

便箋

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淫褻及不雅物品的管制

指示

民政事務委員會的委員會對報章刊載屬暴力、不雅或淫褻性質的文章和照片表示關注。法律事務部獲請向事務委員會委員提供資料，講述現時有何立法措施，規管委員所關注的範疇。

《淫褻及不雅物品管制條例》（第 390 章）下“物品”一詞的涵義

2. 《淫褻及不雅物品管制條例》（第 390 章）（下稱“該條例”）（附件 I）旨在管制多類物品，其中包括內容屬於或含有淫褻或不雅資料的物品。

3. 根據該條例第 2(1)條的定義，“物品”一詞指“內容屬於或含有供閱讀、觀看或供閱讀兼觀看的資料的任何物件，亦指任何錄音，以及錄有一幅或多幅圖像的任何影片、錄影帶、紀錄碟或其他紀錄。”因此，報章所載的圖片屬於“物品”，並受該條例所規管。

禁止發布淫褻或不雅物品

4. 該條例第 21 條訂明，任何人發布淫褻物品，即屬犯罪，但此控罪有若干法定的免責辯護。任何人如違反條文的規定，可處罰款 100 萬元及監禁 3 年。

5. 該條例第 22 條訂明，任何人向青少年發布不雅物品，即屬犯罪，但此控罪有若干法定的免責辯護。任何人如違反條文的規定，首次定罪，可處罰款 40 萬元及監禁 12 個月；第二次或其後定罪，可處罰款 80 萬元及監禁 12 個月。

評定類別的制度

6. 該條例第 13 條訂明評定類別的制度。在此制度下，出版人等如對物品是否屬於淫褻或不雅存疑，可將該物品呈交高等法院司法常務官（下稱“常務官”），以便由淫褻物品審裁處（下稱“審裁處”）評定類別。

7. 該條例第 6 條賦權常務官委出為施行條例而不時所需數目的審裁處，而所委出的審裁處稱為淫褻物品審裁處。

8. 該條例第 8 條訂明，審裁處具有審判權，可裁定多項事宜，其中包括裁定由法院轉交的物品是否淫褻或不雅。對於根據第 13 條呈交的物品，審裁處的權力包括可按以下方式評定該物品的類別—

- (a) 如認為既非淫褻亦非不雅，評定為第 I 類；
- (b) 如認為屬不雅，評定為第 II 類，並可就該物品的發布定下條件；或
- (c) 如認為屬淫褻，評定為第 III 類。

《淫褻及不雅物品管制條例》（第 390 章）下“淫褻”或“不雅”的涵義

9. 該條例第 10 條訂明，審裁處在評定物品是否淫褻或不雅時，須考慮以下各項

- (a) 一般合理的社會人士普遍接受的道德禮教標準，且就物品而言，考慮該等標準時並可考慮檢查員根據《電影檢查條例》（第 392 章）（附件 II）第 10 條就該條例第 2(1)條所指的影片所作的決定；
- (b) 物品或事物整體上產生的顯著效果；
- (c) 如屬物品，其發布對象、擬發布對象或相當可能發布的對象是那些人，或是那一類別或年齡組別的人；
- (d) 如屬公開展示的事物，該事物正在或將會在何處公開展示，以及相當可能觀看該事物的是那些人，或是那一類別或年齡組別的人；及
- (e) 該物品或事物是否具有真正目的，或其內容是否只是掩飾，以使其任何部分成為可予接受者。

評定類別的效力

10. 該條例第 24 條訂明發布第 II 類物品的各種限制，包括物品須以透明封套或完全不透明封套密封。

11. 該條例第 26 條禁止第 III 類物品的發布等。

上訴

12. 該條例第 30 條訂明，在審裁處席前進行的法律程序的任何一方，可就審裁處對某法律觀點所作決定，向原訟法庭提出上訴。

林秉文
助理法律顧問 4

第 390 章

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第390章

淫褻及不雅物品管制條例

本條例旨在管制內容屬於或含有淫褻或不雅資料(包括暴力、腐化或可厭的資料)的物品，設立審裁處以裁定物品是否淫褻或不雅，或裁定公開展示的事物是否不雅，以及將物品評定為屬淫褻、不雅或非淫褻亦非不雅的類別，並為附帶事宜訂定條文。

[1987年9月1日] 1987年第278號法律公告

註：根據1998年第25號第1(2)條，該條例對本文法例的修訂當作自1997年7月1日起實施。上述第1(2)條須符合第383章第II部列出的香港人權法案第十二條。

第I部

導言

1. 簡稱

本條例可引稱為「淫褻及不雅物品管制條例」。

2. 釋義

- (1) 在本條例中，除文意另有所指外——
 “手令”(warrant) 指根據第34(1)條發出的手令；
 “司法常務官”(Registrar) 指高等法院司法常務官；
 “申請”(application) 指根據第13條提出的申請，“申請人”(applicant) 亦須據此解釋；
 “主審裁判官”(presiding magistrate) 指根據第7條獲委任主審的裁判官；

CHAPTER 390

CONTROL OF OBSCENE AND INDECENT ARTICLES

To control articles which consist of or contain material that is obscene or indecent (including material that is violent, depraved or repulsive), to establish tribunals to determine whether an article is obscene or indecent, or whether matter publicly displayed is indecent, and to classify articles as obscene or indecent or neither obscene nor indecent, and for matters incidental thereto.

[1 September 1987] L.N. 278 of 1987

Note: Under s. 1(2) of 25 of 1998, the amendment to this enactment by that Ordinance is deemed to have come into operation on 1 July 1997. The aforesaid s. 1(2) is subject to article 12 of the Hong Kong Bill of Rights set out in Part II of Cap. 383.

PART I

PRELIMINARY

1. Short title

This Ordinance may be cited as the Control of Obscene and Indecent Articles Ordinance.

2. Interpretation

- (1) In this Ordinance, unless the context otherwise requires
 “adjudicator” (審裁委員) means an adjudicator appointed to the panel of adjudicators under section 5;
 “application” (申請) means an application under section 13 and “applicant” (申請人) shall be construed accordingly;
 “article” (物品) means any thing consisting of or containing material to be read or looked at or both read and looked at, any sound recording, and any film, video-tape, disc or other record of a picture or pictures;

“全面聆訊”(full hearing) 指審裁處根據第 15 條舉行的全面聆訊；
 “青少年”(juvenile) 指未滿 18 歲的人；
 “協助人員”(assisting officer) 指根據第 34(2) 條協助獲授權人員執行手令的警務人員或香港海關人員；
 “物品”(article) 指內容屬於或含有供閱讀、觀看或供閱讀兼觀看的資料的任何物件，亦指任何錄音，以及錄有一幅或多幅圖像的任何影片、錄影帶、紀錄碟或其他紀錄；
 “評定類別”(classification) 指審裁處根據第 III 部評定的類別，包括暫定類別，“經評定”(classified) 亦須據此解釋；
 “督察”(inspector) 指根據第 36B(1) 條授權的公職人員；(由 1995 年第 73 號第 2 條增補)
 “暫定類別”(interim classification) 指審裁處根據第 14 條暫時評定的類別；
 “審裁委員”(adjudicator) 指根據第 5 條獲委任為審裁委員小組成員的審裁委員；
 “審裁委員小組”(panel of adjudicators) 指根據第 5 條設立的審裁委員小組；
 “審裁處”(Tribunal) 指根據第 6 條委出的淫褻物品審裁處；
 “獲授權人員”(authorized officer) 指由根據第 34 條所發手令授權的人；
 “營業地點”(place of business)——
 (a) 就根據《公司條例》(第 32 章) 成立的公司而言，包括其註冊辦事處；及
 (b) 就《公司條例》(第 32 章) 第 XI 部適用的公司而言，如任何人的姓名已向公司註冊處處長提交以根據該部登記，包括該人的地址。(由 1995 年第 73 號第 2 條增補)
 (2) 就本條例而言——
 (a) 任何事物因為淫褻而不宜向任何人發布，即屬淫褻；及
 (b) 任何事物因為不雅而不宜向青少年發布，即屬不雅。
 (3) 就第 (2) 款而言，“淫褻”(obscenity) 及“不雅”(indecency) 包括暴力、腐化及可厭。
 (4) 除第 24(1E) 及 (1F) 條外，就本條例而言，任何人有以下行為，不論是否為了牟利，均屬將物品發布——(由 1995 年第 73 號第 2 條修訂)
 (a) 將物品派發、傳閱、出售、出租、交給或出借予公眾人士或部分公眾人士；
 (b) 就以下物品來說——
 (i) 內容屬於或含有供觀看資料的物品；或

“assisting officer”(協助人員) means any police officer or any member of the Customs and Excise Service assisting an authorized officer under section 34(2) in the execution of a warrant;
 “authorized officer”(獲授權人員) means any person authorized by a warrant issued under section 34;
 “classification”(評定類別) means a classification by a Tribunal under Part III and includes an interim classification and “classified”(經評定) shall be construed accordingly;
 “full hearing”(全面聆訊) means a full hearing of a Tribunal under section 15;
 “inspector”(督察) means a public officer authorized under section 36B(1); (Added 73 of 1995 s. 2)
 “interim classification”(暫定類別) means an interim classification made by a Tribunal under section 14;
 “juvenile”(青少年) means a person under the age of 18 years;
 “panel of adjudicators”(審裁委員小組) means the panel of adjudicators established under section 5;
 “place of business”(營業地點) includes in relation to
 (a) a company incorporated in Hong Kong under the Companies Ordinance (Cap. 32), its registered office; and
 (b) a company to which Part XI of the Companies Ordinance (Cap. 32) applies, the address of any person whose name has been delivered to the Registrar of Companies for registration under that Part; (Added 73 of 1995 s. 2)
 “presiding magistrate”(主審裁判官) means a magistrate appointed to preside under section 7;
 “Registrar”(司法常務官) means the Registrar of the High Court; (Amended 25 of 1998 s. 2)
 “Tribunal”(審裁處) means an Obscene Articles Tribunal appointed under section 6;
 “warrant”(手令) means a warrant issued under section 34(1).
 (2) For the purposes of this Ordinance—
 (a) a thing is obscene if by reason of obscenity it is not suitable to be published to any person; and
 (b) a thing is indecent if by reason of indecency it is not suitable to be published to a juvenile.
 (3) For the purposes of subsection (2), “obscenity”(淫褻) and “indecency”(不雅) include violence, depravity and repulsiveness.
 (4) For the purposes of this Ordinance, other than section 24(1E) and (1F), a person publishes an article if he, whether or not for gain—(Amended 73 of 1995 s. 2)
 (a) distributes, circulates, sells, hires, gives or lends the article to the public or a section of the public;
 (b) in the case of an article—
 (i) consisting of or containing material to be looked at; or

- (ii) 性質是錄音或是錄有一幅或多幅圖像的影片、錄影帶、紀錄碟或其他紀錄的物品，將該等物品向公眾人士或部分公眾人士或為公眾人士或部分公眾人士出示、播放或放映。 [比照 1959 c. 66 s. 1(2) U.K.]
- (5) 就第(4)款而言——
- (a) “物品”(article)包括擬用於製造或複製物品的任何物件，不論是單獨或作為配件使用；及 [比照 1964 c. 74 s. 2(1) U.K.]
- (b) “人”、“人士”(person)包括控制或管理任何會所或任何看來是會所的東西的人；“公眾人士”(public)則包括該會所的成員。
- (6) 為施行本條例，在裁定公開展示的事物是否不雅時——
- (a) 該事物沒有展示的部分，須不予理會；及
- (b) 可考慮某物件與另一物件並列所產生的效果。 [比照 1981 c. 42 s. 1(5) U.K.]
- (7) 任何事物如在以下地方展示或可從以下地方看見，則就本條例而言，須當作公開展示——
- (a) 任何公眾街道、公眾碼頭或公園；及
- (b) 公眾人士(憑繳費或其他方式)可進入或獲准進入的任何地方，但公眾人士須繳付完全用於參觀或包括用於參觀所展示不雅事物的費用方可獲准進入的地方除外。 [比照 1981 c. 42 s. 1(2) U.K.]

3. 本條例對某些影片等不適用

本條例不適用於以下事物——

- (a) 與《電影檢查條例》(第 392 章)第 2 條所指的上映有關的，在該條例第 2(1)條中所指的影片，而該影片——
- (i) 具備根據該條例第 9 條發出且屬有效的豁免證明書，或根據該條例第 13 條發出且屬有效的核准證明書；或
- (ii) 除該條例第 32(2A)條另有規定外，已根據第 32(3)條所指的經撤銷規例第 5 條獲准上映；
- (aa) 根據《電影檢查條例》(第 392 章)第 15A 條獲准作該條例第 2 條所指的發布的錄影帶或雷射碟； (由 1993 年第 63 號第 22 條增補)

- (ii) that is a sound recording or a film, video-tape, disc or other record of a picture or pictures, shows, plays or projects that article to or for the public or a section of the public. [cf. 1959 c. 66 s. 1(2) U.K.]
- (5) For the purposes of subsection (4) —
- (a) “article”(物品)includes anything which is intended to be used, either alone or as one of a set, for the purpose of manufacturing or reproducing an article; and [cf. 1964 c. 74 s. 2(1) U.K.]
- (b) “person”(人、人士) and “public”(公眾人士) include, respectively, a person having the control or management of anything which is or purports to be a club, and the members of that club.
- (6) For the purposes of this Ordinance, in determining whether any matter publicly displayed is indecent —
- (a) there shall be disregarded any part of that matter which is not exposed to view; and
- (b) account may be taken of the effect of juxtaposing one thing with another. [cf. 1981 c. 42 s. 1(5) U.K.]
- (7) Any matter which is displayed in or so as to be visible from
- (a) any public street or pier, or public garden; and
- (b) any place to which the public have or are permitted to have access (whether on payment or otherwise) except a place to which the public are permitted to have access only on payment which is or includes payment for a display of indecent matter, shall for the purposes of this Ordinance be deemed to be matter publicly displayed. [cf. 1981 c. 42 s. 1(2) U.K.]

3. Ordinance not to apply in case of certain films, etc.

This Ordinance shall not apply in relation to any—

- (a) film within the meaning of section 2(1) of the Film Censorship Ordinance (Cap. 392) as regards its exhibition within the meaning of section 2 of that Ordinance—
- (i) in respect of which there is in force a certificate of exemption issued under section 9, or a certificate of approval issued under section 13, of that Ordinance; or
- (ii) subject to section 32(2A) of that Ordinance, which is approved for exhibition under regulation 5 of the revoked regulations within the meaning of section 32(3) of that Ordinance;
- (aa) videotape or laserdisc in respect of which there is approval under section 15A of the Film Censorship Ordinance (Cap. 392) for publication within the meaning of section 2 of that Ordinance; (Added 63 of 1993 s. 22)

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- (ab) 具備根據《電影檢查條例》(第 392 章)第 15B 條發出的證明書的包裝物；
 (由 1993 年第 63 號第 22 條增補)
- (ac) (i) 根據《電影檢查條例》(第 392 章)第 15K(5) 條獲發證明書的宣傳資料；或
 (ii) 電影檢查監督根據該條例第 15K(5)(b) 條已拒絕核准的宣傳資料；
 (由 1995 年第 74 號第 30 條增補)
- (b) 除《電影檢查條例》(第 392 章)第 32(2A) 條另有規定外，該條例第 32(1) 條所提及的、已根據該條例第 32(3) 條所指的經撤銷規例第 8 條獲准發佈或上映的事物；或
- (c) 《電視條例》(第 52 章)第 2 條所指的、已根據該條例獲准廣播的資料。
 (由 1988 年第 25 號第 33 條代替。由 1993 年第 63 號第 22 條修訂)

4. 評定類別及條件的生效日期

為本條例的施行——

- (a) 在司法常務官根據第 19(2) 條發出關於物品或事物評定類別的公告之前，該評定類別不得被視為生效；及
- (b) 在司法常務官根據第 19(2) 條發出關於所定條件的公告之前，該等條件不得被視為已根據第 8(2)(c) 條定下。

第 II 部

淫褻物品審裁處

5. 審裁委員小組

- (1) 為施行本條例，現設立審裁委員小組。
- (2) 審裁委員小組由終審法院首席法官不時以書面通知委任的合資格人士組成。
- (3) 就第 (2) 款而言，凡終審法院首席法官認為符合以下條件的人，即有資格獲委任為審裁委員小組成員——

- (ab) packaging in respect of which a certificate has been issued under section 15B of the Film Censorship Ordinance (Cap. 392);
 (Added 63 of 1993 s. 22)
- (ac) advertising material—
 (i) in respect of which a certificate has been issued under section 15K(5) of the Film Censorship Ordinance (Cap. 392); or
 (ii) which the Film Censorship Authority has refused to approve under section 15K(5)(b) of that Ordinance;
 (Added 74 of 1995 s. 30)
- (b) subject to section 32(2A) of the Film Censorship Ordinance (Cap. 392), matter referred to in section 32(1) of that Ordinance which is approved for publication or exhibition under regulation 8 of the revoked regulations within the meaning of section 32(3) of that Ordinance; or
- (c) material within the meaning of section 2 of the Television Ordinance (Cap. 52) permitted to be broadcast under that Ordinance.

(Replaced 25 of 1988 s. 33. Amended 63 of 1993 s. 22)

4. Effective date of classification and conditions

For the purposes of this Ordinance—

- (a) the classification of any article or matter shall not be regarded as taking effect until notice of that classification is given by the Registrar in accordance with section 19(2); and
- (b) conditions shall not be regarded as imposed under section 8(2)(c) until notice thereof is given by the Registrar in accordance with section 19(2).

PART II

OBSCENE ARTICLES TRIBUNALS

5. Panel of adjudicators

- (1) For the purposes of this Ordinance, there shall be established a panel of adjudicators.
- (2) The panel of adjudicators shall consist of such eligible persons as are, from time to time, appointed to it by the Chief Justice by notice in writing.
- (3) For the purpose of subsection (2), a person shall be eligible to be appointed to the panel of adjudicators if, in the opinion of the Chief Justice, he is—

- (a) 通常居於香港，居住期不少於 7 年；及
 (b) 通曉書面英文或書面中文。
- (4) 根據第(2)款獲委任的人，須在委任通知書指明的期間出任審裁委員小組成員；各成員的指明任期不超過 3 年，並有資格再獲委任。
- (5) 審裁委員小組成員可以書面通知終審法院首席法官而辭職。
- (6) 審裁委員如有以下情形，終審法院首席法官可發出書面通知，將其姓名從審裁委員小組名單中刪除——
- (a) 不再通常居於香港；
 - (b) 被定罪；
 - (c) 被宣布為破產人；或
 - (d) 終審法院首席法官認為其疏忽職守或不能執行職責。
- (7) 終審法院首席法官如作以下事項，須在憲報發出公告——
- (a) 根據第(2)款委任審裁委員；及
 - (b) 根據第(6)款刪除審裁委員的姓名。

(由 1998 年第 25 號第 2 條修訂)

6. 淫褻物品審裁處的委出

- (1) 司法常務官可委出為施行本條例而不時所需數目的審裁處。
- (2) 根據本條委出的審裁處，稱為淫褻物品審裁處。

7. 審裁處成員

- (1) 除第 15(1A) 條另有規定外，審裁處由司法常務官所委任的以下人士組成——
 (由 1995 年第 73 號第 3 條修訂)
- (a) 主審裁判官一名；及
 - (b) 從審裁委員小組選出不少於 2 名的審裁委員。
- (2) 除第(3)款另有規定外，審裁處成員之間如有任何分歧，須以多數成員的決定為審裁處的決定，如分歧的成員人數相等，則須以主審裁判官的決定為審裁處的決定。
- (3) 在審裁處進行的法律程序中出現的法律論點，須由主審裁判官裁定並以書面說明裁定理由。

- (a) ordinarily resident in Hong Kong and has so resided for at least 7 years; and
 (b) proficient in written English or written Chinese.

(4) A person appointed under subsection (2) shall be a member of the panel of adjudicators for such period, not exceeding 3 years, as may be specified in his notice of appointment and shall be eligible for reappointment.

(5) A member of the panel of adjudicators may resign by giving notice in writing to the Chief Justice.

(6) The name of any adjudicator may be removed from the panel of adjudicators by the Chief Justice by notice in writing if that adjudicator—

- (a) ceases to be ordinarily resident in Hong Kong;
- (b) is convicted of any offence;
- (c) is declared a bankrupt; or
- (d) in the opinion of the Chief Justice, neglects or is unable to perform his duty.

(7) The Chief Justice shall give notice in the Gazette of—

- (a) any appointment by him under subsection (2); and
- (b) any removal of the name of an adjudicator by him under subsection (6).

6. Appointment of Obscene Articles Tribunals

(1) The Registrar may appoint such number of tribunals as may from time to time be necessary for the purposes of this Ordinance.

(2) A tribunal appointed under this section shall be known as an Obscene Articles Tribunal.

7. Membership of Tribunal

(1) Subject to section 15(1A), a Tribunal shall consist of the following persons appointed by the Registrar— (Amended 73 of 1995 s. 3)

- (a) a magistrate who shall preside; and
- (b) 2 or more adjudicators selected from the panel of adjudicators.

(2) Subject to subsection (3), in the event of any difference between the members of a Tribunal, the decision of that Tribunal shall be that of the majority of them or, in the event that they are equally divided, that of the presiding magistrate.

(3) Any point of law arising during any proceedings before a Tribunal shall be determined by the presiding magistrate who shall give reasons therefor in writing.

8. 審判權

- (1) 對於由法院或裁判官根據第 V 部轉交的任何物品或公開展示事物，審裁處可裁定——
- (a) 該物品是否淫褻或不雅；
 - (b) 該事物是否不雅；或
 - (c) 就物品的發布或任何事物的公開展示而根據第 28 條提出的免責辯護理由是否已證明成立。
- (2) 對於根據第 13 條呈交的物品，審裁處——
- (a) 如認為不能加以適當描述以根據第 19 條發出評定類別公告，可拒絕所提出的評定類別申請；或
 - (b) 可按以下方式評定該物品的類別——
 - (i) 如認為既非淫褻亦非不雅，評定為第 I 類；
 - (ii) 如認為屬不雅，評定為第 II 類；或
 - (iii) 如認為屬淫褻，評定為第 III 類；及
 - (c) 可在評定物品為第 II 類時，就該物品的發布定下條件。
- (3) 為施行第 (1)(c) 款，可就根據第 28 條提出的免責辯護理由接受專家的意見，以確立或否定該項理由。

9. 諒解權

任何——

- (a) 審裁處的成員；及
- (b) 出席審裁處聆訊的證人、訴訟的一方、代表或其他人士，在審裁處進行的法律程序中，或在審裁處行使職能時，享有的特權及諒解權，與他在法庭上會享有的相同。

10. 審裁處指引

- (1) 審裁處在裁定物品是否淫褻或不雅，或裁定公開展示的事物是否不雅時，或在評定物品類別時，須考慮以下各項——

8. Jurisdiction

- (1) In relation to any article, or any matter publicly displayed, referred to it by a court or magistrate under Part V a Tribunal may determine whether—
- (a) the article is obscene or indecent;
 - (b) the matter is indecent; or
 - (c) the ground of defence under section 28 is proved in respect of the publication of an article or the public display of any matter.
- (2) In relation to any article submitted to it under section 13 a Tribunal may—
- (a) refuse an application to make a classification in respect of any article if it considers that article cannot be adequately described for the purpose of giving notice of classification under section 19; or
 - (b) make a classification that the article is—
 - (i) a Class I article if it is of the opinion that the article is neither obscene nor indecent;
 - (ii) a Class II article if it is of the opinion that the article is indecent; or
 - (iii) a Class III article if it is of the opinion that the article is obscene; and
 - (c) in respect of any classification that an article is a Class II article and at the time of making that classification, impose conditions relating to the publication of that article.
- (3) For the purposes of subsection (1)(c) the opinion of an expert as to the ground of defence in section 28 may be admitted either to establish or negative that ground.

9. Immunity

Any—

- (a) member of a Tribunal; and
 - (b) witness, party to any proceedings, representative or other person appearing before a Tribunal,
- shall have the same privileges and immunities in any proceedings before a Tribunal or in the exercise of a Tribunal's functions as he would have before a court.

10. Guidance to Tribunal

- (1) In determining whether an article is obscene or indecent or whether any matter publicly displayed is indecent, or in classifying an article, a Tribunal shall have regard to—

- (a) 一般合理的社會人士普遍接受的道德禮教標準，且就物品而言，考慮該等標準時並可考慮檢查員根據《電影檢查條例》(第 392 章)第 10 條就該條例第 2(1)條所指的影片所作的決定；(由 1988 年第 25 號第 33 條代替)
- (b) 物品或事物整體上產生的顯著效果；
- (c) 如屬物品，其發布對象、擬發布對象或相當可能發布的對象是那些人，或是那一類別或年齡組別的人；
- (d) 如屬公開展示的事物，該事物正在或將會在何處公開展示，以及相當可能觀看該事物的是那些人，或是那一類別或年齡組別的人；及
- (e) 該物品或事物是否具有真正目的，或其內容是否只是掩飾，以使其任何部分成為可予接受者。
- (2) 在審裁處進行的法律程序中，可就審裁處根據第 (1) 款必須或可以考慮的事項接納專家的意見，以確立或否定該事項。

[*cf. 1963 No. 22 s. 11 N.Z.*]

11. 權力

審裁處——

- (a) 根據第 V 部行使審判權時，具有《裁判官條例》(第 227 章)授予裁判官的權力，而為此目的，該條例內凡提及裁判官之處，即當作包括提及審裁處；
- (b) 根據第 III 部行使審判權時，可在符合該部及第 VIII 部的規定下，決定本身的處事程序，尤其可——
- 收取及考慮任何資料，不論該資料是以口頭證供、書面陳述、文件或其他方式提出，儘管該資料在民事或刑事訴訟中並非可接納的證據；
 - 藉主審裁判官簽署通知書，要求任何人出席審裁處的聆訊、提出證供及交出文件；
 - 主持宣誓；
 - 向出席審裁處聆訊的人進行經任何形式宣誓或未經宣誓的訊問，並要求他回答由審裁處提出或在審裁處同意下提出的所有問題；

- (a) standards of morality, decency and propriety that are generally accepted by reasonable members of the community, and in relation thereto may, in the case of an article, have regard to any decision of a censor under section 10 of the Film Censorship Ordinance (Cap. 392) in respect of a film within the meaning of section 2(1) of that Ordinance; (*Replaced 25 of 1988 s. 33*)
- (b) the dominant effect of an article or of matter as a whole;
- (c) in the case of an article, the persons or class of persons, or age groups of persons, to or amongst whom the article is, or is intended or is likely to be, published;
- (d) in the case of matter publicly displayed, the location where the matter is or is to be publicly displayed and the persons or class of persons, or age groups of persons likely to view such matter; and
- (e) whether the article or matter has an honest purpose or whether its content is merely camouflage designed to render acceptable any part of it.

(2) The opinion of an expert as to any of the matters to which a Tribunal must or may have regard under subsection (1) may be admitted in any proceedings before a Tribunal either to establish or negative that matter.

[*cf. 1963 No. 22 s. 11 N.Z.*]

11. Powers

A Tribunal—

- (a) when exercising its jurisdiction under Part V shall have the powers of a magistrate under the Magistrates Ordinance (Cap. 227) and for that purpose references in that Ordinance to a magistrate shall be deemed to include references to a Tribunal;
- (b) when exercising its jurisdiction under Part III may, subject to that Part and Part VIII, determine its own procedure and in particular may—
- receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, notwithstanding that such material would not be admissible in evidence in civil or criminal proceedings;
 - by notice in writing signed by the presiding magistrate, require any person to attend before it at any hearing and to give evidence and produce documents;
 - administer oaths and affirmations;
 - examine on oath, affirmation or otherwise any person attending before it at any hearing and require such person to answer all questions put by or with the consent of that Tribunal;

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- (v) 決定收取第 (i) 節所述資料的方式；及
- (vi) 決定審裁處檢視、觀看或審查物品的方式；
- (c) 可作出下列事項——
 - (i) 本條所授權力的所有附帶事項；或
 - (ii) 為根據本條例履行其職能而合理需要作出的所有事項。

12. 與審裁處有關的罪行

- 任何人——
- (a) 拒絕遵從或沒有遵從審裁處的合法命令、要求或指示；或
 - (b) 幫亂或以其他方式干擾審裁處的法律程序，即屬犯罪，可處罰款 \$10,000 及監禁 6 個月。

第 III 部

審裁處對物品所作的評定類別

13. 物品呈交審裁處的方式

- (1) 任何物品的作者、印刷人、製造商、出版人、進口商、發行人或版權擁有人，或委託設計、生產或發布任何物品的人，可用訂明的表格提出申請，將該物品呈交司法常務官，以便由審裁處評定類別。
- (2) 律政司及獲布政司為此事授權的公職人員，可用訂明的表格提出申請，將任何物品呈交司法常務官，以便由審裁處評定類別。

14. 暫定類別

- (1) 除第 17(2) 條另有規定外，凡有根據第 13 條呈交的物品，審裁處——
 - (a) 須以非公開形式及在申請人或其他人不在場的情況下考慮該物品，並須於該物品呈交後 5 天內將其暫定類別；或

- (v) determine the manner in which the material mentioned in sub-paragraph (i) shall be received; and
- (vi) determine the manner in which any article shall be viewed, seen or examined by that Tribunal;
- (c) may do all things—
 - (i) ancillary to the powers conferred by this section; or
 - (ii) reasonably necessary for the discharge of its functions under this Ordinance.

12. Offences relating to a Tribunal

Any person who—

- (a) refuses or fails to comply with any lawful order, requirement or direction of a Tribunal; or
- (b) disturbs or otherwise interferes with the proceedings of a Tribunal, commits an offence and is liable to a fine of \$10,000 and to imprisonment for 6 months.

PART III

CLASSIFICATION OF ARTICLES BY A TRIBUNAL

13. Submission of article to Tribunal

- (1) The author, printer, manufacturer, publisher, importer, distributor or owner of the copyright of any article or any person who commissions the design, production or publication of any article may, by application in the prescribed form, submit that article to the Registrar for classification by a Tribunal.

- (2) The Attorney General and any public officer authorized in that regard by the Chief Secretary may, by application in the prescribed form, submit any article to the Registrar for classification by a Tribunal.

14. Interim classification

- (1) Subject to section 17(2), where an article is submitted under section 13 a Tribunal shall—
 - (a) consider it in private and without the attendance of the applicant or any other person and, within 5 days of that submission, make an interim classification in respect of that article; or

- (b) (除第(2)款另有規定外)如於(a)段所述期限屆滿時仍未將物品暫定類別，則須考慮有關申請，猶如該申請是根據第15條提出的全面聆訊要求一樣。
- (2) 主審裁判官可在第(1)(a)款所述期限內，隨時將該期限延長一段時間，但以不超過5天為限，並須將延期之事通知申請人。
- (3) 除第7(3)條另有規定外，審裁處——(由1995年第73號第4條修訂)
- 無須為所作的任何暫定類別提出理由；(由1995年第73號第4條增補)
 - 可就申請人呈交的物品向該人作出指引；及(由1995年第73號第4條增補)
 - 須指出該物品屬淫褻或不雅的部分。(由1995年第73號第4條增補)

15. 全面聆訊的要求

- (1) 審裁處將物品暫定類別後，根據第13條呈交或有資格呈交該物品的人，可——
- 於該項暫定類別生效後5天內；及
 - 用詳明的表格向司法常務官發給書面通知，要求審裁處在全面聆訊中覆核該項暫定類別。
- (1A) 除第(2)(b)款另有規定外，依據第(1)款或第17條舉行全面聆訊的審裁處，須由司法常務官所委任的以下人士組成——
- 主審裁判官一名；及
 - 從審裁委員小組選出4名或4名以上的審裁委員。(由1995年第73號第5條增補)
- (2) 在全面聆訊中——
- 根據第13(1)條呈交或有資格呈交該全面聆訊所涉物品的人及其代表，以及律政司及其代表，均可出席及作出陳述；及
 - 任何審裁委員如曾是作出暫定類別的審裁處成員，即無資格在該全面聆訊中以審裁處成員身份出席。(由1995年第73號第5條代替)
- (3) 司法常務官須在全面聆訊舉行日期最少5天之前，在香港每日出版及普遍流通的中英文報章各一份，發出舉行全面聆訊的公告一次，但本款並不規定司法常務官須就押後舉行全面聆訊發出公告。

- (b) subject to subsection (2), if at the expiry of the period mentioned in paragraph (a) it has not made an interim assessment, consider that application as if it were a requirement for a full hearing under section 15.

- (2) The presiding magistrate may, at any time during the period mentioned in subsection (1)(a), extend that period by any period not exceeding 5 days and shall give notice of that extension to the applicant.
- (3) Subject to section 7(3), a Tribunal—(Amended 73 of 1995 s. 4)
- shall not be required to give any reasons for any interim classification; (Added 73 of 1995 s. 4)
 - may give guidance to the applicant in relation to the article submitted; and (Added 73 of 1995 s. 4)
 - shall identify the part of the article which causes the obscenity or indecency. (Added 73 of 1995 s. 4)

15. Requirement for full hearing

- (1) Where a Tribunal makes an interim classification in respect of an article any person who submitted, or would have been entitled to submit, the article under section 13 may—
- within 5 days of that interim classification taking effect; and
 - by notice in writing in the prescribed form to the Registrar, require a Tribunal to review that interim classification at a full hearing.
- (1A) Subject to subsection (2)(b), the Tribunal for a full hearing held pursuant to subsection (1) or section 17 shall consist of the following persons appointed by the Registrar—
- a magistrate who shall preside; and
 - 4 or more adjudicators selected from the panel of adjudicators. (Added 73 of 1995 s. 5)
- (2) At a full hearing—
- any person who submitted the article the subject of that full hearing and any person who would have been entitled to submit it under section 13(1), the Attorney General, and their representatives, may appear and be heard; and
 - any adjudicator shall not be competent to sit as a member of the Tribunal at that full hearing if he was a member of the Tribunal which made the interim classification. (Amended 73 of 1995 s. 5)
- (3) The Registrar shall, at least 5 days prior to a full hearing, give notice of that full hearing once each in an English language newspaper and a Chinese language newspaper published daily and circulating generally in Hong Kong but nothing in this subsection shall require the Registrar to give notice of any adjourned hearing of that full hearing.

- (4) 按照第(3)款發出的公告，如於不同日期在該款所提述的報章發布，則公告須當作在最後的發布日期發出。
- (5) 如無人根據第(1)款要求舉行全面聆訊以覆核暫定類別，該暫定類別須當作由作出該暫定類別的審裁處所作的評定類別。
- (6) 在全面聆訊中，審裁處須指出該物品屬淫褻或不雅的部分。 (由 1995 年第 73 號第 5 條增補)

16. 全面聆訊須公開舉行

- (1) 除第(2)及(3)款另有規定外，全面聆訊須公開舉行。
- (2) 如審裁處認為為了公眾道德而需要在舉行全面聆訊時禁止任何人或某些人在場，則主審裁判官可發出指示，禁止該等人士在場；但本款所授權力，不得用於禁止根據第13條呈交或有資格呈交物品的人或其代表在場，或禁止真正為報章、雜誌、電台或電視台從事記者工作的人在場。
- (3) 審裁處不論是否有根據第(2)款發出指示，均可發出命令，禁止在電台或電視上廣播，或以其他方式發布任何有關在審裁處提出的全部或部分證供的報導或描述。

17. 對物品的重新考慮

- (1) 除第(2)款另有規定外，審裁處可自動動議或在根據第13條呈交或有資格呈交物品的人請求下，重新考慮物品的評定類別，並可更改或維持該項評定類別。
- (2) 如根據第13條呈交的物品曾於呈交前的3年內經評定類別，則審裁處可拒絕對其評定類別作重新考慮的請求。
- (3) 本部適用於為重新考慮評定類別而作出的動議或請求，猶如該項動議或請求是根據第15條提出的全面聆訊要求一樣。

(4) If in accordance with subsection (3) notice is published in the newspapers referred to in that subsection on different days, notice shall be deemed to have been given on the last of those days.

(5) If under subsection (1) no person requires a review of an interim classification at a full hearing, that interim classification shall be deemed to be the classification of the Tribunal which made it.

(6) At a full hearing, the Tribunal shall identify the part of the article which causes the obscenity or indecency. (Added 73 of 1995 s. 5)

16. Full hearing to be in public

- (1) Subject to subsections (2) and (3), a full hearing shall be conducted in public.
- (2) Where a Tribunal is of the opinion that the interests of public morality require that all or any persons should be excluded from a full hearing the presiding magistrate may direct that those persons be excluded accordingly; but the power conferred by this subsection shall not be exercised for the purpose of excluding any person who submitted the article, or any person who would have been entitled to submit it, under section 13 or his representative, or any bona fide reporter for any newspaper, magazine or radio or television station.
- (3) A Tribunal may, whether or not it gives a direction under subsection (2), make an order forbidding the broadcasting, whether by radio or television, or other publication of any report or account of the whole or any part of any evidence adduced before it.

17. Reconsideration of article

- (1) Subject to subsection (2), a Tribunal may of its own motion, or at the request of any person who submitted an article or of any person who would have been entitled to submit it under section 13, reconsider the classification of the article and may alter or confirm that classification.
- (2) A Tribunal may refuse a request to reconsider the classification of any article submitted under section 13 if that article was classified within a period of 3 years prior to that submission.
- (3) This Part shall apply to any motion or request to reconsider a classification as if such motion or request were a requirement for a full hearing under section 15.

18. 關於出版人等發出評定類別通知的規定

- (1) 凡物品經評定為第 I 類或第 II 類，其印刷人、製造商、出版人、發行人及進口商如於該評定類別生效後向任何人發布該物品，數量在 2 份以上時，須將該評定類別及根據第 8(2)(c) 條定下的任何條件，以訂明方式通知該人。
- (2) 任何人違反第 (1) 款的規定，即屬犯罪，可處罰款 \$200,000 及監禁 12 個月。

19. 關於司法常務官發出公告的規定

- (1) 司法常務官須按照第 (2) 款的規定，發出有關以下事項的公告——
- (a) 任何暫定類別；
 - (b) 以下任何評定類別——
 - (i) 在全面聆訊中作出的評定類別；
 - (ii) 根據第 15(5) 條當作由審裁處作出的評定類別；或
 - (iii) 根據第 17 條重新考慮後作出的評定類別；及
 - (c) 根據第 8(2)(c) 條定下的任何條件。
- (2) 根據第 (1) 款發出的公告，須在香港每日出版及普遍流通的中英文報章各一份刊登一次。
- (3) 按照第 (2) 款發出的公告，如於不同日期在該款所提及的報章發布，則公告須當在最後的發布日期發出。
- (4) 司法常務官須按他認為適當的形式儲存及保存一份登記冊，登記所有根據本條發出的公告。

20. 司法常務官須備存儲存庫

- (1) 司法常務官須按他認為適當的方式儲存及保存一個儲存庫，儲存根據第 13 條呈交以待評定類別的物品。
- (2) 除獲得審裁處同意外，根據第 13 條呈交以待評定類別的所有物品，須由經評定類別的日期起存於儲存庫內 5 年，其後可按照司法常務官的指示加以處置。

第 IV 部**罪行****21. 禁止發布淫褻物品**

- (1) 除第 (2) 款另有規定外，任何人——

18. Publisher etc. to give notice of classification

- (1) The printer, manufacturer, publisher, distributor and importer of any article which is classified as a Class I or Class II article shall give notice in the prescribed manner of that classification and of any conditions imposed under section 8(2)(c) to any person to whom after that classification has taken effect he publishes more than 2 copies.

(2) Any person who contravenes subsection (1) commits an offence and is liable to a fine of \$200,000 and to imprisonment for 12 months.

19. Registrar to give notice

- (1) The Registrar shall give notice in accordance with subsection (2)—
- (a) of any interim classification;
 - (b) of any classification—
 - (i) made at a full hearing;
 - (ii) deemed to be the classification of a Tribunal under section 15(5); or
 - (iii) made following a reconsideration under section 17; and
 - (c) of any conditions imposed under section 8(2)(c).

(2) Notice under subsection (1) shall be given once each in an English language newspaper and a Chinese language newspaper published daily and circulating generally in Hong Kong.

(3) If notice in accordance with subsection (2) is published in the newspapers referred to in that subsection on different days, notice shall be deemed to have been given on the last of those days.

(4) The Registrar shall keep and maintain, in such form as he thinks fit, a register of notices given under this section.

20. Registrar to keep repository

(1) The Registrar shall keep and maintain, in such manner as he thinks fit, a repository for the keeping of articles submitted for classification under section 13.

(2) Except with the consent of a Tribunal all articles submitted for classification under section 13 shall be kept in the repository for a period of 5 years from the date on which it is classified and may thereafter be disposed of in accordance with the directions of the Registrar.

PART IV**OFFENCES****21. Prohibition on publishing obscene articles**

- (1) Subject to subsection (2) any person who—

- (a) 發布淫褻物品；
- (b) 管有淫褻物品以供發布；或
- (c) 輸入淫褻物品以供發布；

不論是否知道該物品是淫褻物品，均屬犯罪，可處罰款 \$1,000,000 及監禁 3 年。

(2) 根據第(1)款所提控罪的免責辯護如下—

- (a) 被告人證明在指稱為罪行發生的時間，控罪所指的物品經評定為第 III 類物品；但如該證供證明他犯了本部所訂的其他罪行，他可因此而被定罪，猶如他已被控犯該其他罪行一樣；
- (b) 被告人證明控罪所指的物品經評定為第 I 或第 II 類物品，或證明在指稱為罪行發生的時間，控罪所指的物品經評定為第 I 或第 II 類物品；
- (c) (如屬根據第(1)(b) 或 (c) 款提出的控罪) 被告人證明在指稱為罪行發生的時間，控罪所指的物品是—
 - (i) 由他管有或輸入，以根據第 13 條將該物品、其複製本或印刷本呈交司法常務官；或
 - (ii) 由根據《電視條例》(第 52 章) 第 8 條領有廣播牌照的人管有或輸入，以根據該條例呈交，使能根據該條例廣播； (由 1988 年第 25 號第 33 條修訂)
- (d) (如屬根據第(1)(b) 款提出的控罪) 被告人證明在指稱為罪行發生的時間，他—
 - (i) 未有合理機會檢查控罪所指的物品；及
 - (ii) 有合理理由相信該物品並不淫褻；及
- (e) (如屬根據第(1)(c) 款提出的控罪) 被告人證明在指稱為罪行發生的時間，他有合理理由相信控罪所指的物品並不淫褻。

(a) publishes;

(b) possesses for the purpose of publication; or

(c) imports for the purpose of publication,

any obscene article, whether or not he knows that it is an obscene article, commits an offence and is liable to a fine of \$1,000,000 and to imprisonment for 3 years.

(2) It shall be a defence to a charge—

- (a) under subsection (1) for a defendant to prove that, at the time the offence is alleged to have been committed, the article the subject of the charge was classified as a Class III article; but he may be convicted of any other offence under this Part established by the evidence as if he had been charged with that other offence;
- (b) under subsection (1) for a defendant to prove that the article the subject of the charge is, or was at the time the offence is alleged to have been committed, classified as a Class I or a Class II article;
- (c) under subsection (1)(b) or (c) for a defendant to prove that, at the time the offence is alleged to have been committed, the article the subject of the charge was possessed or imported—
(Amended 80 of 1997 s. 102)
 - (i) by him for the purpose of submitting it, a copy thereof or a print therefrom to the Registrar under section 13; or
(Amended 80 of 1997 s. 102)
 - (ii) by a person licensed to broadcast under section 8 of the Television Ordinance (Cap. 52) for the purpose of submitting it under that Ordinance for broadcast under that Ordinance; (Amended 25 of 1988 s. 33)
- (d) under subsection (1)(b) for a defendant to prove that, at the time that offence is alleged to have been committed, he—
 - (i) had had no reasonable opportunity to inspect the article the subject of the charge; and
 - (ii) had reasonable grounds for believing that article was not obscene; and
- (e) under subsection (1)(c) for a defendant to prove that, at the time that offence is alleged to have been committed, he had reasonable grounds for believing that the article the subject of the charge was not obscene.

22. 禁止向青少年發布不雅物品的規定

(1) 除第(2)款另有規定外，任何人向青少年人發布不雅物品，不論是否知道該物品是不雅物品，或是否知道該人是青少年，均屬犯罪，首次定罪，可處罰款\$400,000及監禁12個月，第二次或其後定罪，可處罰款\$800,000及監禁12個月。
〔由1995年第73號第6條修訂〕

(2) 根據本條所提控罪的免責辯護如下——

- (a) 被告人證明控罪所指的物品經評定為第I類物品，或證明在指稱為罪行發生的時間，控罪所指的物品經評定為第I類物品；
- (b) 被告人證明在指稱為罪行發生的時間，他曾查閱看來是屬於該青少年的身份證或護照，並有合理理由相信該青少年不是青少年；或
- (c) 被告人證明已遵照審裁處根據第8(2)(c)條定下的條件發布該不雅物品。

23. 禁止展示不雅事物

(1) 凡有公開展示的不雅事物，則作該項展示的人，或任何導致或准許作該項展示的人，不論是否知道該事物是不雅事物，均屬犯罪，首次定罪，可處罰款\$400,000及監禁12個月，第二次或其後定罪，可處罰款\$800,000及監禁12個月。
〔由1995年第73號第7條修訂〕

(2) 本條不適用於——

- (a) 根據《電視條例》(第52章)領有廣播牌照的公司所作電視廣播中出現的事物；或
- (b) 在真正美術館或博物館內進行而只能從該美術館或博物館內看見的物品展示中出現的事物。

[*比照1981 c. 42 s. 1 U.K.*]

24. 發布不雅物品的限制

(1) 任何人不得在以下情況下發布不雅物品——

- (a) (i) 該物品沒有封面和封底，亦沒有包裝物，或其封面和封底或其包裝物不是不雅的，但如該物品連同其封面和封底或其包裝物(如有的話)，以透明封套密封，則屬例外；

22. Prohibition on publishing an indecent article to a juvenile

(1) Subject to subsection (2), any person who publishes any indecent article to a person who is a juvenile, whether or not he knows that it is an indecent article or that such person is a juvenile, commits an offence and is liable to a fine of \$400,000 and to imprisonment for 12 months on his first conviction, and to a fine of \$800,000 and to imprisonment for 12 months on a second or subsequent conviction. (Amended 73 of 1995 s. 6)

(2) It shall be a defence to a charge under this section to prove that—

- (a) the article the subject of the charge is, or was at the time that the offence is alleged to have been committed, classified as a Class I article;
- (b) at the time that the offence is alleged to have been committed, the person so charged inspected an identity card or passport purporting to be the identity card or passport of the juvenile and believed on reasonable grounds that the juvenile was not a juvenile; or
- (c) the indecent article was published in compliance with conditions relating to its publication imposed by a Tribunal under section 8(2)(c).

23. Prohibition on display of indecent matter

(1) If any indecent matter is publicly displayed the person making the display and any person causing or permitting the display to be made, whether or not he knows that the matter is indecent, commits an offence and is liable to a fine of \$400,000 and to imprisonment for 12 months on his first conviction, and to a fine of \$800,000 and to imprisonment for 12 months on a second or subsequent conviction. (Amended 73 of 1995 s. 7)

(2) Nothing in this section shall apply in relation to any matter—

- (a) included in a television broadcast by a company licensed to broadcast under the Television Ordinance (Cap. 52); or
- (b) included in the display of an article in a bona fide art gallery or museum and visible only from within that gallery or museum.

[*cf. 1981 c. 42 s. 1 U.K.*]

24. Restriction on publishing indecent article

(1) A person shall not publish an indecent article—

(a) where—

- (i) the article has no cover or packaging or the covers or packaging is not indecent, unless the article (together with its covers or packaging, if any) is sealed in a transparent wrapper;

- (ii) 該物品的封面或封底，或其封面和封底是不雅的（不論該物品是否有任何包裝物，亦不論該包裝物是否不雅的），但如該物品連同其封面和封底，及連同其包裝物（如有的話），以完全不透明封套密封，則屬例外；或
- (iii) 該物品的包裝物是不雅的（不論該物品是否有任何封面或封底，亦不論該等封面或封底是否不雅的），但如該物品連同其封面和封底（如有的話），及連同其包裝物，以完全不透明封套密封，則屬例外；
- (b) 該物品——
 - (i) 是 (a)(i) 段所描述的物品，但如該物品有符合第 (1D) 款所指明格式的告示，並按照第 (1C) 款的規定展示該告示，則屬例外；或
 - (ii) 是 (a)(ii) 或 (iii) 段所描述的物品，但如該物品及其完全不透明封套分別有符合第 (1D) 款所指明格式的告示，並按照第 (1C) 款的規定展示該告示，則屬例外；及
 - (c) 該物品，及其透明封套或完全不透明封套（視屬何情況而定）不符合第 (1A) 及 (1B) 款的有關規定。 (由 1995 年第 73 號第 8 條代替)
 - (1A) 除第 (1B) 及 (1C) 款另有規定外，凡發布任何不雅物品——
 - (a) 而該物品是以完全不透明封套密封的，則該完全不透明封套上，除展示該物品的名稱、發布日期、發行期數及售價外，不得展示其他事物；或
 - (b) 而該物品是以透明封套密封的，則該透明封套上，不得展示任何事物。 (由 1995 年第 73 號第 8 條增補)
 - (1B) 凡發布任何不雅物品——
 - (a) (i) 而該物品沒有包裝物，則其封面或封底上；
 - (ii) 而該物品有包裝物，則不論它是否有任何封面或封底，其包裝物上；或
 - (iii) 而該物品沒有封面和封底，亦沒有包裝物，則一張加於該物品上並覆蓋該物品整個表面的標貼上；及
 - (b) 如該物品以完全不透明封套密封，除按照 (a) 段的規定外，亦於該完全不透明封套兩面的其中一面，須清楚而顯眼地印上其出版人的姓名或名稱、營業地點的詳細地址及電話號碼。 (由 1995 年第 73 號第 8 條增補)

- (ii) either the front cover or back cover of the article or both such covers are indecent (whether or not the article has any packaging and whether or not the packaging is indecent), unless the article (together with the covers, and packaging if any) is sealed in a completely opaque wrapper; or
- (iii) the packaging of the article is indecent (whether or not the article has any cover and whether or not the covers are indecent), unless the article (together with the covers, if any, and the packaging) is sealed in a completely opaque wrapper;
- (b) where the article is an article—
 - (i) described in paragraph (a)(i), unless the article bears; or
 - (ii) described in paragraph (a)(ii) or (iii), unless the article and the completely opaque wrapper each bears, a notice which is in the form specified in subsection (1D) and is displayed in accordance with subsection (1C); and
- (c) unless the article, and its transparent wrapper or completely opaque wrapper, as the case may be, comply with the relevant requirements in subsections (1A) and (1B). (Replaced 73 of 1995 s. 8)
- (1A) Subject to subsections (1B) and (1C), where an indecent article is published—
 - (a) if it is an article which is sealed in a completely opaque wrapper, nothing other than the name of the article, its date of publication, issue number and selling price shall be displayed on its completely opaque wrapper; or
 - (b) if it is an article which is sealed in a transparent wrapper, nothing shall be displayed on its transparent wrapper. (Added 73 of 1995 s. 8)
- (1B) Where an indecent article is published—
 - (a) it shall have—
 - (i) where it has no packaging, printed either on its front cover or back cover;
 - (ii) where it has any packaging, (whether or not it has any covers) printed on its packaging; or
 - (iii) where it has no cover or packaging, printed on a label affixed to the article and which occupies the whole article; and
 - (b) where it is sealed in a completely opaque wrapper, it shall have in addition to the requirement in paragraph (a) printed on either side of the completely opaque wrapper, clearly and conspicuously, the name, the full address of place of business and the telephone number of the publisher. (Added 73 of 1995 s. 8)

(1C) 凡發布任何不雅物品——

- (a) (i) 第(1)款所提述的告示須以容易令人注意的方式，展示於該物品的封面和封底上；
- (ii) 而該物品沒有封面和封底，第(1)款所提述的告示須以容易令人注意的方式，展示於其包裝物上；或
- (iii) 而該物品沒有封面和封底，亦沒有包裝物，第(1)款所提述的告示須以容易令人注意的方式，展示於加於該物品上並覆蓋該物品整個表面的標貼上；及
- (b) 而該物品連同其封面和封底或其包裝物（如有的話）以完全不透明封套密封，第(1)款所提述的告示須以容易令人注意的方式，展示於該完全不透明封套的兩面。（由 1995 年第 73 號第 8 條增補）

(1D) 第(1)款所提述的告示須符合以下格式——

“WARNING: THIS ARTICLE CONTAINS MATERIAL WHICH MAY OFFEND AND MAY NOT BE DISTRIBUTED, CIRCULATED, SOLD, HIRED, GIVEN, LENT, SHOWN, PLAYED OR PROJECTED TO A PERSON UNDER THE AGE OF 18 YEARS

警告： 本物品內容可能令人反感；不可將本物品派發、傳閱、出售、出租、交給或出借予年齡未滿 18 歲的人士或將本物品向該等人士出示、播放或放映。”；

而以下規定適用於該告示——

(a) 構成該告示的英文字母及中文字樣——

- (i) (A) 須佔該物品的封面和封底的面積的 20% 或以上；
- (B) 在該物品沒有封面和封底的情況下，須佔該物品的包裝物的面積的 20% 或以上；或
- (C) 在該物品沒有封面和封底，亦沒有包裝物的情況下，須佔加於該物品上並覆蓋該物品整個表面的標貼的面積的 20% 或以上；及
- (ii) 在該物品連同其封面和封底或其包裝物（如有的話）以完全不透明封套密封的情況下，須佔該不透明封套的面積的 20% 或以上；

(b) (a) 段所提述的英文字母及中文字樣的顏色，須與底色有對比效果；

(c) 在告示展示的範圍內，不得載有構成該告示的英文字母和中文字樣以外的其他事物。（由 1995 年第 73 號第 8 條增補）

(1E)(a) (i) 如不雅物品的出版人及印刷人為同一人，則該人；或

須確保第(1A)、(1B)、(1C) 及(1D) 款的規定均得以遵從。

(1C) Where an indecent article is published, the notice referred to in subsection (1) shall be displayed so that it is easily noticeable—

- (a) (i) on both the front and back covers of the article;
- (ii) on the packaging of the article if the article has no cover; or
- (iii) on a label affixed to the article and which occupies the whole article if the article has no cover or packaging; and
- (b) on both sides of its completely opaque wrapper where the article (together with its covers or packaging, if any) is sealed in a completely opaque wrapper. (Added 73 of 1995 s. 8)

(1D) The notice referred to in subsection (1) shall be in the following form—

“WARNING: THIS ARTICLE CONTAINS MATERIAL WHICH MAY OFFEND AND MAY NOT BE DISTRIBUTED, CIRCULATED, SOLD, HIRED, GIVEN, LENT, SHOWN, PLAYED OR PROJECTED TO A PERSON UNDER THE AGE OF 18 YEARS

警告： 本物品內容可能令人反感；不可將本物品派發、傳閱、出售、出租、交給或出借予年齡未滿 18 歲的人士或將本物品向該等人士出示、播放或放映。”；

and the following shall apply in respect of the notice —

(a) the letters and characters constituting the notice shall occupy at least—

- (i) (A) 20% of each cover of the article;
- (B) 20% of the packaging of the article if the article has no cover; or
- (C) 20% of a label affixed to the article and which occupies the whole article if the article has no cover or packaging; and

- (ii) 20% of each side of its completely opaque wrapper where the article (together with its covers or packaging, if any) is sealed in a completely opaque wrapper;

(b) the letters and characters referred to in paragraph (a) shall be of a colour which contrasts with the colour of the background upon which they are printed;

(c) the area within which the notice is displayed shall not contain anything other than the letters and characters constituting the notice. (Added 73 of 1995 s. 8)

(1E)(a) (i) In case the publisher and the printer of the indecent article are the same person, that person; or

- (ii) in any other case, the publisher of the article, shall ensure that the requirements of subsections (1A), (1B), (1C) and (1D) are complied with.

- (b) 除第(3)款另有規定外，任何出版人或印刷人（視屬何情況而定）違反(a)段的規定，無論他是否知道該物品為不雅物品，他即屬犯罪，首次定罪，可處罰款\$400,000 及監禁12個月，第二次或其後定罪，可處罰款\$800,000 及監禁12個月。
- (c) 任何不是不雅物品的出版人的人，如故意或明知而容許在該物品或其完全不透明封套（視何者適當而定）上印上其姓名或名稱作為該物品的出版人，即屬犯罪，可處第5級罰款及監禁6個月。（由1995年第73號第8條增補）
- (1F) 在第(1E)款中，就不雅物品而言——
- “出版人”（the publisher）指安排、管理或控制不雅物品的印刷、製造或複製（視屬何情況而定）的人；
- “印刷人”（the printer）指印刷、製造或複製不雅物品的人（視屬何情況而定）。（由1995年第73號第8條增補）
- (2) 除第(3)款另有規定外，任何人違反第(1)款的規定，不論是否知道該物品是不雅物品，均屬犯罪，首次定罪，可處罰款\$400,000 及監禁12個月，第二次或其後定罪，可處罰款\$800,000 及監禁12個月。（由1995年第73號第8條修改）
- (3) 對於根據本條提出的控罪，被告人如證明控罪所指的物品經評定為第I類物品，或證明在指稱為罪行發生的時間，控罪所指的物品經評定為第I類物品，即可作為該控罪的免責辯護。

25. 有關暫定類別的罪行

凡物品只在暫定類別下經評定為第III類物品，任何人發佈該物品，不論是否知道該物品已經評定為該類別，均屬犯罪，可處罰款\$1,000,000 及監禁3年。

26. 禁止發佈第III類物品

任何人如將任何經審裁處評定為第III類的物品（只在暫定類別下經評定者除外）——

- (a) 加以發布；
- (b) 管有以供發布；
- (c) 輸入以供發布；

不論該人是否知道該物品已經評定為該類別，均屬犯罪，可處罰款\$1,000,000 及監禁3年。

- (b) Subject to subsection (3), any publisher or printer, as the case may be, who contravenes paragraph (a), whether or not he knows that the article is an indecent article, commits an offence and is liable to a fine of \$400,000 and to imprisonment for 12 months on his first conviction, and to a fine of \$800,000 and to imprisonment for 12 months on a second or subsequent conviction.
- (c) Any person who is not the publisher of an indecent article but wilfully or knowingly allows his name to be printed on it or its completely opaque wrapper (as may be appropriate) as the publisher of it, commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months. (Added 73 of 1995 s. 8)
- (1F) In subsection (1E), with respect to an indecent article—
“the publisher” (出版人) means the person who causes, manages or controls the printing, manufacturing or reproduction of it, as the case may be;
“the printer” (印刷人) means the person who prints, manufactures or reproduces it, as the case may be. (Added 73 of 1995 s. 8)
- (2) Subject to subsection (3), any person who contravenes subsection (1), whether or not he knows that the article is an indecent article, commits an offence and is liable to a fine of \$400,000 and to imprisonment for 12 months on his first conviction, and to a fine of \$800,000 and to imprisonment for 12 months on a second or subsequent conviction. (Amended 73 of 1995 s. 8)
- (3) It shall be a defence to a charge under this section to prove that the article the subject of the charge is, or was at the time the offence is alleged to have been committed, classified as a Class I article.

25. Offences in relation to interim classification

Where an article is classified as a Class III article by virtue only of an interim classification, any person who publishes that article, whether or not he knows it has been so classified, commits an offence and is liable to a fine of \$1,000,000 and to imprisonment for 3 years.

26. Prohibition on publishing Class III article

Any person who—

- (a) publishes;
 - (b) possesses for the purpose of publication;
 - (c) imports for the purpose of publication,
- any article classified by a Tribunal, other than by virtue only of an interim classification, as a Class III article, whether or not he knows it has been so classified, commits an offence and is liable to a fine of \$1,000,000 and to imprisonment for 3 years.

27. 發布第 II 類物品的限制

審裁處根據第 8(2)(c) 條就經評定為第 II 類的物品定下條件後，任何人不按照該等條件發布該物品，則不論他是否知道該物品已經評定為該類別，或是否知道已定下該等條件，均屬犯罪，首次定罪，可處罰款 \$400,000 及監禁 12 個月，第二次或其後定罪，可處罰款 \$800,000 及監禁 12 個月。

(由 1995 年第 73 號第 9 條修訂)

27A. 禁止管有不雅物品以供發布

(1) 除第(2)款另有規定外，任何人管有任何不雅物品以供發布，而就該物品而言，第 24 條的任何規定或根據第 8(2)(c) 條任何條件遭違反，則不論他是否知道該物品為不雅物品或該不雅物品違反第 24 條的任何規定或違反根據第 8(2)(c) 條定下的任何條件，他即屬犯罪，首次定罪，可處罰款 \$400,000 及監禁 12 個月，第二次或其後定罪，可處罰款 \$800,000 及監禁 12 個月。

(2) 對於根據本條提出的控罪，如被告人證明以下事項，即可作為該控罪的免責辯護—

- (a) 控罪所指的物品經評定為第 I 類物品，或在指稱為罪行發生的時間，控罪所指的物品經評定為第 I 類物品；
- (b) 在指稱為罪行發生的時間，控罪所指的物品是—
 - (i) 由被告人管有，以根據第 13 條將該物品、其複製本或印刷本呈交司法當務官；或
 - (ii) 由作為根據《電視條例》(第 52 章) 第 8 條領有廣播牌照的人的被告人管有，以根據該條例呈交，使能根據該條例廣播；
- (c) 在指稱為罪行發生的時間，他—
 - (i) 沒有合理機會檢查控罪所指的物品；及
 - (ii) 有合理理由相信該物品並非不雅；或
- (d) 在指稱為罪行發生的時間，他有良好及充分的理由相信第 24 條的規定及根據第 8(2)(c) 條定下的條件已獲遵從。

(由 1995 年第 73 號第 10 條增補)

27. Restriction on publishing Class II article

Where, in relation to any article classified as a Class II article, a Tribunal has imposed conditions under section 8(2)(c), any person who publishes that article otherwise than in accordance with those conditions, whether or not he knows it has been so classified or that those conditions have been imposed, commits an offence and is liable to a fine of \$400,000 and to imprisonment for 12 months on his first conviction, and to a fine of \$800,000 and to imprisonment for 12 months on a second or subsequent conviction.

(Amended 73 of 1995 s. 9)

27A. Prohibition on possession of indecent article for the purpose of publication

(1) Subject to subsection (2), any person who possesses for the purpose of publication any indecent article in respect of which any requirement of section 24 or any condition imposed under section 8(2)(c) is contravened, whether or not he knows that it is an indecent article, or that the indecent article contravenes any requirement of section 24 or that any condition imposed under section 8(2)(c) is contravened, commits an offence and is liable to a fine of \$400,000 and to imprisonment for 12 months on his first conviction, and to a fine of \$800,000 and to imprisonment for 12 months on a second or subsequent conviction.

(2) It shall be a defence to a charge under this section for the defendant to prove that—

- (a) the article the subject of the charge is, or was at the time the offence is alleged to have been committed, classified as a Class I article;
- (b) at the time the offence is alleged to have been committed, the article the subject of the charge was possessed by him—
 - (i) for the purpose of submitting it, a copy thereof or a print therefrom to the Registrar under section 13; or
 - (ii) as a person licensed to broadcast under section 8 of the Television Ordinance (Cap. 52) for the purpose of submitting it under that Ordinance for broadcast under that Ordinance;
- (c) at the time the offence is alleged to have been committed, he—
 - (i) had had no reasonable opportunity to inspect the article the subject of the charge; and
 - (ii) had reasonable grounds for believing that the article was not indecent; or
- (d) at the time the offence is alleged to have been committed, he had good and sufficient reasons to believe that the requirements of section 24 and the conditions imposed under section 8(2)(c) had been complied with.

(Added 73 of 1995 s. 10)

28. 以公益作為免責辯護

凡有因發布物品或公開展示事物而根據本部提出的控罪，如得到審裁處同意該項發布或展示是擬為公益而作的，理由是發布該物品或展示該事物有利於科學、文學、藝術、學術或大眾關注的其他事項，即可作為該控罪的免責辯護。

第 V 部

審裁處的裁定

29. 審裁處的專有審判權

- (1) 審裁處具專有審判權，以裁定——
 (a) 物品是否淫穢或不雅；
 (b) 公開展示的事物是否不雅；或
 (c) 為發布物品或公開展示事物而根據第 28 條提出的免責辯護理由是否已證明成立。

(2) 除第 (3) 款另有規定外，在任何在法院或裁判官席前進行的民事或刑事法律程序中，如出現關於第 (1) 款所述事項的問題，有關法院或裁判官須將該問題轉交審裁處；而該項民事或刑事法律程序的各方或其代表可在有關該問題的審裁處聆訊中出席並作陳述；如法律程序各方之中並無公職人員，則律政司或其代表亦可在該聆訊中出席並作陳述。

(3) 在任何在法院或裁判官席前進行的民事或刑事法律程序中，如有人承認物品屬淫穢或不雅，或承認公開展示的事物屬不雅，有關法院或裁判官可予以接受而對該人作出裁決，在此情況下，第 (1) 及 (2) 款即不適用。

[*cf. 1963 No. 22 s. 12 N.Z.*]

第 VI 部

上訴

30. 上訴

(1) 在審裁處席前進行的法律程序的任何一方，可在審裁處就法律論點作出決定後 14 天內，向司法常務官發出上訴通知書，列明上訴理由，就該項決定向原訟法庭上訴。
 (由 1998 年第 25 號第 2 條修訂)

28. Defence of public good

It shall be a defence to a charge under this Part in respect of the publication of an article or the public display of matter if that publication or display, as the case may be, is found by a Tribunal to have been intended for the public good on the ground that such publication or display was in the interests of science, literature, art or learning, or any other object of general concern.

PART V

DETERMINATION BY A TRIBUNAL

29. Tribunal to have exclusive jurisdiction

- (1) A Tribunal shall have exclusive jurisdiction to determine whether—
 (a) any article is obscene or indecent;
 (b) any matter that is publicly displayed is indecent; or
 (c) the ground of defence under section 28 is proved in respect of the publication of an article or the public display of any matter.

(2) Subject to subsection (3), where in any civil or criminal proceedings before a court or magistrate a question arises as to any of the matters mentioned in subsection (1), that court or magistrate shall refer that question to a Tribunal; and the parties to those civil or criminal proceedings and, in the case of proceedings to which a public officer is not a party, the Attorney General or their representatives, may appear and be heard at any hearing of that Tribunal relating to that reference.

(3) Where in any civil or criminal proceedings before a court or magistrate a person admits that an article is obscene or indecent or that any matter publicly displayed is indecent the court or magistrate may accept that admission and so find against that person, and subsections (1) and (2) shall not apply.

[*cf. 1963 No. 22 s. 12 N.Z.*]

PART VI

APPEALS

30. Appeal

(1) Any party to any proceedings before a Tribunal may appeal to the Court of First Instance against a decision of that Tribunal on a point of law by giving notice of appeal in writing setting out the grounds of that appeal to the Registrar within 14 days of that decision. (Amended 25 of 1998 s. 2)

- (b) 有關該物品的公告，已按照第 19(2) 條的規定，以該文件指明的方式及在該文件指明的日期發出，則該文件在任何法律程序中出示時，即須接納為證據，而無須再加證明；除非證明該文件並非由司法當務官簽署，否則該文件即為所載事項的確證。
- (2) 凡看來是由主審裁判官簽署，證明審裁處的決定或裁定的文件，在任何法律程序中出示時，即須接納為證據，而無須再加證明；除非證明該文件並非由主審裁判官簽署，否則該文件即為所載事項的確證。

34. 根據手令而作的搜查及檢取

- (1) 裁判官如信納經宣誓而作的告發，認為有合理理由懷疑在任何處所、地點、船隻、飛機或車輛之內或之上，有一—
- (a) 與第 21、24、26 或 27A 條所訂罪行有關的物品，不論該罪行是已發生、正在發生或即將發生的；或 (由 1995 年第 73 號第 12 條修訂)
- (b) 作該罪行證據的物件，不論該物件本身是該罪行的證據，或是載有該罪行的證據，
- 可發出手令，授權任何警務人員或香港海關人員進入該處所、地點、船隻、飛機或車輛，以搜尋、檢取、帶走及扣留該物品或物件。
- (2) 受授權人員—
- (a) 如屬警務人員，可召請香港海關任何人員；或
- (b) 如屬香港海關人員，可召請任何警務人員，協助行使本條授予的權力。
- (3) 受授權人員或協助人員可在日夜任何時間—
- (a) 進入及搜查手令內指明的任何處所或地點；或
- (b) 截停、登上及搜查手令內指明的任何船隻、飛機或車輛。
- (4) 受授權人員或協助人員可檢取、帶走及扣留—
- (a) 他有合理理由懷疑與第 21、24、26 或 27A 條所訂罪行有關的物品，不論該罪行是已發生、正在發生或即將發生的；或 (由 1987 年第 245 號法律公告修訂；由 1995 年第 73 號第 12 條修訂)

(b) notice in accordance with section 19(2) was given in the manner and on the date specified in that document in respect of that article, shall be admissible on its production and without further proof in any proceedings and such document shall be conclusive evidence of the facts contained in it unless it is proved that the document was not signed by the Registrar.

(2) A document purporting to be under the hand of a presiding magistrate stating a decision or determination of a Tribunal shall be admissible on its production and without further proof in any proceedings and such document shall be conclusive evidence of the facts contained in it unless it is proved that the document was not signed by a presiding magistrate.

34. Search and seizure under warrant

- (1) A magistrate may, if he is satisfied by information on oath that there is reasonable ground for suspecting that there is in or on any premises, place, vessel, aircraft or vehicle—
- (a) any article in respect of which an offence under section 21, 24, 26 or 27A has been or is being or is about to be committed; or (Amended 73 of 1995 s. 12)
- (b) anything which is, or contains, evidence of the commission of any such offence, issue a warrant authorizing any person being a police officer or member of the Customs and Excise Service to enter such premises, place, vessel, aircraft or vehicle, and search for, seize, remove and detain any such article or thing.
- (2) An authorized officer may—
- (a) if he is a police officer, call on any member of the Customs and Excise Service; or
- (b) if he is a member of the Customs and Excise Service, call on any police officer, to assist him in the exercise of the powers conferred by this section.
- (3) An authorized officer or an assisting officer may, at any time of the day or night—
- (a) enter and search any premises or place named in the warrant; or
- (b) stop, board and search any vessel, aircraft or vehicle named in the warrant.
- (4) An authorized officer or an assisting officer may seize, remove and detain—
- (a) any article in respect of which he reasonably suspects that an offence under section 21, 24, 26 or 27A has been or is being or is about to be committed; or (Amended L.N. 245 of 1987; 73 of 1995 s. 12)

(b) 他有合理理由懷疑是該罪行證據或載有該罪行證據的任何物件。

(5) 在本條內——

“飛機”(aircraft)不包括軍用飛機；

“船隻”(vessel)不包括軍用船艦或具有軍用船艦地位的船隻。

35. 持有手令人員的附帶權力

獲授權人員或協助人員根據手令行使權力時，可——

- (a) 使用合理所需的武力，以進入他有權進入及搜查的任何處所或地點；
- (b) 使用合理所需的武力，以截停、登上或搜查他有權截停、登上及搜查的任何船隻、飛機或車輛；
- (c) 使用合理所需的武力，以帶走妨礙他行使該等權力的任何人或物件；
- (d) 將在他有權進入及搜查的處所、地點、船隻、飛機或車輛之內或之上發現的任何人扣留，直至搜查完畢為止；及
- (e) 制止任何人接近、登上或離開他有權進入及搜查的任何船隻、飛機或車輛，直至搜查完畢為止。

36. 香港海關人員的檢取行動

除根據第 34 條可行使的權力外，香港海關人員可檢取、帶走及扣留——

- (a) 他有合理理由懷疑與第 21(1)(c) 或 26(c) 條所訂罪行有關的物品，不論該罪行是已發生、正在發生或即將發生的；及
- (b) 他有合理理由懷疑是該罪行證據或載有該罪行證據的任何物件。

36A. 警務人員的檢取行動

除根據第 34 條可行使的權力外，任何警務人員——

- (a) 如有合理理由懷疑有人已經或正在就在公眾地方的任何物品犯第 22、23、24、27 或 27A 條所訂罪行，他可檢取、帶走及扣留該物品；及

(b) 任何什麼他合理懷疑是該罪行證據或載有該罪行證據的任何物件。

(5) 在 this section—

“aircraft”(飛機)不包括軍用飛機；
“vessel”(船隻)不包括軍用船艦或具有軍用船艦地位的船隻。

35. Ancillary powers of officers under warrant

An authorized officer or an assisting officer may in relation to his powers under a warrant—

- (a) use such force as is reasonably necessary to enter any premises or place which he is empowered to enter and search;
- (b) use such force as is reasonably necessary to stop, board, or search any vessel, aircraft or vehicle which he is empowered to stop, board and search;
- (c) use such force as is reasonably necessary to remove any person or thing obstructing him in the exercise of those powers;
- (d) detain any person found in or on any premises, place, vessel, aircraft or vehicle which he is empowered to enter and search until it has been searched; and
- (e) prevent any person from approaching, boarding or leaving any vessel, aircraft or vehicle which he is empowered to enter and search until it has been searched.

36. Seizure by member of Customs and Excise Service

In addition to any power he may have under section 34, any member of the Customs and Excise Service may seize, remove and detain—

- (a) any article in respect of which he reasonably suspects that an offence under section 21(1)(c) or 26(c) has been or is being or is about to be committed; and
- (b) anything whatever which he reasonably suspects to be, or to contain, evidence of the commission of such an offence.

36A. Seizure by police officer

In addition to any power he may have under section 34, any police officer may seize, remove and detain—

- (a) any article in a public place, in respect of which he reasonably suspects that an offence under section 22, 23, 24, 27 or 27A has been committed or is being committed; and

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