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# LAWS OF HONG KONG

## CONTROL OF OBSCENE AND INDECENT ARTICLES ORDINANCE

CHAPTER 390



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## CHAPTER 390

## CONTROL OF OBSCENE AND INDECENT ARTICLES ORDINANCE

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## 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.*

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9 of 1987.

L.N. 245/87.

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LN272/90

[1 September 1987.]

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## PART I

## PRELIMINARY

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

Short title.

2. (1) In this Ordinance, unless the context otherwise requires—

Interpretation.

“adjudicator” means an adjudicator appointed to the panel of adjudicators under section 5;

“application” means an application under section 13 and “applicant” shall be construed accordingly;

“article” 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;

“assisting officer” 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” means any person authorized by a warrant issued under section 34;

“classification” means a classification by a Tribunal under Part III and includes an interim classification and “classified” shall be construed accordingly;

“full hearing” means a full hearing of a Tribunal under section 15;

“interim classification” means an interim classification made by a Tribunal under section 14;

“juvenile” means a person under the age of 18 years;

“panel of adjudicators” means the panel of adjudicators established under section 5;

“presiding magistrate” means a magistrate appointed to preside under section 7;

“Registrar” means the Registrar of the Supreme Court;

“Tribunal” means an Obscene Articles Tribunal appointed under section 6;

“warrant” 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” and “indecency” include violence, depravity and repulsiveness.

(4) For the purposes of this Ordinance, a person publishes an article if he, whether or not for gain—

(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) 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.

(5) For the purposes of subsection (4)—

(a) “article” 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

(b) “person” and “public” 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.

(7) Any matter which is displayed in or so as to be visible from—

(a) any public street or pier, or public garden; and

[cf. 7 & 8 Eliz. 2 c. 66, s. 1(2).]

[cf. 1964, c. 74, s. 2(1).]

[cf. 1981, c. 42, s. 1(5).]

- (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, [cf. 1981, c. 42, s. 1(2).]

shall for the purposes of this Ordinance be deemed to be matter publicly displayed.

3. This Ordinance shall not apply in relation to any—
- (a) film approved by the Film Censorship Authority under the Film Censorship Regulations;
  - (b) film permitted to be broadcast under section 32 of the Television Ordinance; or
  - (c) poster, picture, figure or text of any advertisement approved for publication by the censor under regulation 8 of the Film Censorship Regulations.
4. 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).
- Ordinance not to apply in case of certain films and advertising material.  
(Cap. 172, sub. leg.)  
(Cap. 52.)
- Effective date of classification and conditions.

## PART II

### OBSCENE ARTICLES TRIBUNALS

5. (1) For the purposes of this Ordinance, there shall be established a panel of adjudicators. 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) 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).

Appointment of  
Obscene Articles  
Tribunals.

6. (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.

Membership of  
Tribunal.

7. (1) A Tribunal shall consist of the following persons appointed by the Registrar—

- (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.

Jurisdiction.

8. (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. Any—**

Immunity.

- (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. (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—

Guidance to Tribunal.  
[cf. NZ, 1963, No. 22, s. 11.]

- (a) standards of morality, decency and propriety that are generally accepted by reasonable members of the community, and in relation thereto may have regard to—
  - (i) in the case of an article, any decision of the Film Censorship Authority under the Film Censorship Regulations to approve or refuse to approve a film; and
  - (ii) in the case of matter publicly displayed, any decision of the censor under regulation 8 of the Film Censorship Regulations to approve or refuse to approve any poster, picture, figure or text of any advertisement for publication;
- (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;

(Cap. 172, sub. leg.)



- (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.

Powers.

**11. A Tribunal—**

(Cap. 227.)

LN 2/2/90

- (a) when exercising its jurisdiction under Part V shall have the powers of a magistrate under the Magistrates Ordinance 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—
  - (i) 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;
  - (ii) 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;
  - (iii) administer oaths and affirmations;
  - (iv) 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;
  - (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.

Offences relating to a Tribunal.

**12. 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.** (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.

Submission of  
article to  
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.** (1) Subject to section 17(2), where an article is submitted under section 13 a Tribunal shall—

Interim  
classification.

(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) 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 shall not be required to give any reasons for any interim classification but may give guidance to the applicant in relation to the article submitted.

**15.** (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—

Requirement for  
full hearing.

(a) within 5 days of that interim classification taking effect; and

(b) by notice in writing in the prescribed form to the Registrar, require a Tribunal to review that interim classification at a full hearing.

(2) At a full hearing—

(a) 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

(b) any magistrate and any adjudicator shall be competent to sit as a member of the Tribunal at that full hearing notwithstanding that he was a member of the Tribunal which made the interim classification.

(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) 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.

Full hearing to  
be in public.

16. (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.

Reconsideration  
of article.

17. (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.** (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.

Publisher etc. to give notice of classification.

(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.** (1) The Registrar shall give notice in accordance with subsection (2)—

Registrar to give notice.

- (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.** (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.

Registrar to keep repository.

(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.** (1) Subject to subsection (2) any person who—

- (a) publishes;
- (b) possesses for the purpose of publication; or

Prohibition on publishing obscene articles.

(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 by him—

(i) for the purpose of submitting it, a copy thereof or a print therefrom to the Registrar under section 13; or

(ii) by a person licensed to broadcast under section 8 of the Television Ordinance for the purpose of submitting it ~~to the panel of censors under section 32 of that Ordinance;~~

(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.

(Cap. 52.)

Prohibition on publishing an indecent article to a juvenile.

**22.** (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 \$200,000 and to imprisonment for 12 months.

(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. (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 \$200,000 and to imprisonment for 12 months.

Prohibition on display of indecent matter.  
[cf. 1981, c. 42, s. 1.]

(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; 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.

(Cap. 52.)

24. (1) No person may publish an indecent article unless there is clearly and conspicuously displayed on that article or on a wrapper enclosing that article, a notice in the following form—

Restriction on publishing indecent article.

“WARNING: THIS ARTICLE CONTAINS MATERIAL WHICH MAY OFFEND AND MAY NOT BE SOLD TO A PERSON UNDER THE AGE OF 18 YEARS

警告：本物品內容可能有不良成份；本物品不可售給年齡未滿十八歲人士。”

(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 \$200,000 and to imprisonment for 12 months.

(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. 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.

Offences in relation to interim classification.

Prohibition on publishing Class III article.

**26.** 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.

Restriction on publishing Class II article.

**27.** 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 \$200,000 and to imprisonment for 12 months.

Defence of public good.

**28.** 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

Tribunal to have exclusive jurisdiction.

[cf. NZ, No. 22 of 1963, s. 12.]

**29.** (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.

## PART VI

## APPEALS

30. (1) Any party to any proceedings before a Tribunal may appeal to the High Court 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. Appeal.

(2) Where notice of appeal is given under subsection (1) the Registrar shall fix a date for the hearing of the appeal which shall not be later than 28 days after the giving of that notice; but if, in the opinion of the Registrar, it is not practicable for him to fix a date within that period he may fix a date not later than 56 days after the giving of that notice.

31. In the case of any appeal under section 30—

- (a) the High Court may confirm the decision of the Tribunal or may order it to re-hear or re-open the proceedings to be determined in accordance with the point of law decided by it;
- (b) the powers and duties of a High Court shall be exercised and performed by the Chief Justice or by such one of the judges as the Chief Justice shall from time to time appoint; and
- (c) the High Court may make such order as to costs as it may think fit.

Procedure on hearing appeal.

## PART VII

## ENFORCEMENT

32. For the purposes of this Ordinance, a person shall—

- (a) be deemed to possess an article for publication if he possesses it with the intention of manufacturing or reproducing a copy of it for publication; and
- (b) be presumed, until the contrary is proved, to possess an article for publication if he possesses more than 2 copies of it.

Presumptions relating to publication.

33. (1) A document purporting to be under the hand of the Registrar certifying that—

- (a) an article was at any time classified as a Class I, a Class II or a Class III article;
- (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,

Proof of certain matters.



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.

Search and  
seizure under  
warrant.

34. (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 or 26 has been or is being or is about to be committed; or
- (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 or 26 has been or is being or is about to be committed; or (*Amended, L.N. 245/87*)
- (b) anything whatever which he reasonably suspects to be, or to contain, evidence of the commission of such an offence.

(5) In this section—

“aircraft” does not include a military aircraft;

“vessel” does not include a ship of war or a ship having the status of a ship of war.

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

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

Seizure by member of Customs and Excise Service.

- (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.

37. Any article or thing which has been detained under section 34 or 36 and is liable to forfeiture under section 39 shall, as soon as practicable after that detention, be taken before a magistrate to be dealt with in accordance with this Part; but this section shall not apply in the case of any article which is the subject of a charge under Part IV.

Detained article to be taken before magistrate.

38. Any person who—

Obstruction.

- (a) obstructs an authorized officer or an assisting officer in the exercise of any power conferred by this Ordinance; or
- (b) fails to comply with any reasonable requirement, direction or demand given or made by an authorized officer or an assisting officer in the execution of the warrant,

commits an offence and is liable to a fine of \$10,000 and to imprisonment for 6 months.

Liability to forfeiture.

- 39.** (1) Any article which is—
- (a) obscene; or
  - (b) classified, other than by virtue only of an interim classification, as a Class III article,

shall be liable to forfeiture.

- (2) Subject to subsection (3), any—
- (a) machinery or apparatus used for projecting or showing; or
  - (b) machinery, plate, implement, utensil, photographic film or material used for the purpose of printing copies of,

any article mentioned in subsection (1) shall be liable to forfeiture.

(3) Where an article submitted under section 13(1) is classified as a Class III article, nothing mentioned in subsection (2)(b) shall be liable to forfeiture under this section by reason only that it was used to print, manufacture or reproduce that article or copies of that article for the purpose of that submission.

Order for forfeiture.

**40.** (1) Subject to subsection (2) and section 41, where an application is made to a magistrate for an order for forfeiture—

- (a) he shall, in the case of an article that is before him and is liable to forfeiture under section 39(1), order it to be forfeited;
- (b) he may, in the case of a thing that is before him and is liable to forfeiture under section 39(2), order it to be forfeited.

(2) An order for forfeiture shall not be made under subsection (1) if any ground of defence under section 21(2)(b), (c), (d) or (e), or section 28 in respect of the publication of an article is proved.

(3) An order for forfeiture of an article or thing may be made under subsection (1) notwithstanding that no person is convicted of any offence in connexion with that article or thing.

(4) Any article or thing which is ordered to be forfeited under subsection (1) shall be disposed of in such manner as the magistrate shall direct.

Procedure in relation to forfeiture.

**41.** (1) Subject to subsections (3) and (4), before making an order for forfeiture of any article or thing under section 40 the magistrate shall issue a summons to—

- (a) the occupier of any premises or, in the case of a stall, the owner of the stall, in or from which the article or thing was seized;
- (b) the owner of any vessel, aircraft or vehicle in or from which the article or thing was seized;
- (c) the owner of the article or thing seized,

to appear on a day specified in the summons to show cause why the article or thing should not be forfeited.

(2) In addition to any person mentioned in subsection (1), any other person being the author or manufacturer of any article seized or a person into whose hands any such article may have passed before seizure, or a person who has an interest in any article or thing seized, may appear before the magistrate on the day specified in the summons to show cause why the article or thing should not be forfeited.

(3) If the magistrate is satisfied that any person specified in subsection (1) cannot for any reason be found or ascertained, he may dispense with the issue of a summons to that person.

(4) If any summons issued under subsection (1) has not for any reason been served and the magistrate is satisfied that all reasonable efforts were made to serve the summons on the person named in the summons he may make an order of forfeiture under section 40 notwithstanding that the summons was not served and that the person named in the summons is not given an opportunity to show cause why the article or thing should not be forfeited.

(5) An order for forfeiture of any article shall, unless the magistrate considers that there are special reasons for directing otherwise, apply to the whole of the article.

(6) In this section "owner"—

- (a) in the case of a stall includes any occupier of that stall;
- (b) in the case of a vessel includes any charterer and the master of that vessel;
- (c) in the case of an aircraft includes any operator of that aircraft; and
- (d) in the case of a vehicle includes the driver of that vehicle.

42. (1) Subject to subsection (2) and section 43, if, upon the application of any public officer, a magistrate is satisfied that any indecent matter is publicly displayed on any building or other structure he may order the owner of the building or structure to remove or efface that indecent matter.

Obliteration of  
indecent matter.

(2) An order shall not be made under subsection (1) if the ground of defence under section 28 is proved in respect of the public display of any matter.

(3) If a person against whom an order is made under subsection (1) fails to comply with the order within the time specified in the order, or if no time is specified, within a reasonable time, the magistrate may by warrant empower any police officer, with such assistance as may be necessary, to enter and if necessary to break into or forcibly enter such premises or place and execute that order.

(4) A police officer in executing an order under subsection (3) shall have all the powers of a police officer acting in the execution of a warrant under section 34.

(5) The Commissioner of Police may apply to a magistrate for an order that a person who has failed to comply with an order made against him under subsection (1) shall pay any expenses reasonably incurred by a police officer in the execution of the order under subsection (3) and the magistrate may make an order for such payment under section 69 of the Magistrates Ordinance notwithstanding that it may exceed the amount mentioned in that section.

(Cap. 227.)

Procedure in relation to obliteration.

**43.** (1) Before making an order to remove or efface any indecent matter under section 42 the magistrate shall, unless he is satisfied that the owner of the building or other structure mentioned in that section 42 cannot for any reason be found or ascertained, issue a summons to him to appear on a day specified in the summons to show cause why an order should not be made to remove or efface that indecent matter.

(2) In addition to the person mentioned in subsection (1) any other person being the owner or manufacturer of the indecent matter mentioned in section 42 may appear before the magistrate on the day specified in the summons to show cause why the order to remove or efface that indecent matter should not be made.

(3) Subsections (4) and (6) of section 41 shall apply in relation to an order to remove or efface indecent matter under section 42 as they apply in relation to an order for forfeiture under section 40.

## PART VIII

### RULES, REGULATIONS AND THE POWERS OF THE REGISTRAR

Chief Justice may make rules.

**44.** The Chief Justice may make rules relating to the practice and procedure to apply to proceedings before a Tribunal, or magistrate, or in any court, under this Ordinance and to appeals under this Ordinance and, in particular, may make rules to provide for—

- (a) the manner of making application under this Ordinance;
- (b) the reference of questions from a court or magistrate to a Tribunal;
- (c) the method of recording a classification or determination of a Tribunal;
- (d) the service of documents;
- (e) the form of any document for the purpose of any proceedings in a Tribunal or for any appeal;
- (f) rights of audience before a Tribunal;
- (g) the giving of notice relating to any proceedings before a Tribunal or any appeal under section 30; and

(h) the award, taxation and recovery of costs relating to any proceedings in a Tribunal.

45. The Registrar may—

Powers of Registrar.

(a) give directions as to the distribution and disposal of the business of a Tribunal;

(b) determine any form of document to be made or issued by a Tribunal; and

(c) permit such person or class of person as he thinks appropriate on payment of any prescribed fee to search—

(i) the register of notices kept by him under section 19(4); and

(ii) the repository of articles kept by him under section 20.

46. The Governor in Council may make regulations to provide for— Regulations.

(a) fees;

(b) the manner of giving of notice under section 18;

(c) the empowering of a Tribunal or the Registrar to waive any prescribed fee; and

(d) the payment of fees and allowances to adjudicators.

## PART IX

### MISCELLANEOUS

47. The Objectionable Publications Ordinance is repealed.

Repeal of Objectionable Publications Ordinance.  
(Cap. 150, 1975 Ed.)

48. Any proceedings under the Objectionable Publications Ordinance commenced before the commencement of this Ordinance may, notwithstanding the repeal of the Objectionable Publications Ordinance by section 47, be continued as if that Ordinance had not been repealed.

Transitional.  
(Cap. 150, 1975 Ed.)