

立法會 *Legislative Council*

《國家安全(立法條文)條例草案》委員會文件

《刑事罪行條例》按條例草案建議作出的修訂而 訂定的調查及搜查權力

I. 引言

在法案委員會2003年5月10日會議上，委員要求本部就《刑事罪行條例》(第200章)(下稱“該條例”)按《國家安全(立法條文)條例草案》建議作出的修訂而訂定的調查及搜查權力提供意見，特別是《1997年刑事罪行(修訂)(第2號)條例》(1997年第89號條例)(下稱“《1997年條例》”)。

II. 《警隊條例》所訂的一般權力

2. 根據《警隊條例》(第232章)，警方獲賦予一般的調查權力，藉以：

- (a) 逮捕及扣留涉嫌人士；
- (b) 進入及搜查處所，並檢取涉嫌財產；
- (c) 截停、扣留及搜查涉嫌人士；
- (d) 截停、扣留及搜查船隻。

3. 儘管已訂定上述一般權力，其他條例亦基於有關條例所特有的政策理由，賦予警方在持有或沒有手令下進入及搜查的特定權力。任何條例亦同樣可基於政策理由，訂定和進入、搜查及檢取有關的一般和特定權力。委員可參閱保安局於2002年10月向保安事務委員會和司法及法律事務委員會發出，有關授權無須司法手令而緊急進入及搜查的香港法例條文的文件(立法會CB(2)86/02-03(01)號文件)。

III. 《刑事罪行條例》的現有及擬議權力

該條例第8條

4. 該條例第8條訂明，如法官信納有合理理由懷疑有人觸犯第7條所訂的煽惑離叛罪行，即可批出搜查令，授權一名不低於督察職級的警務人員進入及搜查指明處所，並檢取在該處所發現而該警務人員有合理理由懷疑屬觸犯該罪行證據的任何物品。根據《釋義及通則條

例》(第1章)所作界定，“法官”指終審法院首席法官、終審法院法官、高等法院首席法官、上訴法庭法官、原訟法庭法官、原訟法庭特委法官及原訟法庭暫委法官。

5. 在保安局所擬備“有關法律適應化的事項”的文件(28號文件)中，當局表示該條例第6及7條將另行作出適應化修改。**至於第8條會否納入為該項適應化工作的一部分，則並不清楚。條例草案並未建議對第8條作出任何修訂，而新訂第18B條並不涵蓋第6及7條所訂罪行。**

該條例第13條

6. 根據該條例的現行第13條，如裁判官信納有合理因由相信有人已經或行將犯第10條所訂罪行，即可批出搜查令，授權任何警務人員進入搜查令所載明的任何處所或地方，及搜查該處所或地方和每名在場所發現的人，並檢取在該處所或地方發現而該警務人員有合理理由懷疑屬犯第10條所訂罪行證據的任何物品。

7. 現時建議作出的修訂是廢除該條例第10條，並以第9A或9C條取代。概念上，條例草案是採取第13條所訂的現有權力，處理和煽動叛亂及處理煽動性刊物有關的擬議新訂罪行，而該等罪行與現行第10條所訂罪行的性質並不完全相若，特別是新訂第9A(1)(a)條是與煽惑他人犯叛國、顛覆及分裂國家罪有關。**對第13條作出修訂的實際效力是訂定一般的調查權力。**

8. 已通過成為法例但至今尚未開始實施的《1997年條例》廢除了第13條。在《1996年刑事罪行(修訂)(第2號)條例草案》(下稱“《1996年條例草案》”)二讀時，當時的保安司解釋，《1996年條例草案》的部分條文旨在消除其他法例中雙重權力的情況。根據《1996年條例草案》的摘要說明所載，廢除第13條的原因是當局可根據《警隊條例》第50(7)條發出搜查令。

9. 《警隊條例》第50(7)條訂明，裁判官如覺得有合理因由懷疑在任何建築物、船隻或地方內，有任何報章、簿冊或其他文件，或任何其他物品或實產是相當可能對調查所觸犯或合理地懷疑已經或即將或意圖觸犯的罪行有價值的，則該裁判官可向任何警務人員發出手令，以便在日間或夜間——

- (a) 進入該建築物、船隻或地方，並搜查及接管任何該等報章、簿冊或其他文件，或任何其他物品或實產；
- (b) 扣留任何看似是管有或控制該等報章、簿冊或其他文件，或任何其他物品或實產的人，而該人若非如此扣留，則會妨礙該項搜查的目的。

10. 《警隊條例》第50(7)條所訂一般權力的涵蓋範圍，在以下各方面似乎較該條例第13條所訂的特定權力廣泛：

- (a) 有合理因由懷疑的標準較有合理因由相信的標準為低；
- (b) 可根據《警隊條例》第50(7)條提出申請的情況，並不局限於已經或即將觸犯的罪行；
- (c) 檢取相當可能對調查某宗罪行有價值的財產的標準，較檢取有合理理由懷疑屬所觸犯罪行證據的財產的標準為低；
- (d) 《警隊條例》第50(7)條訂定了額外權力，以便在為容許搜查工作得以進行而合理地需要的期間內扣留任何人；
- (e) 可搜查的地方包括任何並非軍用船艦或具有軍用船艦地位的船隻。

11. 根據第1章所作界定，第50(7)條所提述的“船隻”指“任何大小船艇，以及各類用於航行的船隻”。新訂第18B條所訂擬議權力的涵蓋範圍較第50(7)條廣泛，因為有關人員可就任何運輸工具行使該項擬議權力，亦即同時包括車輛及飛機。

12. 在政府當局就立法會助理法律顧問提出的問題作出回應的文件(37號文件)中，當局回答問題B23時表示，其政策目的是保留第13條，但須作出條例草案附表1第15段所載的有關相應修訂。**政府當局並未解釋其為何不採取原來在《1997年條例》建議廢除第13條時所採納，有關消除雙重權力的政策。**

該條例的新訂第18B條

13. 條例草案建議在該條例加入新訂第18B條，訂明如職級在總警司級或以上的警務人員合理地相信已出現多種情況，包括有人已犯或正犯煽動叛亂或處理煽動性刊物的罪行，警方即獲授權在沒有手令下進行搜查。

14. 在政府當局就立法會助理法律顧問提出的問題作出回應的文件(37號文件)中，當局回答問題B24時解釋，擬議權力是在已界定情況下行使的緊急權力。在其他非緊急的情況下，當局必須先行根據第13條申領司法手令，然後才可行使進入、搜查及檢取的權力。在法案委員會2003年5月10日會議上，政府當局表示，需要訂定第18B條的理據是避免證據被毀滅。至於所提出的理據是否充分，則須由委員決定。

符合《基本法》第二十九條

15. 一名委員詢問，新訂第18B條所訂的擬議權力是否符合《基本法》第二十九條。《基本法》第二十九條訂明，香港居民的住宅和其他房屋不受侵犯。禁止任意或非法搜查、侵入居民的住宅和其他房屋。

16. 在提交保安事務委員會和司法及法律事務委員會有關警方調查權力的文件(立法會CB(2)86/02-03(01)號文件)中，政府當局表示，為防止有關權力被濫用及為符合《基本法》第二十九條有關私人物業不

受侵犯的憲法保障，當局會訂定保障條文。政府當局在立法會參考資料摘要第6段亦表示，當局已考慮必須完全符合《基本法》的規定。

17. 本部未能找到任何與《基本法》第二十九條有關而涉及沒有手令下的搜查權力的案例。然而，《基本法》第二十九條與《香港人權法案條例》(第383章)所訂的《香港人權法案》的第十四條相若。第十四條訂明：

(一) 任何人之私生活、家庭、住宅或通信，不得無理或非法侵擾，其名譽及信用，亦不得非法破壞。

(二) 對於此種侵擾或破壞，人人有受法律保護之權利。

18. 在1997年7月1日前，《英皇制誥》第VII條訂明，聯合國大會於1966年12月16日通過的《公民權利和政治權利國際公約》中適用於香港的條文，須透過香港法律予以實施。在關於香港的《1991年(第2號)英皇制誥》實施後，香港不得制定任何令在香港所享有的權利及自由受到限制，以致抵觸該公約中適用於香港的條文的法例。

19. 在R v Yu Yem-kin (1994) 4 HKPLR 75一案中，高等法院裁定，當時的《危險藥物條例》(第134章)第52(1)(e)條所訂的在無手令下搜查及檢取的權力，只有在符合合理所需及最低程度侵擾的標準的情況下，才屬有理可據。當時的第52(1)(e)條訂明，為施行《危險藥物條例》，任何警務人員及海關人員如有理由懷疑任何場所或處所內有可予扣押的物件，即可進入及搜查有關場所或處所。高等法院認為該條文並不符合上述驗證標準，因而違反了《香港人權法案》第十四條的規定，理由是：

(a) 申領手令的需要並不會對警方的調查及搜集證據工作造成任何不利；及

(b) 成文法中並無規定，只有在申領手令方面並不合理切實可行的情況下，才可在沒有手令下進行搜查及檢取。

20. **本部相信**在研究擬議第18B條所訂擬議權力是否符合《基本法》第二十九條時，有關合理所需及最低程度侵擾的標準亦同樣適用。政府當局在37號文件中表示，擬議權力將會是在嚴格界定的情況下，由職級在總警司級或以上的警務人員行使的緊急權力。一名委員在法案委員會會議上提出其感到關注的是，倘根據擬議第18B條發出指示的總警司是負責或監督有關調查工作的警務人員，可能會出現角色衝突的情況。倘在擬議第18B條中加入有關的警務人員必須屬總警司級的規定的目的，是要作出保障以免出現濫用權力的問題，則一旦出現上述情況，便無法達到該目的。

IV. 《有組織及嚴重罪行條例》

21. 委員在研究《刑事罪行條例》所訂的調查及搜查權力時，同時研究《有組織及嚴重罪行條例》(第455章)所訂的權力，亦屬相關的審議事項。條例草案附表第29及30段建議對《有組織及嚴重罪行條例》第5條及附表1作出相應修訂。此等修訂的效力是將第2、2A、2B、9A、9C及18條所訂，分別有關叛國、顛覆、分裂國家、煽動叛亂、處理煽動性刊物及非法操練的罪行納入下述範圍：

- (a) 《有組織及嚴重罪行條例》所訂有關“指明的罪行”的定義所指的行為；
- (b) “有組織罪行”的定義所指的行為，如有關行為是與2名或以上的人的活動有關連的，而該等人聯合一起的唯一或部分目的是為作出2項或以上行為，每一項均為指明的罪行及涉及相當程度的策劃及組織。

22. 根據《有組織及嚴重罪行條例》第3條，原訟法庭(下稱“法庭”)如信納已經符合第3(4)條的條件，可因應律政司司長單方面提出的申請而發出命令，要求任何人回答或提供有關人員合理地覺得是與偵查一項有組織罪行有關的問題或物料。

23. 根據《有組織及嚴重罪行條例》第4條，法庭如信納已經符合第4(4)條的條件，可因應律政司司長或獲授權人單方面提出的申請而發出命令，要求任何人提交可能與偵查有組織嚴重罪行或從有組織罪行或指明的罪行的得益有關的物料(不論有關物料是在香港特區還是其他地方)，或讓有關人員取覽該物料。

24. 根據《有組織及嚴重罪行條例》第5條，法庭或區域法院如信納已經符合第5(2)條的條件，可因應獲授權人提出的申請而發出手令，授權獲授權人進入及搜查指明處所，並檢取和扣留任何可能與偵查有組織罪行或從有組織罪行或指明的罪行的得益有關的物料。為方便參考，現將《有組織及嚴重罪行條例》第3、4、5條及第2條所訂有關“獲授權人”的定義載於附件。**鑒於煽動叛亂及處理煽動性刊物將屬於指明的罪行定義範圍內的行為，《刑事罪行條例》第13條可能與《有組織及嚴重罪行條例》第5條重複。**

25. 條例草案明文規定該條例第18條所訂的擬議權力，以及《有組織及嚴重罪行條例》第5條所訂關於相關罪行的進入、搜查及檢取權力，均受第1章第83條及其第XII部其他條文規限。第1章第83條的作用是規定任何條例的條文如賦權任何人進入、搜查及檢取，或授權發出賦權任何人作出以上作為的手令，則如無明文的相反規定，該條文不得解釋為賦權任何人或授權發出手令以賦權任何人為搜尋或檢取被知為或被懷疑是新聞材料的材料的目的而進入處所。

V. 《官方機密條例》所訂的相若權力

26. 《官方機密條例》(第521章)第11(2)條訂明，凡警司級人員覺得某個案的情況極其緊急，而且有需要即時採取行動以保障聯合王國(根據第1章解釋為中華人民共和國)或香港的利益，即可行使相若的進入、搜查及檢取權力。**條例草案並未建議修訂《官方機密條例》第11條。**

27. 《官方機密條例》第26條訂明，裁判官如有合理理由懷疑有人已犯或即將犯《官方機密條例》第III部所訂有關非法披露的罪行(第22(1)、(4)或(5)條所訂罪行除外)，即可發出搜查手令。**鑒於非法披露將屬於指明的罪行定義範圍內的行為，《官方機密條例》第26條可能與《有組織及嚴重罪行條例》第5條重複。**

VI. 《社團條例》所訂的相若權力

28. 《社團條例》(第151章)第32條訂明，裁判官如有合理理由相信任何社團或分支機構正用作或經營作某用途，以致禁止該社團或該分支機構的運作或繼續運作是維護國家安全或公共安全、公共秩序或保護他人的權利和自由所需要者，即可發出搜查手令。**鑒於參加受取締組織的活動、容許受取締組織進行集會及煽惑他人成為受取締組織成員，將屬於指明的罪行定義範圍內的行為，《社團條例》第32條可能與《有組織及嚴重罪行條例》第5條重複。**

29. 《社團條例》第33條賦予任何督察級或督察級以上的警務人員進入、逮捕及檢取的權力。**條例草案並未建議修訂《社團條例》第33條。**

VII. 總結

30. 為方便參考，現將本文件所載主要觀察所得綜述如下：

- (a) 關於會否將《刑事罪行條例》第8條納入為《刑事罪行條例》第I及II部其他條文(包括第6及7條)的適應化工作的一部分，並未有作出清楚的說明。條例草案並未建議對第8條作出任何修訂，而新訂第18B條並不涵蓋該條例第6及7條所訂罪行(第5段)。
- (b) 修訂《刑事罪行條例》第13條的實際效力是訂定一般的調查權力(第7段)。政府當局並未解釋其為何不採取原來在《1997年條例》建議廢除第13條時所採納，有關消除雙重權力的政策(第12段)。
- (c) 在研究擬議第18B條所訂的擬議權力是否符合《基本法》第二十九條時，有關合理所需及最低程度侵擾的標準亦同樣適

用。研究應否授權一名屬適當職級而與所涉調查工作無關的人員，指示其他警務人員行使第18B條所訂的搜查及檢取權力，亦是相關的審議事宜(第20段)。

- (d) 鑒於煽動叛亂及處理煽動性刊物將屬於指明的罪行定義範圍內的行為，《刑事罪行條例》第13條可能與《有組織及嚴重罪行條例》第5條重複(第24段)。
- (e) 條例草案並未建議修訂《官方機密條例》第11條(第26段)。
- (f) 鑒於非法披露將屬於指明的罪行定義範圍內的行為，《官方機密條例》第26條可能與《有組織及嚴重罪行條例》第5條重複(第27段)。
- (g) 鑒於參加受取締組織的活動、容許受取締組織進行集會及煽惑他人成為受取締組織成員，將屬於指明的罪行定義範圍內的行為，《社團條例》第32條可能與《有組織及嚴重罪行條例》第5條重複(第28段)。
- (h) 條例草案並未建議修訂《社團條例》第33條(第29段)。

連附件

立法會秘書處
法律事務部
2003年5月23日

“債務處理人”(insolvency officer)指——

- (a) 破產管理署署長；或
- (b) 用以下身分行事的人——
 - (i) 根據《破產條例》(第 6 章)委任的接管人、臨時接管人、特別經理人或受託人；或
 - (ii) 根據《公司條例》(第 32 章)委任的清盤人、臨時清盤人或特別經理人；

“酬賞”(reward)包括金錢利益；

“潛逃”(absconded)，就任何人而言，包括因任何理由而潛逃，而不論該人在潛逃之前是否——

- (a) 已被拘押；或
- (b) 已獲保釋；(由 1995 年第 90 號第 2 條增補)

“獲授權人”(authorized officer)指——

- (a) 任何警務人員；
- (b) 根據《海關條例》(第 342 章)第 3 條設立的海關的任何成員；及
- (c) 任何為施行本條例而獲律政司司長書面授權的人；(由 1997 年第 362 號法律公告修訂)

“權益”(interest)就財產而言，包括權利。

(2) 就第(1)款的“有組織罪行”(organized crime)的定義而言——

- (a) 如就串謀犯附表 1 所列罪行而在實行協定的行為過程中會在某階段涉及該定義(c)(i)至(iii)段所提述的事情，則有關的串謀即涉及該事情；
- (b) 如企圖或煽惑犯附表 1 所列罪行的人所構想的事會涉及該定義(c)(i)至(iii)段所提述的事情，則有關的企圖或煽惑即涉及該事情。

(3) 下表左欄所列詞句的含義，分別由右欄相對列出的條文界定，或依照右欄所列條文的內容而解釋：

詞句	有關條文
押記令 (Charging order).....	第 16(2) 條
受本條例限制的饋贈 (Gift caught by this Ordinance).....	第 12(9) 條
作出饋贈 (Making a gift).....	第 12(10) 條
可變現財產 (Realisable property).....	第 12(1) 條
限制令 (Restraint order).....	第 15(1) 條
饋贈、付款或酬賞的價值 (Value of gift, payment or reward).....	第 12 條
財產的價值 (Value of property).....	第 12(4) 條

(由 1995 年第 90 號第 2 條修訂)

“society”(社團) has the same meaning as in section 2(1) of the Societies Ordinance (Cap. 151);

“specified offence”(指明的罪行) means—

- (a) any of the offences specified in Schedule 1 or Schedule 2;
- (b) conspiracy to commit any of those offences;
- (c) inciting another to commit any of those offences;
- (d) attempting to commit any of those offences;
- (e) aiding, abetting, counselling or procuring the commission of any of those offences;

“triad society”(三合會) includes any society which—

- (a) uses any ritual commonly used by triad societies, any ritual closely resembling any such ritual or any part of any such ritual; or
- (b) adopts or makes use of any triad title or nomenclature.

(2) For the purpose of the definition of “organized crime”(有組織罪行) in subsection (1)—

- (a) a conspiracy to commit a Schedule 1 offence involves a matter referred to in paragraph (c)(i) to (iii) of that definition if the pursuit of the agreed course of conduct would at some stage involve that matter;
- (b) an attempt or incitement to commit a Schedule 1 offence involves a matter referred to in paragraph (c)(i) to (iii) of that definition if what the person attempting or inciting the commission had in view would involve that matter.

(3) The expressions listed in the left-hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Ordinance listed in the right-hand column in relation to those expressions.

Expression	Relevant provision
Charging order (押記令).....	Section 16(2)
Gift caught by this Ordinance (受本條例限制的饋贈).....	Section 12(9)
Making a gift (作出饋贈).....	Section 12(10)
Realisable property (可變現財產).....	Section 12(1)
Restraint order (限制令).....	Section 15(1)
Value of gift, payment or reward (饋贈、付款或酬賞的價值).....	Section 12
Value of property (財產的價值).....	Section 12(4)

(Amended 90 of 1995 s. 2)

- (a) 使用三合會普遍使用的任何儀式、任何與該等儀式十分相似的儀式或該等儀式的任何部分的社團；或
- (b) 採用或利用任何三合會名銜或稱謂術語的社團；
- “司法常務官”(Registrar) 指高等法院司法常務官； (由 1998 年第 25 號第 2 條修訂)
- “有組織罪行”(organized crime) 指附表 1 所列罪行，而且是——
- (a) 與某三合會的活動相關的；
- (b) 與 2 名或以上的人的活動有關連的，而該等人聯合一起的唯一或部分目的是為作出 2 項或以上行為，每一項均為附表 1 所列罪行及涉及相當程度的策劃及組織的；或
- (c) 由 2 名或以上的人所犯的，而且涉及相當程度的策劃及組織，以及——
- (i) 有人喪失生命或有人有喪失生命的相當程度的危險；
- (ii) 有人在身體或心理上受嚴重傷害或有人有受該等傷害的相當程度的危險；或
- (iii) 有人嚴重喪失自由；
- “沒收令”(confiscation order) 指根據第 8(7) 條發出的命令；
- “享有法律特權的品目”(items subject to legal privilege) 指——
- (a) 專業法律顧問和他的當事人或當事人代表之間，就有關向當事人提供法律意見而作出的通訊；
- (b) 專業法律顧問和他的當事人或當事人代表之間，或該等顧問、當事人或當事人代表和任何其他人士之間，就有關法律程序或在預期進行法律程序的情況下及為該等法律程序而作出的通訊；及
- (c) 該等通訊中所附有或提及的品目，而該等品目又是——
- (i) 與提供法律意見有關而作出的；或
- (ii) 就有關法律程序或在預期進行法律程序的情況下及為該等法律程序而作出的，
- 且正由有權管有該等品目的人所管有，
- 但不包括為意圖助長犯罪目的而持有的品目或作出的通訊；
- “附表 1 所列罪行”(Schedule 1 offence) 指——
- (a) 附表 1 所指明的任何罪行；
- (b) 串謀犯任何該等罪行；

- (a) taken into custody; or
- (b) released on bail; (Added 90 of 1995 s. 2)
- “authorized officer” (獲授權人) means—
- (a) any police officer;
- (b) any member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap. 342); and
- (c) any other person authorized in writing by the Secretary for Justice for the purposes of this Ordinance; (Amended L.N. 362 of 1997)
- “confiscation order” (沒收令) means an order made under section 8(7);
- “dealing” (處理), in relation to property referred to in section 15(1) or 25, includes—
- (a) receiving or acquiring the property;
- (b) concealing or disguising the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);
- (c) disposing of or converting the property;
- (d) bringing into or removing from Hong Kong the property;
- (e) using the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise); (Added 90 of 1995 s. 2)
- “defendant” (被告人) means a person against whom proceedings have been instituted for a specified offence (whether or not he has been convicted of that offence);
- “insolvency officer” (債務處理人) means—
- (a) the Official Receiver; or
- (b) any person acting as—
- (i) a receiver, interim receiver, special manager or trustee appointed under the Bankruptcy Ordinance (Cap. 6); or
- (ii) a liquidator, provisional liquidator or special manager appointed under the Companies Ordinance (Cap. 32);
- “interest” (權益), in relation to property, includes right;
- “items subject to legal privilege” (享有法律特權的品目) means—
- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(f) 法律程序中所發出的沒收令得到圓滿執行(不論所用方法是繳付根據命令須繳的款額,或由被告人接受監禁以作抵償)。

(16A) 在第 8(1)(a)(ii) 或 (7A) 條適用的情況下,若就被被告人而提出申請發出沒收令——

(a) 如原訟法庭或區域法院決定不發出沒收令,則在原訟法庭或區域法院作出該項決定時;或 (由 1998 年第 25 號第 2 條修訂)

(b) 如因該項申請而發出沒收令,則在該命令得到圓滿執行時,該項申請即算是結束。 (由 1995 年第 90 號第 2 條增補)

(16B) 就針對被告人的沒收令而根據第 20(1A) 條提出的申請——

(a) 如原訟法庭決定不更改該命令,則在原訟法庭作出該項決定時;或

(b) 如原訟法庭因該項申請而更改該命令,則在該命令得到圓滿執行時,該項申請即算是結束。 (由 1995 年第 90 號第 2 條增補。由 1998 年第 25 號第 2 條修訂)

(17) 法庭或裁判官的命令或裁決(包括判令被告人無罪釋放的命令或裁決),在該命令或裁決可能被上訴、再上訴或覆核的期間,即受上訴或覆核所限;為此目的,可可能被上訴、再上訴或覆核(即當事人有權提出但未有提出上訴、再上訴或覆核)的期間——

(a) (由 1995 年第 79 號第 50 條廢除)

(b) 指截至提出上訴、再上訴或覆核的訂明期限結束為止的期間。 (由 1995 年第 79 號第 50 條修訂)

“(18) 除第 (19) 款另有規定外,本條例並不規定披露任何享有法律特權的物品。 38 U.K.]

(19) 第 (18) 款不影響第 3、4 及 5 條的實施。”

第 II 部

偵查的權力

3. 提供資料或提交物料的規定

(1) 為偵查有組織罪行,律政司司長可向原訟法庭提出單方面申請,就某人或某類別的人根據第(2)款發出命令。 (由 1997 年第 362 號法律公告修訂;由 1998 年第 25 號第 2 條修訂)

(2) 原訟法庭如信納第 (4)(a)、(b) 及 (d) 款或第 (4)(a)、(c) 及 (d) 款的條件已經符合,可應如此單方面提出的申請,就與申請有關的人或與申請有關的類別的人,發出符合第 (3) 款規定的命令。 (由 1998 年第 25 號第 2 條修訂)

(f) the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

(16A) An application for a confiscation order made in respect of a defendant where section 8(1)(a)(ii) or (7A) is applicable is concluded—

(a) if the Court of First Instance or the District Court decides not to make such an order, when it makes that decision; or (Amended 25 of 1998 s. 2)

(b) if such an order is made as a result of that application, when the order is satisfied. (Added 90 of 1995 s. 2)

(16B) An application under section 20(1A) in respect of a confiscation order made against a defendant is concluded—

(a) if the Court of First Instance decides not to vary that order, when it makes that decision; or

(b) if the Court of First Instance varies that order as a result of that application, when the order is satisfied. (Added 90 of 1995 s. 2. Amended 25 of 1998 s. 2)

(17) An order or verdict (including an order or verdict of acquittal) is subject to appeal or review so long as an appeal, further appeal or review is pending against the order or verdict; and for this purpose an appeal, further appeal or review shall be treated as pending (where one is competent but has not been instituted) until—

(a) (Repealed 79 of 1995 s. 50)

(b) the expiration of the time prescribed for instituting the appeal, further appeal or review. (Amended 79 of 1995 s. 50)

“(18) Subject to subsection (19), nothing in this Ordinance shall require the disclosure of any items subject to legal privilege. 38 U.K.]

(19) Subsection (18) shall not prejudice the operation of sections 3, 4 and 5.”

POWERS OF INVESTIGATION

3. Requirement to furnish information or produce material

(1) The Secretary for Justice may, for the purpose of an investigation into an organized crime, make an ex parte application to the Court of First Instance for an order under subsection (2) in relation to a particular person or to persons of a particular description. (Amended L.N. 362 of 1997; 25 of 1998 s. 2)

(2) The Court of First Instance may, if on such an application it is satisfied that the conditions in subsection (4)(a), (b) and (d) or subsection (4)(a), (c) and (d) are fulfilled, make an order complying with subsection (3) in respect of the particular person, or persons of the particular description, to whom the application relates. (Amended 25 of 1998 s. 2)

- (3) 根據第 (2) 款發出的命令須——
- (a) 說明該正在偵查中的有組織罪行的詳情；
 - (b) 指出命令所針對的人或述明該命令所針對的人的類別；
 - (c) 授權律政司司長向命令所針對的人或類別的人提出要求，要其——
 - (i) 就獲授權人合理地覺得是與偵查有關的任何事情回答問題或提供資料；或
 - (ii) 提交任何律政司司長合理地覺得是與關乎偵查的事情有關的任何物料或某種類的物料，
 或要求該人兩者皆作；及 (由 1997 年第 362 號法律公告修訂)
 - (d) 載有原訟法庭認為符合公眾利益而宜於加上的其他條款，但本段不得解釋為授權法庭未得任何人的同意而命令將該人拘留。(由 1998 年第 25 號第 2 條修訂)
- (4) 第 (2) 款所指的條件是——
- (a) 有合理理由懷疑有人犯了該正在偵查中的有組織罪行；
 - (b) 如第 (1) 款申請是針對某人的，有合理理由懷疑該人擁有資料或管有物料，而該等資料或物料相當可能與偵查有關；
 - (c) 如該申請是關於某類別的人，而——
 - (i) 有合理理由懷疑該類別中某些或全部人擁有該等資料或管有該等物料；及
 - (ii) 不論是因偵查需迫切進行、偵查需保密或擁有有關資料或物料的人的身分是難於辨別的，如規定該申請須是就某一一人而作出的，即不能有效地對該有組織罪行進行偵查；
 - (d) 經考慮——
 - (i) 該偵查中的有組織罪行的嚴重性；
 - (ii) 若不根據第 (2) 款發出命令，能否有效地偵查該有組織罪行；

- (3) An order under subsection (2) shall—
- (a) give particulars of the organized crime under investigation;
 - (b) identify the particular person, or state the particular description of persons, in respect of whom the order is made;
 - (c) authorize the Secretary for Justice to require the person or persons in respect of whom the order is made—
 - (i) to answer questions or otherwise furnish information with respect to any matter that reasonably appears to an authorized officer to be relevant to the investigation; or
 - (ii) to produce any material that reasonably appears to the Secretary for Justice to relate to any matter relevant to the investigation, or any material of a class that reasonably appears to him so to relate,
 or both; and (Amended L.N. 362 of 1997)
 - (d) contain such other terms (if any) as the Court of First Instance considers appropriate in the public interest, but nothing in this paragraph shall be construed as authorizing the court to order the detention of any person in custody without that person's consent. (Amended 25 of 1998 s. 2)
- (4) The conditions referred to in subsection (2) are—
- (a) that there are reasonable grounds for suspecting that the organized crime under investigation has been committed;
 - (b) where the application relates to a particular person, that there are reasonable grounds for suspecting that the person has information, or is in possession of material, likely to be relevant to the investigation;
 - (c) where the application relates to persons of a particular description, that—
 - (i) there are reasonable grounds for suspecting that some or all persons of that description have such information or are in possession of such material; and
 - (ii) the organized crime could not effectively be investigated if the application was required to relate to a particular person, whether because of the urgency of the investigation, the need to keep the investigation confidential or the difficulty in identifying a particular person who has relevant information or material; (Amended 90 of 1995 s. 3)
 - (d) that there are reasonable grounds for believing that it is in the public interest, having regard—
 - (i) to the seriousness of the organized crime under investigation;
 - (ii) to whether or not the organized crime could be effectively investigated if an order under subsection (2) is not made;

- (iii) 披露資料或取得物料後對偵查可能帶來的利益；及
- (iv) 該人或該等人所可能獲得或持有的資料或物料，是在何種情況下獲得或持有的（包括考慮對該資料或物料的保密責任，以及與該資料或物料所關乎的人的任何家族關係），（由 1995 年第 90 號第 3 條修訂）

有合理理由相信就該人或該等人根據第 (2) 款發出命令，是符合公眾利益的。

(5) 凡根據第 (2) 款發出的命令，授權律政司司長要求某人就獲授權人合理地覺得是與偵查有關的任何事情，回答問題或提供資料，律政司司長可藉向該人送達書面通知，要求該人在指定的時間、地點到某獲授權人席前，就該獲授權人合理地覺得是與該偵查有關的任何事情回答問題或提交資料。（由 1997 年第 362 號法律公告修訂）

(6) 凡根據第 (2) 款發出的命令，授權律政司司長要求某人將律政司司長合理地覺得是與關乎偵查的事項有關的物料或某一種類的物料提交，律政司司長可向該人送達書面通知，要求該人在指定的時間、地點將律政司司長合理地覺得是與關乎偵查的事情有關的任何指明的物料或指明的某一種類的物料提交。（由 1997 年第 362 號法律公告修訂）

(7) 根據第 (5) 或 (6) 款所送達的書面通知，須——

(a) 說明法庭已根據本條發出命令，並且須——

- (i) 載有命令的日期；
- (ii) 說明該有組織罪行的詳情；
- (iii) 如命令是針對該人而發出的，說明此情況；（由 1995 年第 90 號第 3 條修訂）
- (iv) 如命令是針對某類別的人而發出，而該人是屬於該類別的，說明此情況；
- (v) 說明命令中授予律政司司長的權力；及（由 1997 年第 362 號法律公告修訂）
- (vi) 說明該命令中與該人有關的其他條款；

- (iii) to the benefit likely to accrue to the investigation if the information is disclosed or the material obtained; and
- (iv) to the circumstances under which the person or persons may have acquired, or may hold, the information or material (including any obligation of confidentiality in respect of the information or material and any family relationship with a person to whom the information or material relates),

that an order under subsection (2) should be made in respect of that person or those persons.

(5) Where an order under subsection (2) authorizes the Secretary for Justice to require a person to answer questions or otherwise furnish information with respect to any matter that reasonably appears to an authorized officer to be relevant to an investigation, the Secretary for Justice may by one, or more than one, notice in writing served on that person require him to attend before an authorized officer at a specified time and place, or at specified times and places, and answer questions or otherwise furnish information with respect to any matter that reasonably appears to the authorized officer to be relevant to the investigation. (*Amended L.N. 362 of 1997*)

(6) Where an order under subsection (2) authorizes the Secretary for Justice to require a person to produce any material that reasonably appears to the Secretary for Justice to relate to any matter relevant to an investigation, or any material of a class that reasonably appears to him so to relate, the Secretary for Justice may by one, or more than one, notice in writing served on that person require him to produce at a specified time and place, or at specified times and places, any specified material that reasonably appears to him so to relate or any material of a specified class that reasonably appears to him so to relate. (*Amended L.N. 362 of 1997*)

(7) A notice in writing imposing a requirement on a person under subsection (5) or (6) shall—

- (a) state that a court order has been made under this section and include—
 - (i) the date of the order;
 - (ii) the particulars of the organized crime under investigation;
 - (iii) where the order is made in respect of that particular person, a statement to that effect;
 - (iv) where the order is made in respect of persons of a particular description and that person is of that particular description, a statement to that effect;
 - (v) a statement of the authorization given to the Secretary for Justice by the order; and (*Amended L.N. 362 of 1997*)
 - (vi) a statement of any other terms of the order relevant to that person;

- (b) 已夾附根據本條所發出的命令的副本，但該副本可不包括——
 - (i) 在該命令中對該人以外的某人的提述，或對不包括該人在內的某類別的人的提述；及
 - (ii) 在該命令中只與該某人或只與屬該某類別的人有關的任何詳情；及
- (c) 實質上是以附表 4 所指明的關於該通知的表格作出，此外並須將第 (8) 至 (10) 款及第 7 條的條文在該通知內載列或夾附於該通知。
- (8) 對於為遵從根據本條所提要求而提交的任何物料，獲授權人可將該物料攝影或複印。
- (9) 任何人不得根據本條被要求提供或提交任何與享有法律特權的品目有關的資料或物料，但律師(包括大律師)則可被要求提供其客戶的姓名、名稱及地址。
- (10) 根據第 (2) 款所發出的命令或根據第 (5) 或 (6) 款就施加要求所作的書面通知，可就關乎第 28 條界定的公共機構所持有的資料或管有的物料而作出。
- (11) 任何人不得以會有下述情況為理由，而不遵從根據本條提出的要求提供資料或提交物料——
 - (a) 提供資料或提交物料會傾向於使該人獲罪；或
 - (b) 提供資料或提交物料會違反法規或其他規定所施加的保密責任或對披露資料或物料的其他限制。
- (12) 因遵從憑藉本條施加的要求而作的陳述，不可在針對陳述者的刑事法律程序中用於針對他，但在以下情況則除外——
 - (a) 在根據第 (14) 款或《刑事罪行條例》(第 200 章) 第 36 條提起的法律程序中作為證據；或
 - (b) 在有關任何罪行、且該人作出與該陳述不相符的證供的法律程序中，用以對其可信程度提出質疑。
- (13) 任何人無合理辯解而不遵從根據本條向他施加的要求，即屬犯罪，可處第 6 級罰款及監禁 1 年。
- (14) 任何人在看來是遵從根據本條施加的要求時——
 - (a) 作出他知道在要項上虛假或有誤導成分的陳述；或
 - (b) 罔顧後果地作出在要項上虛假或有誤導成分的陳述，

- (b) have annexed to it a copy of the order made under this section, but there may be excluded from such copy—
 - (i) any reference in the order to a particular person other than that person, or to persons of a particular description not including that person; and
 - (ii) any details in the order that relate only to such particular person or persons of a particular description; and
- (c) be substantially in the form specified in Schedule 4 in relation to such notice and in addition shall set out or have annexed to it subsections (8) to (10) and section 7.
- (8) An authorized officer may photograph or make copies of any material produced in compliance with a requirement under this section.
- (9) A person shall not under this section be required to furnish any information or produce any material relating to items subject to legal privilege, except that a lawyer may be required to furnish the name and address of his client.
- (10) An order under subsection (2), and a notice in writing imposing a requirement under subsection (5) or (6), may be made in relation to information held by, and material in the possession of, a public body as defined in section 28.
- (11) A person is not excused from furnishing information or producing any material required under this section on the ground that to do so—
 - (a) might tend to incriminate him; or
 - (b) would breach an obligation as to secrecy or another restriction upon the disclosure of information or material imposed by statute or otherwise.
- (12) A statement by a person in response to a requirement imposed by virtue of this section may not be used against him in criminal proceedings against him except as follows—
 - (a) in evidence in proceedings under subsection (14) or section 36 of the Crimes Ordinance (Cap. 200); or
 - (b) for the purpose of impeaching his credibility in proceedings in respect of any offence where in giving evidence he makes a statement inconsistent with it.
- (13) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section commits an offence and is liable to a fine at level 6 and to imprisonment for 1 year.
- (14) Any person who, in purported compliance with a requirement under this section—
 - (a) makes a statement that he knows to be false or misleading in a material particular; or
 - (b) recklessly makes a statement that is false or misleading in a material particular,

即屬犯罪——

- (i) 循公訴程序定罪後，可處罰款 \$500,000 及監禁 3 年；或
- (ii) 循簡易程序定罪後，可處第 6 級罰款及監禁 1 年。
- (15) 凡一項命令已根據第 (2) 款發出，律政司司長或其為本款的目的而書面授權的代表，可在符合法庭規則就此事而訂明的條件後，獲取該命令的副本；但除在符合本款前述部分及第 (7)(b) 款的規定的情況外，任何人均無權獲取該命令的整份或任何部分的副本。（由 1997 年第 362 號法律公告修訂）
- (16) 凡根據本條施加於任何人的要求所關乎的物料為並非以可閱讀形式記錄的資料——
 - (a) 則須當該要求為將物料以一種可以帶走的形式提交的要求；
 - (b) 獲授權人可藉送達該人的書面通知，要求該人在指明的時間及地點，或在指明的不同時間及地點，以可以看到、可以閱讀及可以帶走的形式提交該物料，獲授權人並可藉同樣的通知解除該人根據該項要求須提交以原來記錄形式記錄的物料的责任。
- (17) 撤銷或更改根據本條發出的命令的申請，可由根據該項命令被施加要求的人提出。
- (18) 法庭規則——
 - (a) 須就根據本條發出的命令而據此被施加要求的人申請撤銷或更改該等命令的申請事宜，作出規定；
 - (b) 可就下述事項作出規定——
 - (i) 關乎根據本條發出的命令的法律程序；
 - (ii) 第 (15) 款所指的人（包括律政司司長）獲取該命令的副本前所必須符合的條件。（由 1995 年第 90 號第 3 條修訂；由 1997 年第 362 號法律公告修訂）
- (19) 保安局局長須就——（由 1997 年第 362 號法律公告修訂）
 - (a) 行使本條所賦予的權力；及
 - (b) 執行本條所委以的職責，
 制定實務守則，而任何此類守則均須提交立法會議席上省覽，並須得立法會批准始可頒布。（由 1999 年第 13 號第 3 條修訂）

commits an offence and is liable—

- (i) on conviction upon indictment to a fine of \$500,000 and to imprisonment for 3 years; or
- (ii) on summary conviction to a fine at level 6 and to imprisonment for 1 year.
- (15) Where an order under subsection (2) has been made the Secretary for Justice, or a person authorized in writing by the Secretary for Justice for the purpose of this subsection, may, after satisfying any conditions that may be prescribed by rules of court in this respect, obtain a copy of the order; but subject to the foregoing part of this subsection and to subsection (7)(b), no person is entitled to obtain a copy of the order or any part of the order. (Amended L.N. 362 of 1997)
- (16) Where a requirement imposed on a person under this section relates to material which consists of information recorded otherwise than in legible form—
 - (a) the requirement shall have effect as a requirement to produce the material in a form in which it can be taken away;
 - (b) an authorized officer may by notice in writing served on the person require the person to produce at a specified time and place, or at specified times and places, the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the requirement to produce the material in the form in which it is recorded.
- (17) An application for the discharge or variation of an order made under this section may be made by any person on whom a requirement is imposed under the order.
- (18) Rules of court—
 - (a) shall provide for applications by any person on whom a requirement is imposed under an order made under this section for the discharge or variation of such order;
 - (b) may provide for—
 - (i) proceedings relating to orders under this section;
 - (ii) conditions that must be satisfied before a person (including the Secretary for Justice) referred to in subsection (15) may obtain a copy of such order. (Amended 90 of 1995 s. 3; L.N. 362 of 1997)
- (19) The Secretary for Security shall prepare a code of practice in connection with—
 - (a) the exercise of any of the powers conferred; and
 - (b) the discharge of any of the duties imposed,
 by this section, and any such code shall be laid before the Legislative Council and shall not be promulgated until the code has been approved by the Legislative Council.

4. 提交物料令

(1) 為偵查下述事項，律政司司長或獲授權人可就某物料或某類別的物料，向原訟法庭提出單方面申請，要求根據第(2)款發出命令，不論有關的物料是在香港或(如申請是由律政司司長提出的)在其他地方——(由 1997 年第 362 號法律公告修訂；由 1998 年第 25 號第 2 條修訂)

- (a) 有組織罪行；或
- (b) 已犯或被懷疑已犯有組織罪行的人從有組織罪行的得益；或
- (c) 已犯或被懷疑已犯指明的罪行的人從該罪行的得益。

(2) 除第(5)款及第 28(10)條另有規定外，法庭接獲該項申請後，如信納已經符合第(4)(a)、(c)及(d)款或第(4)(b)、(c)及(d)款的條件，可發出命令，飭令其覺得是管有或控制與申請有關的物料的人，在命令內所指明的期限內——

- (a) 將物料提交給獲授權人帶走；或
- (b) 讓獲授權人取覽該物料。

(3) 除非法庭覺得就個別申請的特別情況適宜給予較長或較短期限，否則根據第(2)款發出的命令內指明的期限為 7 日。

(4) 第(2)款所指的條件是——

- (a) (如偵查是針對某有組織罪行的)有合理理由懷疑有人已犯該有組織罪行；
- (b) 如偵查是針對某人從有組織罪行或指明的罪行的得益的——
 - (i) 該人已犯有組織罪行或該指明的罪行，或有合理理由懷疑該人已犯有組織罪行或該指明的罪行；及
 - (ii) 有合理理由懷疑該人已從有組織罪行或該指明的罪行中獲利；
- (c) 有合理理由相信與申請有關的物料——

4. Order to make material available

(1) The Secretary for Justice or an authorized officer may, for the purpose of an investigation into—

- (a) an organized crime; or
- (b) the proceeds of organized crime of any person who has committed or is suspected of having committed an organized crime; or
- (c) the proceeds of a specified offence of any person who has committed, or is suspected of having committed, that specified offence,

make an ex parte application to the Court of First Instance for an order under subsection (2) in relation to particular material or material of a particular description, whether in Hong Kong or, in the case of an application by the Secretary for Justice, elsewhere. (*Amended L.N. 362 of 1997; 25 of 1998 s. 2*)

(2) Subject to subsection (5) and section 28(10), the court may, if on such an application it is satisfied that the conditions in subsection (4)(a), (c) and (d) or subsection (4)(b), (c) and (d) are fulfilled, make an order that the person who appears to the court to be in possession or control of the material to which the application relates shall—

- (a) produce the material to an authorized officer for him to take away; or
- (b) give an authorized officer access to it,

within such period as the order may specify.

(3) The period to be specified in an order under subsection (2) shall be 7 days unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) are—

- (a) where the investigation is into an organized crime, that there are reasonable grounds for suspecting that the organized crime has been committed;
- (b) where the investigation is into the proceeds of organized crime or a specified offence of a person—
 - (i) that the person has committed an organized crime or that specified offence, or that there are reasonable grounds for suspecting that he has committed an organized crime or that specified offence; and
 - (ii) that there are reasonable grounds for suspecting that the person has benefited from organized crime or that specified offence;
- (c) that there are reasonable grounds for believing that the material to which the application relates—

- (i) 相當可能與申請所關的偵查有關者；及
- (ii) 並不包括享有法律特權的品目，亦並非由該等品目組成；
- (d) 經考慮——
 - (i) 取得物料後對偵查可能帶來的利益；及
 - (ii) 管有或控制物料的人在何種情況下持有或控制(視屬何情況而定)該物料，(由 1995 年第 90 號第 4 條代替)
 有合理理由相信將物料交予獲授權人或讓他們取覽，是符合公眾利益的。
- (5) 凡根據第 (1) 款提出的申請是關乎某類別的物料的，則第 (2) 款所指的命令只可在就某物料提出申請並不合理地切實可行的情況才可發出。
- (6) 凡法庭根據第 (2)(b) 款就任何處所內的物料發出命令，法庭可應獲授權人在同一或隨後的申請，命令獲授權人覺得是有權准許別人進入處所的人，准許獲授權人進入處所以取覽有關物料。
- (7) 要求撤銷或更改根據第 (2) 或 (6) 款發出的命令的申請，可由受制於該命令的人提出。
- (8) 法庭規則——
 - (a) 須就受制於根據本條發出的命令的人申請撤銷或更改該等命令的申請事宜，作出規定；
 - (b) 可就關乎根據本條所發出的命令的法律程序作出規定。
- (9) 凡與根據本條提出的申請有關的物料為並非以可閱讀形式記載的資料——
 - (a) 根據第 (2)(a) 款發出的命令，須當為一項飭令將物料以一種可以帶走的形式，提交給獲授權人由他帶走的命令；及
 - (b) 根據第 (2)(b) 款發出的命令，須當為一項飭令將物料以一種可以看到及可以閱讀的形式，供獲授權人取覽的命令。
- (10) 凡根據第 (2)(a) 款發出的命令所關乎的資料並非以可閱讀形式記錄，獲授權人可藉書面通知，要求有關的人以可以看到、可以閱讀及可以帶走的形式提交該物料，獲授權人並可藉同樣的通知解除該人根據該項要求須提交以原來記錄形式記錄的物料的責任。

- (i) is likely to be relevant to the investigation for the purpose of which the application is made; and
- (ii) does not consist of or include items subject to legal privilege;
- (d) that there are reasonable grounds for believing that it is in the public interest, having regard—
 - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) to the circumstances under which the person in possession or control of the material holds or controls it, as the case may be, (Amended 90 of 1995 s. 4)
 that the material should be produced or that access to it should be given.
- (5) Where an application under subsection (1) relates to material of a particular description, an order under subsection (2) shall only be made where an application in relation to particular material is not reasonably practicable.
- (6) Where a court makes an order under subsection (2)(b) in relation to material on any premises it may, on the same or a subsequent application of an authorized officer, order any person who appears to it to be entitled to grant entry to the premises to allow an authorized officer to enter the premises to obtain access to the material.
- (7) An application for the discharge or variation of an order made under subsection (2) or (6) may be made by any person who is subject to the order.
- (8) Rules of court—
 - (a) shall provide for applications by any person who is subject to an order made under this section for the discharge or variation of such order;
 - (b) may provide for proceedings relating to orders under this section.
- (9) Where material to which an application under this section relates consists of information recorded otherwise than in legible form—
 - (a) an order under subsection (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away; and
 - (b) an order under subsection (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (10) Where an order made under subsection (2)(a) relates to information recorded otherwise than in legible form, an authorized officer may by notice in writing require the person to produce the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the order to produce the material in the form in which it was recorded.

- (11) 根據第 (2) 款發出的命令——
- 不得賦予要求提交或取覽享有法律特權的品目的權力；及
 - 可就第 28 條界定的公共機構所管有或控制的物料而發出 (由 1995 年第 90 號第 4 條修訂)
- (12) 任何人不得以若提交物料會出現下述情況為理由，而不提交與根據第 (2) 款發出的命令有關的物料——
- 提供資料或提交物料會傾向於使該人獲罪；或
 - 提供資料或提交物料會違反法規或其他規定所施加的保密責任或對披露資料或物料的其他限制。
- (13) 任何人無合理辯解而不遵從根據第 (2) 款發出的命令，即屬犯罪，可處第 6 級罰款及監禁 1 年。
- (14) 獲授權人可將根據本條提交的物料攝影或複印。
[比照 1986 c. 32 s. 27 U.K.]

5. 搜查的權限

- (1) 為偵查下述事項，獲授權人可向原訟法庭或區域法院申請，要求就指明的處所根據本條發出手令—— (由 1998 年第 25 號第 2 條修訂)
- 有組織罪行；
 - 已犯或被懷疑已犯有組織罪行的人從有組織罪行的得益；
 - 已犯或被懷疑已犯指明的罪行的人從該罪行的得益。
- (2) 法庭接獲該項申請後，如信納——
- 就某處所內的物料根據第 3(6) 條施加的要求未予遵從；或
 - 根據第 4 條就處所內的物料發出的命令，未予遵從；或
 - 已符合第 (3)(a)、(c) 及 (d) 款或第 (3)(b)、(c) 及 (d) 款的條件；或
 - 已符合第 (4)(a)、(c) 及 (d) 款或第 (4)(b)、(c) 及 (d) 款的條件，
- 可簽發手令，授權獲授權人進入處所搜查。

- (11) An order under subsection (2)—
- shall not confer any right to production of, or access to, items subject to legal privilege; and
 - may be made in relation to material in the possession or control of a public body as defined in section 28. (Amended 90 of 1995 s. 4)
- (12) A person is not excused from producing any material in relation to which an order under subsection (2) is made on the ground that to do so—
- might tend to incriminate him; or
 - would breach an obligation as to secrecy or another restriction upon the disclosure of information imposed by statute or otherwise.
- (13) Any person who without reasonable excuse fails to comply with an order made under subsection (2) commits an offence and is liable to a fine at level 6 and to imprisonment for 1 year.
- (14) An authorized officer may photograph or make copies of any material produced under this section.

[cf. 1986 c. 32 s. 27 U.K.]

5. Authority for search

- (1) An authorized officer may, for the purpose of an investigation into—
- an organized crime;
 - the proceeds of organized crime of any person who has committed or is suspected of having committed an organized crime;
 - the proceeds of a specified offence of any person who has committed, or is suspected of having committed, that specified offence,
- apply to the Court of First Instance or the District Court for a warrant under this section in relation to specified premises. (Amended 25 of 1998 s. 2)
- (2) On such application the court may issue a warrant authorizing an authorized officer to enter and search the premises if it is satisfied—
- that a requirement imposed under section 3(6) in relation to material on the premises has not been complied with; or
 - that an order made under section 4 in relation to material on the premises has not been complied with; or
 - that the conditions in subsection (3)(a), (c) and (d) or subsection (3)(b), (c) and (d) are fulfilled; or
 - that the conditions in subsection (4)(a), (c) and (d) or subsection (4)(b), (c) and (d) are fulfilled.

- (3) 第(2)(c)款所指的條件是——
- (a) (如偵查是針對某有組織罪行的)有合理理由懷疑有人已犯該有組織罪行；
 - (b) 如偵查是針對某人從有組織罪行或指明的罪行的得益的——
 - (i) 該人已犯有組織罪行或該指明的罪行，或有合理理由懷疑該人已犯有組織罪行或該指明的罪行；及
 - (ii) 有合理理由懷疑該人已從有組織罪行或該指明的罪行中獲利；
 - (c) 就該處所內任何物料而言，已符合第 4(4)(c) 及 (d) 條的條件；
 - (d) 由於下列原因，不適宜根據該條就該物料發出命令——
 - (i) 如要聯絡任何有權提交有關物料的人，並不切實可行；或
 - (ii) 如要聯絡任何有權准許別人取覽有關物料的人，或任何有權准許別人進入有關物料所在的處所的人，並不切實可行；或
 - (iii) 除非獲授權人能立即取覽有關物料，否則與該項申請有關的偵查可能受到嚴重妨害。
- (4) 第(2)(d)款所指的條件是——
- (a) (如偵查是針對某有組織罪行的)有合理理由懷疑有人已犯該有組織罪行；
 - (b) 如偵查是針對某人從有組織罪行或指明的罪行的得益的——
 - (i) 該人已犯有組織罪行或該指明的罪行，或有合理理由懷疑該人已犯有組織罪行或該指明的罪行；及
 - (ii) 有合理理由懷疑該人已從有組織罪行或該指明的罪行中獲利；
 - (c) 有合理理由懷疑該處所內相當可能藏有與該申請所關的偵查有關的物料，而在提出申請時不能就該物料作詳細說明；

- (3) The conditions referred to in subsection (2)(c) are—
- (a) where the investigation is into an organized crime, that there are reasonable grounds for suspecting that the organized crime has been committed;
 - (b) where the investigation is into the proceeds of organized crime or a specified offence of a person—
 - (i) that the person has committed an organized crime or that specified offence, or that there are reasonable grounds for suspecting that he has committed an organized crime or that specified offence; and
 - (ii) that there are reasonable grounds for suspecting that the person has benefited from organized crime or that specified offence;
 - (c) that the conditions in section 4(4)(c) and (d) are fulfilled in relation to any material on the premises;
 - (d) that it would not be appropriate to make an order under that section in relation to the material because—
 - (i) it is not practicable to communicate with any person entitled to produce the material; or
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorized officer could secure immediate access to the material.
- (4) The conditions referred to in subsection (2)(d) are—
- (a) where the investigation is into an organized crime, that there are reasonable grounds for suspecting that the organized crime has been committed;
 - (b) where the investigation is into the proceeds of organized crime or a specified offence of a person—
 - (i) that the person has committed an organized crime or that specified offence, or that there are reasonable grounds for suspecting that he has committed an organized crime or that specified offence; and
 - (ii) that there are reasonable grounds for suspecting that the person has benefited from organized crime or that specified offence;
 - (c) that there are reasonable grounds for suspecting that there is on the premises material which is likely to be relevant to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularized;

- (d) (i) 如要聯絡任何有權准許別人進入該處所的人，並不切實可行；或
(ii) 除非出示手令，否則不會獲准進入該處所；或
(iii) 除非獲授權人到達該處所時能立即進入該處所，否則該項申請所關的偵查可能受到嚴重妨害。
- (5) 凡獲授權人執行根據本條簽發的手令進入處所後，可扣押及扣留任何相當可能與該手令所關的偵查有關的物料，但享有法律特權的品目則除外。
- (6) 任何人阻撓或妨礙獲授權人執行根據本條簽發的手令，即屬犯罪——
(a) 循公訴程序定罪後，可處罰款 \$250,000 及監禁 2 年；或
(b) 循簡易程序定罪後，可處第 5 級罰款及監禁 6 個月。
- (7) 獲授權人可將根據本條扣押的任何物料攝影或複印。
- (8) 即使《釋義及通則條例》(第 1 章) 第 83 條已有規定，但在符合本條的規定下，法庭可根據本條發出手令，授權為搜尋或扣押被知為或被懷疑是新聞材料的物料的目的而進入處所。 (由 1995 年第 88 號第 6 條增補)

[比照 1986 c. 32 s. 28 U.K.]

6. 根據第 3、4 或 5 條獲取的資料的披露

- (1) 根據或憑藉第 3、4 或 5 條而從稅務局局長或稅務局人員根據《稅務條例》(第 112 章) 獲得的受保密責任限制的資料，除為了——
(a) 檢控任何人犯指明的罪行；
(b) 申請沒收令；或
(c) 申請根據第 15(1) 或 16(1) 條發出命令，
而可由任何獲授權人向律政司司長披露外，不得將該等資料披露。

- (d) that—
(i) it is not practicable to communicate with any person entitled to grant entry to the premises; or
(ii) entry to the premises will not be granted unless a warrant is produced; or
(iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorized officer arriving at the premises could secure immediate entry to them.

(5) Where an authorized officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be relevant to the investigation for the purpose of which the warrant was issued.

(6) Any person who hinders or obstructs an authorized officer in the execution of a warrant issued under this section commits an offence and is liable—

- (a) on conviction upon indictment to a fine of \$250,000 and to imprisonment for 2 years; or
(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(7) An authorized officer may photograph or make copies of any material seized under this section.

(8) Notwithstanding section 83 of the Interpretation and General Clauses Ordinance (Cap. 1), but subject to this section, a warrant may be issued under this section authorizing entry to premises for the purpose of searching for or seizing material which is known or suspected to be journalistic material. (Added 88 of 1995 s. 6)

[cf. 1986 c. 32 s. 28 U.K.]

6. Disclosure of information obtained under section 3, 4 or 5

(1) Where any information subject to an obligation of secrecy under the Inland Revenue Ordinance (Cap. 112) has been obtained from the Commissioner of Inland Revenue or any officer of the Inland Revenue Department under or by virtue of section 3, 4 or 5, that information may be disclosed by any authorized officer to the Secretary for Justice for the purposes of—

- (a) any prosecution of a specified offence;
(b) any application for a confiscation order; or
(c) any application for an order under section 15(1) or 16(1),

but may not otherwise be disclosed.