或 (3) 款發出的命令而被扣留之際，有以下訴訟 (不論是在香港或其他地方) 提起——

(a) 針對任何人就與該財產有關的罪行而提起的訴訟；或

(b) 可導致該財產遭充公或以其他方式沒收的訴訟，
該財產不得在該等訴訟結束前予以發還。

(6) 立法會可藉決議修訂第 (1) 款，以其他期限取代該款內指明的任何期限。
(由 1999 年第 15 號第 3 條修訂)

24D. 充公

(1) 在經扣押的財產根據第 24C(2) 或 (3) 條被扣留期間，如法院應律政司司長或其代表提出的申請而信納該財產—— (由 1997 年第 362 號法律公告修訂)

(a) 全部或部分、直接或間接代表任何人的販毒得益；

(b) 曾用於販毒；或

(c) 擬用於販毒，

可在符合第 (2) 款的規定下命令把該財產充公。

(2) 凡法院擬根據第 (1) 款就該款 (a) 段適用的任何經扣押的財產發出命令，法院須在該命令內指明在該等財產中，有多少 (如有的話) 是其不信納是直接或間接代表任何人的販毒得益的。

(3) 不論是否有針對任何人就與經扣押的財產有關的罪行而提起的訴訟，法院均可根據本條發出命令。

(4) 就根據本條而提出的申請而言，須以相對可能性的衡量為舉證的準則。

24E. 利息

經扣押的財產如是金錢而且是按根據第 24C(2) 或 (3) 條發出的命令而被扣留的，除非須用作為某罪行的證據，否則須存入孳息帳戶內，而且在充公或發還該財產時，所孳生的利息須計入該財產內。

(5) If, at any time when any seized property is being detained by virtue of an order under subsection (2) or (3), proceedings are instituted (whether in Hong Kong or elsewhere)—

(a) against any person in relation to an offence with which such property is connected; or

(b) which may result in the forfeiture or other confiscation of such property,

such property shall not be released until such proceedings have been concluded.

(6) The Legislative Council may, by resolution, amend subsection (1) by substituting another period for any period specified therein.

24D. Forfeiture

(1) While any seized property is detained under section 24C(2) or (3), a court may, if satisfied on an application made by or on behalf of the Secretary for Justice that such property— (*Amended L.N. 362 of 1997*)

(a) in whole or in part directly or indirectly represents any person's proceeds of drug trafficking;

(b) has been used in drug trafficking; or

(c) is intended for use in drug trafficking,

order, subject to subsection (2), the forfeiture of such property.

(2) Where a court proposes to make an order under subsection (1) in respect of any seized property where paragraph (a) of that subsection is applicable, the court shall specify in the order so much, if any, of such property in respect of which the court is not satisfied that it directly or indirectly represents any person's proceeds of drug trafficking.

(3) An order may be made under this section whether or not proceedings are brought against any person for an offence with which the seized property concerned is connected.

(4) The standard of proof on an application under this section shall be on the balance of probabilities.

24E. Interest

Seized property which is money and which is detained in pursuance of an order under section 24C(2) or (3) shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing thereon shall be added to such property on its forfeiture or release.

24F. 程序

- (1) 根據第 24C(2) 條發出的命令須附有對受該命令影響的人發出通知的規定。
- (2) 法院規則可——
 - (a) 就根據本部向任何法院提出申請訂定條文；
 - (b) 就為圓滿執行根據第 24D(1) 條發出的命令而把受該命令所限的經扣押的財產在以下情況下分割、轉換或處置訂定條文——
 - (i) 第 24D(2) 條是適用的；及
 - (ii) 該財產並不是可為上述目的而輕易攤分的；
 - (c) 就本部下的法院程序訂立一般性的條文。
- (3) 第 (2) 款並不影響現存的訂立規則的權力的一般性。

(第 IVA 部由 1995 年第 89 號第 19 條增補)

第 V 部

關乎販毒得益的違禁作為

(由 1995 年第 89 號第 20 條代替)

25. 處理已知道或相信為代表販毒得益的財產

(1) 除第 25A 條另有規定外，如有人知道或有合理理由相信任何財產全部或部分、直接或間接代表任何人的販毒得益而仍處理該財產，即屬犯罪。

(2) 在檢控任何人犯第 (1) 款下的罪行的訴訟中，被告可證明以下事情作為免責辯護——

- (a) 他曾意圖就違反第 (1) 款的有關作為而向獲授權人披露第 25A(1) 條所述的知悉、懷疑或事宜；及
- (b) 他未能按照第 25A(2) 條作出披露是有合理解釋的。
- (3) 任何人犯第 (1) 款下的罪行——
 - (a) 循公訴程序定罪，可處罰款 \$5,000,000 及監禁 14 年；或
 - (b) 循簡易程序定罪，可處罰款 \$500,000 及監禁 3 年。

(由 1995 年第 89 號第 21 條代替)

✓ 24F. Procedure

(1) An order under section 24C(2) shall provide for notice to be given to persons affected by the order.

(2) Provision may be made by rules of court—

- (a) with respect to applications to any court under this Part;
- (b) with respect to the division, conversion or disposal of seized property for the purposes of satisfying an order under section 24D(1) to which it is subject where—
 - (i) section 24D(2) is applicable; and
 - (ii) such property is not readily divisible for those purposes;
- (c) generally with respect to the procedure under this Part before any court.

(3) Subsection (2) is without prejudice to the generality of any existing power to make rules.

(Part IVA added 89 of 1995 s. 19)

PART V

PROHIBITED ACTS IN RELATION TO PROCEEDS OF DRUG TRAFFICKING

(Replaced 89 of 1995 s. 20)

25. Dealing with property known or believed to represent proceeds of drug trafficking

(1) Subject to section 25A, a person commits an offence if, knowing or having reasonable grounds to believe that any property in whole or in part directly or indirectly represents any person's proceeds of drug trafficking, he deals with that property.

(2) In proceedings against a person for an offence under subsection (1), it is a defence to prove that—

- (a) he intended to disclose to an authorized officer such knowledge, suspicion or matter as is mentioned in section 25A(1) in relation to the act in contravention of subsection (1) concerned; and
- (b) there is reasonable excuse for his failure to make disclosure in accordance with section 25A(2).

(3) A person who commits an offence under subsection (1) is liable—

- (a) on conviction upon indictment to a fine of \$5,000,000 and to imprisonment for 14 years; or
- (b) on summary conviction to a fine of \$500,000 and to imprisonment for 3 years.

(Replaced 89 of 1995 s. 21)