

MISUSE OF DRUGS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Misuse of Drugs Act 1975, and consequentially amends a number of other Acts. The principal features are:

- (a) The maximum penalties that may be imposed for dealing in Class A and Class B controlled drugs are increased:
 - (b) The maximum penalties that may be imposed for conspiracy to deal in Class A and Class B controlled drugs are also increased:
 - (c) Courts sentencing offenders to imprisonment for dealing in Class A and Class B controlled drugs are required to consider imposing fines in addition to imprisonment:
 - (d) Provision is made for Customs officers and the Police to attach tracking devices to vehicles and goods to track drugs or suspected offenders:
 - (e) Provision is also made for the Police to use listening devices to intercept private communications, one party to which is suspected of dealing in Class A or Class B controlled drugs:
 - (f) Every such interception must be undertaken pursuant to a warrant (or emergency permit) issued by a Judge of the Supreme Court:
 - (g) Bail will not be allowed for a person charged with dealing in Class A or Class B controlled drugs, except by order of a Judge of the Supreme Court:
 - (h) Where a Court convicts any person of dealing in Class A or Class B controlled drugs, it will be empowered to impose a fine greater than it would otherwise have imposed if it is satisfied on the balance of probabilities that the offender has money or assets derived from previous drug dealings:
 - (i) A Court sentencing a person to imprisonment for dealing in Class A or Class B controlled drugs is given a circumscribed right to order that the offender be not paroled for a certain period of time:
 - (j) The Crimes Act 1961 is amended to provide general prohibitions in respect of the use of listening devices without statutory authority.
- It is proposed that *Parts III to VI* will be finally enacted as separate amending Acts.

Clause 1 relates to the Short Title.

PART I

AMENDMENTS TO PRINCIPAL ACT

Clause 2 provides that one of the functions of the Minister of Health under the principal Act is to provide and publish reports, information, and advice concerning the misuse of drugs and the rehabilitation of persons suffering from the misuse of drugs.

Clause 3 increases the maximum penalties that may be imposed for dealing in Class A or Class B controlled drugs. The maximum penalty in respect of Class A controlled drugs is increased from 14 years' imprisonment to life imprisonment. In respect of Class B controlled drugs, the maximum penalty is increased from 10 years' to 14 years' imprisonment. The maximum penalty for Class C controlled drugs (8 years' imprisonment) remains unaltered.

In addition, the maximum fines that a Magistrate may impose for dealing in Class A or Class B controlled drugs are increased. In respect of Class A controlled drugs, the maximum fine is increased from \$3,000 to \$15,000. In respect of Class B drugs, the maximum fine is increased from \$3,000 to \$10,000. Again, the maximum fine in respect of Class C controlled drugs (\$1,000) remains unaltered.

Clause 4 inserts in the principal Act a specific offence of conspiring to deal in drugs. At present, this is an offence by virtue of the general provisions of section 310 of the Crimes Act 1961. The purpose of making this new provision in the principal Act is to enable the present maximum penalties to be increased. The maximum term of imprisonment that may be imposed for conspiring to deal in Class A controlled drugs is increased from 7 years to 14 years. In respect of Class B controlled drugs, the maximum term is increased from 7 years to 10 years. The maximum term in respect of Class C controlled drugs remains at 7 years.

Clause 5 requires the Court, whenever it is sentencing an offender to imprisonment for dealing in Class A or Class B controlled drugs to consider whether or not it should also impose a fine.

Clause 6 amends section 12 of the principal Act which makes it an offence for any person to knowingly permit any premises or vehicle to be used for the purposes of an offence against the Act. The amendment extends the ambit of this provision to embrace vessels, aircraft, hovercraft, motor vehicles, and other modes of conveyance.

Clause 7 deals with the case where, on a summary trial, the Crown alleges that the defendant was unlawfully in possession of a controlled drug. It has been held by Mr Justice Mahon (confirmed on appeal) in *Police v Emirali* that the prosecution must show that the amount of the controlled drug in the defendant's possession was of a usable amount. Theoretically, this would have to be proved by the prosecution in every case, although in most cases there would be no real dispute.

Accordingly, the clause provides that the prosecution will not have to prove that the quantity of the drug was of a usable quantity unless the defendant puts the matter in issue.

This provision does not apply to trials on indictment.

Clause 8 amends section 31 (2) of the principal Act. This provision states that the analyst's certificate of the identity of the substance in issue is evidence of the facts stated in the certificate. In some cases, the weight of the substance may be in issue. Accordingly, the amendment provides that where the weight of the substance is stated in the analyst's certificate, the certificate shall be evidence of that weight.

Clause 9 exempts Police officers from any liability under specified sections of the Act for any thing done in the course of their official duties.

PART II

SPECIAL PROVISIONS RELATING TO DETECTION, ENFORCEMENT, AND SENTENCING

Clause 10 is an interpretative provision. An important definition is that of the term "drug dealing offence". This means an offence against section 6 of the principal Act in respect of any Class A or Class B controlled drug. Thus, except as otherwise stated in this note, nothing in this Part relates to Class C controlled drugs.

Special Powers of Police and Customs Officers

Clause 11 provides that *clauses 12 and 13* apply notwithstanding anything in the Post Office Act 1959 or the Customs Act 1966.

Clause 12 authorises any proper officer of Customs to allow any unlawfully imported controlled drug (including Class C controlled drugs) to pass through Customs where this may facilitate the Customs investigation of the case. In respect of postal packets, the Customs officer is authorised to return the packet to the Post Office for delivery. *Subclause (2)* exempts the Customs officer and Post Office personnel from liability in respect of any thing done in the exercise of the powers conferred by this section.

Clause 13 allows Police and Customs officers to use tracking devices for "following" articles, vehicles, etc., believed to contain any drug in respect of which a drug dealing offence has been, or is being, or is about to be, committed, or any suspected offender in respect of such an offence.

Where this power is used the matter must be reported to a Magistrate, who may, if he thinks the circumstances of the case warrant it, refer a copy of the report to the Commissioner of Police or Comptroller of Customs with such recommendations as he thinks fit. In any such case, the Magistrate may also refer a copy of his report to the appropriate Minister.

Listening Devices

Clause 14 provides for the Police to apply to a Judge of the Supreme Court for a warrant authorising a Police officer to intercept private communications by means of a listening device. Such an application may be made where there are reasonable grounds for believing that a person has committed, is committing, or is about to commit a drug dealing offence, and that it is unlikely that the Police investigation of the case could be brought to a successful conclusion by other means.

Subclause (2) requires every application to be made in writing and on oath by a commissioned officer of Police, and sets out the particulars to be included in the application.

Clause 15 specifies the matters of which a Judge must be satisfied before granting an interception warrant, and *clause 16* specifies the matters to be set out in the warrant.

Subclause (2) of *clause 16* provides that a warrant shall be valid for such period, not exceeding 30 days, as the Judge may specify, and *clause 17* provides for the renewal of a warrant.

Clause 18 makes provision for a Judge to issue an emergency permit (orally or otherwise) in any case where he is satisfied that circumstances exist that would justify the grant of a warrant under *clause 15*, but the urgency of the situation requires that the interception should begin before a warrant could with all practicable diligence be obtained. Provision is made for the subsequent confirmation of the permit by the Judge. If the permit is not confirmed, any evidence obtained pursuant to it will be inadmissible.

Clause 19 attempts to balance the possible competing interests where the Police wish any document relating to a warrant or permit to remain confidential, while any party to Court proceedings seeks to have the document produced. The basic principle is that the document should be produced but a Judge may prohibit production to protect the identity of persons who gave information to the Police and of undercover Policemen unless the identity of such persons was essential to the grant of the warrant or permit.

Clause 20 requires the destruction of irrelevant records of information obtained by the interception of a private communication in accordance with a warrant or permit.

Clause 21 requires the destruction of relevant records as soon as it is clear that they are unlikely to be required for Court proceedings.

Clause 22 provides that a person commits an offence if, otherwise than in the performance of his duty, he knowingly discloses the substance, meaning, or purport of a private communication that has been intercepted in accordance with a warrant or permit.

Clause 23 provides that a private communication intercepted in accordance with a warrant or a permit shall not be received in evidence against any person unless the party intending to adduce it has given to the person reasonable notice of his intention together with the prescribed particulars.

Clause 24 renders inadmissible in any proceedings any evidence obtained by the interception of a private communication by means of a listening device otherwise than in pursuance of a warrant or permit. However, if the Judge in any criminal proceedings is satisfied that there has been substantial compliance with the terms of the Bill and a warrant or permit, he may admit the evidence notwithstanding any technical or procedural non-compliance.

Clause 25 renders inadmissible any evidence obtained by the lawful interception of a private communication relating to any offence other than a drug dealing offence.

Clause 26 provides that any private communication that is privileged at law remains privileged notwithstanding its lawful interception by means of a listening device.

Clause 27 requires the Police to report to the Judge on the manner in which they have exercised the powers conferred by a warrant or permit. The report is to include the information specified in *subclause (2)*.

Clause 28 requires the Commissioner of Police to include in his annual report to Parliament information relating to the exercise of the Police powers in respect of listening devices.

Bail

Clause 29 provides that no person charged with or convicted of a drug dealing offence shall be granted bail, except by order of a Judge of the Supreme Court.

Clause 30 empowers the Judge to impose conditions of bail.

Clause 31 provides for the arrest of suspected absconders without warrant, and *clause 32* allows for the arrest without warrant of an offender who has failed to comply with any condition of bail.

Clause 33 applies the relevant provisions of the Summary Proceedings Act 1957 to the grant of bail by Judges under *clause 29*.

Clause 34 entitles an offender to appeal to the Court of Appeal against the refusal by a Judge to grant bail, or the imposition of any condition of bail. The Crown is given the right to appeal to the Court of Appeal against the grant of bail, or the failure to impose any condition of bail.

Clause 35 gives the Court of Appeal jurisdiction to determine such appeals, and *clause 36* provides for the execution of the decisions of that Court in respect of such appeals.

Imposition of Fines

Clause 37 empowers a Court to impose on an offender convicted of a drug dealing offence a fine greater than it would otherwise have imposed if it is satisfied on the balance of probabilities that any money or assets owned by the offender have been derived by him from earlier drug dealing offences. This power can be exercised only on application by the Crown, and the clause provides for notice of the Crown's intention to make such an application to be given to the offender.

Clause 38 provides that this power cannot be exercised twice in respect of the same money or assets, nor in respect of any alleged previous drug dealing offences in respect of which the offender has been charged but acquitted.

Clause 39 provides that the offender's inability to explain the source of his money or assets shall be evidence that he derived it or them from previous drug dealing offences.

Clause 40 provides that where the Court is satisfied that the offender has disposed of any money or assets to defeat the exercise of the Court's powers, it may treat that money or those assets as still belonging to the offender for the purpose of *clause 37*.

Enforcement of Fines

Clause 41 confers on the Registrar of the Supreme Court the powers specified in the clause to investigate the offender's means where he is in default of payment of a fine. On the basis of the Registrar's report on the offender's means, a Judge may make any order specified in *paragraph (e)*. *Paragraph (g)* provides that any property treated as the offender's under *clause 40* shall be amenable to any such order of the Court.

Clause 42 makes similar provision in respect of the enforcement of fines in Magistrates' Courts.

Clause 43 provides that, where a Registrar of a Magistrate's Court believes that a fine imposed in that Court may be more adequately enforced in the Supreme Court, he may arrange to have it enforced in that Court.

Clause 44 provides, in effect, for the seizure of money standing to the credit of the offender by the Registrar by way of enforcement of a fine.

Parole

Clause 45 relates to parole. *Subclause (1)* provides that where any person convicted of a drug dealing offence is sentenced to imprisonment for a term of 10 years or more, the Judge may order that the offender shall not be considered for release on parole for such period, not exceeding 7 years, as he may specify.

Subclause (2) provides that where such a person is sentenced to less than 10 years' imprisonment, the Judge imposing the sentence may order that the offender may not be recommended for release on parole for such period, not exceeding seven-tenths of the term of the sentence, as he may specify.

Administration of Part

Clause 46 provides that this Part is to be administered by the Department of Justice. The principal Act is administered by the Department of Health.

PART III

AMENDMENTS TO CRIMINAL JUSTICE ACT 1954

Clause 47 is a machinery provision.

Clause 48 consequentially amends section 33A of the Criminal Justice Act 1954 in a number of respects.

Subclause (1) provides that a person who is sentenced to life imprisonment for a drug dealing offence shall be eligible to be considered for parole when he has served 7 years.

Subclause (2) provides that where, under *clause 45* of the Bill, a Judge has specified that an offender shall not be considered for parole during a certain period, that offender's case shall be considered at the expiry of that period.

Subclause (3) is a consequential drafting amendment.

Subclauses (4) and (5) provide that the present power of the Prisons Parole Board to consider any case in exceptional circumstances will prevail notwithstanding any order of the Court under *clause 45* of the Bill.

Subclauses (6) and (7) are of a consequential drafting nature only.

PART IV

AMENDMENTS TO PENAL INSTITUTIONS ACT 1954

Clause 49 is a machinery provision.

Clause 50 makes it clear that an order of the Court under *clause 45* of the Bill does not affect the offender's right to ordinary remission during the currency of the order, but does remove his right to extra remission.

PART V

AMENDMENTS TO SUMMARY PROCEEDINGS ACT 1957

Clause 51 is a machinery provision.

Clause 52 makes technical amendments to 2 sections of the Summary Proceedings Act 1957 consequential upon *clause 29* of the Bill.

Clause 53 is consequential upon *clause 55* of the Bill. It provides that the offences created by that clause may be tried summarily.

PART VI

AMENDMENTS TO CRIMES ACT 1961

Clause 54 is a machinery provision.

Clause 55 inserts in the principal Act a new Part IXA (comprising *sections 216A to 216B*) relating to crimes against personal privacy.

Section 216A is an interpretative provision.

Section 216B prohibits the intentional interception of any private communication by means of a listening device. The prohibition does not apply to parties to the communication, or to persons who intercept the communication pursuant to any authority conferred by or under any other enactment.

Section 216C provides that, whereas private communication has been intercepted in contravention of *section 216B*, every person commits an offence who intentionally discloses or makes use of the private communication or discloses the existence thereof. The prohibition does not apply to disclosure by or with the consent of one of the parties to the communication, or to disclosure for the purpose of a Police investigation or any Court proceedings.

Section 216D makes it an offence to issue an invitation to the public to purchase, or to offer or expose for sale to the public, any listening device or any component thereof knowing that the design of such a device renders it primarily useful for the surreptitious interception of private communications.

Hon. T. F. Gill

MISUSE OF DRUGS AMENDMENT

ANALYSIS

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- 216A. Interpretation
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A BILL INTITULED

An Act to facilitate the detection of certain drug dealing offences, to increase the maximum penalties that may be imposed in respect of such offences, and to amend the Misuse of Drugs Act 1975

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BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act (except Parts III to VI) may be cited as the Misuse of Drugs Amendment Act 1978, and shall be read together with and deemed part of the Misuse of Drugs Act 1975* (hereinafter referred to as the principal Act).

PART I

AMENDMENTS TO PRINCIPAL ACT

2. Functions of Minister—The principal Act is hereby amended by inserting, after section 4, the following section:

5 “4A. For the purposes of this Act the functions of the Minister, on behalf of the Crown, shall include the provision and publication of reports, information, and advice concerning the misuse of drugs and the rehabilitation of persons suffering from the misuse of drugs.”

10 **3. Maximum penalties for dealing with controlled drugs increased**—(1) Section 6 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

15 “(2) Every person who contravenes subsection (1) of this section commits an offence against this Act and is liable on conviction on indictment to—

20 “(a) Imprisonment for life where a Class A controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed:

“(b) Imprisonment for a term not exceeding 14 years where paragraph (a) of this subsection does not apply but a Class B controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed:

25 “(c) Imprisonment for a term not exceeding 8 years in any other case.”

(2) The said section 6 is hereby further amended—

30 (a) By omitting from paragraph (a) of subsection (3) the expression “\$3,000”, and substituting the expression “\$15,000”:

(b) By omitting from paragraph (b) of that subsection the expression “\$2,000”, and substituting the expression “\$10,000”.

35 **4. Conspiring to commit certain offences**—(1) Section 6 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsection:

40 “(2A) Every person who conspires with any other person to commit an offence against subsection (1) of this section commits an offence against this Act and is liable on conviction on indictment to imprisonment for a term—

- “(a) Not exceeding 14 years where a Class A controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed:
- “(b) Not exceeding 10 years where paragraph (a) of this subsection does not apply but a Class B controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed:
- “(c) Not exceeding 7 years in any other case.”
- (2) The said section 6 is hereby further amended—
- (a) By inserting in paragraph (a) of subsection (3), after the words “of subsection (2)”, the words “or paragraph (a) of subsection (2A)”:
- (b) By inserting in paragraph (b) of subsection (3), after the words “of subsection (2)”, the words “or paragraph (b) of subsection (2A)”.

5. Court to consider possibility of fine in addition to imprisonment—Section 6 of the principal Act is hereby further amended by inserting, after subsection (4), the following subsection:

“(4A) Without limiting anything in subsections (3) and (4) of this section or in section 44 of the Criminal Justice Act 1954, where any person is convicted of an offence relating to a Class A controlled drug or a Class B controlled drug against any of paragraphs (a), (b), (c), and (f) of subsection (1) of this section, the Judge or Magistrate, if he decides to impose a custodial sentence as aforesaid, shall consider whether or not he should also impose a fine.”

6. Use of premises or vehicle, etc.—Section 12 (1) of the principal Act is hereby amended by omitting the word “vehicle”, and substituting the words “any vessel, aircraft, hovercraft, motor vehicle, or other mode of conveyance”.

7. Issue of usable quantity—The principal Act is hereby amended by inserting, after section 29, the following section:

“29A. (1) On the summary trial of any person charged with an offence against this Act in which it is alleged that the defendant had in his possession any controlled drug in contravention of this Act, it shall not be necessary for the prosecution to prove that the amount of the controlled drug in the defendant’s possession was of a usable quantity, unless the defendant puts the matter in issue.

“(2) Where, in the course of a summary trial, the defendant puts in issue the question of whether or not the amount of any controlled drug alleged to have been in his possession was of a usable quantity, the Magistrate shall, if requested
5 to do so by the prosecutor, adjourn the hearing for such period as he considers sufficient to enable the prosecutor to arrange for the attendance in Court of a witness or witnesses to adduce evidence that that amount was of a usable quantity; and, if the prosecutor has closed his case before the said
10 question is put in issue, the Magistrate shall also grant the prosecutor leave to re-open his case for the purpose of adducing evidence that the amount of the drug was of a usable quantity.

8. Analyst’s certificate to be evidence of weight—Section
15 31 (2) of the principal Act is hereby amended by inserting, after the words “a particular controlled drug”, the words “(whether of a specified or unspecified weight)”.

9. Protection of Police officers—The principal Act is hereby amended by inserting, after section 34, the following
20 section:

“34A. No member of the Police shall be guilty of an offence against any of the provisions of sections 6, 7, 10, 12, and 13 of this Act by reason of any act done by him in the performance of his duty, notwithstanding that that act, but for this
25 section, would have constituted such an offence.”

PART II

SPECIAL PROVISIONS RELATING TO DETECTION, ENFORCEMENT, AND SENTENCING

10. Interpretation—(1) In this Part of this Act, unless the
30 context otherwise requires,—

“Drug dealing offence” means any offence against section 6 of the principal Act in relation to a Class A controlled drug or a Class B controlled drug:

35 “Emergency permit” means a permit granted under section 18 of this Act to intercept a private communication by means of a listening device:

“Intercept”, in relation to a private communication, includes hear, listen to, record, monitor, or acquire the communication:

“Interception warrant” means a warrant granted under section 15 of this Act to intercept a private communication by means of a listening device:

“Listening device” means any electronic, mechanical, or electromagnetic instrument, apparatus, equipment, or other device that is used or is capable of being used to intercept a private communication; but does not include a hearing aid or similar device used to correct subnormal hearing of the user to no better than normal hearing:

“Private communication” means any oral communication made under circumstances that may reasonably be taken to indicate that any party to the communication desires it to be confined to the parties to the communication; but does not include such a communication occurring in circumstances in which any party ought reasonably to expect that the communication may be intercepted by some other person not having the express or implied consent of any party to do so:

“Proper officer of Customs”, in relation to any power conferred by or under section 12 or section 13 or section 16 of this Act, means any officer of Customs exercising or authorised to exercise that power by the order or with the concurrence (whether precedent or subsequent) of the Minister of Customs or the Comptroller of Customs, or in pursuance of any other lawful authority:

“Tracking device” means a device capable of transmitting a signal to a receiver for the purpose of indicating the location of the device.

(2) A reference in this Part of this Act to a party to a private communication is a reference to—

- (a) Any originator of the communication and any person intended by the originator to receive it; and
- (b) A person who, with the express or implied consent of any originator of the communication or any person intended by the originator to receive it, intercepts the communication.

(3) For the purposes of sections 12 and 13 of this Act,—
“Aircraft”, “boat”, “bulk cargo container”, “goods”,
“package”, “pallet”, “ship”, and “vehicle” have the
5 same meanings as in section 2 of the Customs Act
1966:

“Postal packet” has the same meaning as in section 305
(3) of the Customs Act 1966.

Special Powers of Police and Customs Officers

10 **11. Application of sections 12 and 13**—The provisions of
sections 12 and 13 of this Act shall apply notwithstanding
anything in the Post Office Act 1959 or the Customs Act
1966.

**12. Allowing delivery of unlawfully imported drugs for
purpose of detection, etc.**—(1) Where any proper officer of
15 Customs acting in the course of his official duties believes on
reasonable grounds that there is in or on any aircraft, boat,
bulk cargo container, package, pallet, postal packet, ship,
vehicle, or goods any controlled drug that has been imported
20 into New Zealand in contravention of section 6 (1) (a) of
the principal Act, he may, for the purpose of his investigation
of the matter, leave or replace that drug, or any portion of it,
in or on the aircraft, boat, bulk cargo container, package,
pallet, postal packet, ship, vehicle, or goods and may, in the
25 same manner as if there had been delivery from Customs
control,—

(a) Allow the aircraft, boat, ship, or vehicle to leave;
or

(b) Allow the bulk cargo container, package, pallet, or
goods to be collected by or delivered to or on behalf
30 of the consignee; or

(c) Return the postal packet to the Post Office for delivery
to the addressee—

(as the case may require).

35 (2) No proper officer of Customs who exercises any power
conferred by subsection (1) of this section, and no officer or
employee of the Post Office who, in the ordinary course of
his duties, does any thing in respect of any postal packet
returned to the Post Office in accordance with that subsection
40 (whether or not he knows that the postal packet contains
a controlled drug), shall be under any criminal or civil
liability in respect thereof.

13. Use of tracking devices by Police and Customs officers—

(1) Where any member of the Police or proper officer of Customs believes on reasonable grounds that—

(a) A drug dealing offence has been or is being or is about to be committed; and

(b) The drug is in or on any aircraft, boat, bulk cargo container, package, pallet, ship, vehicle, or goods, or any person involved or suspected to be involved in the offence is in or on any aircraft, boat, ship, or vehicle,—

he may, for the purpose of his investigation of the matter, place a tracking device in or on that aircraft, boat, bulk cargo container, package, pallet, ship, vehicle, or goods.

(2) The power conferred by subsection (1) of this section may be exercised in respect of any postal packet that any proper officer of Customs intends to return to the Post Office pursuant to section 12 (1) (c) of this Act, but shall not be exercisable in respect of any other postal packet.

(3) Within 72 hours of having placed a tracking device in or on any object pursuant to subsection (1) of this section, the member of the Police or proper officer of Customs shall lodge a written report on the exercise of the power, and the circumstances in which it came to be exercised, with the Registrar of a Magistrate's Court, who shall, as soon as reasonably practicable, bring the report to the notice of a Magistrate.

(4) If the Magistrate to whom the report is referred pursuant to subsection (2) of this section considers that the circumstances so warrant, he shall refer a copy of the report to the Commissioner of Police or the Comptroller of Customs, as the case may require, with such recommendations as he thinks fit. In any such case, the Magistrate may also refer a copy of his report to the Minister of Police or, as the case may require, the Minister of Customs.

(5) Every report made under subsection (3) of this section shall be personal to the Magistrate, and shall be retained by him in safe custody.

Listening Devices

14. Application by Police for warrant to intercept private communications—(1) An application may be made in accordance with this section to a Judge of the Supreme Court for a warrant for any member of the Police to intercept a private communication by means of a listening device in any case where there are reasonable grounds for believing that—

- (a) A person has committed, or is committing, or is about to commit, a drug dealing offence; and
 - (b) It is unlikely that the Police investigation of the case could be brought to a successful conclusion without the grant of such a warrant.
- 5
- (2) Every application under subsection (1) of this section shall be made by a commissioned officer of Police, in writing, and on oath, and shall set out the following particulars:
- 10 (a) The facts relied upon to show that there are reasonable grounds for believing that a person has committed, or is committing, or is about to commit, a drug dealing offence; and
 - (b) A general description of the manner in which it is proposed to intercept private communications; and
 - 15 (c) The name and address, if known, of the suspect whose private communications there are reasonable grounds for believing will assist the Police investigation of the case, or, if the name and address of the suspect are not known, a general description of the premises or place in respect of which it is proposed to intercept private communications, being premises or a place believed to be used for any purpose by any person involved in the drug dealing offence; and
 - 20 (d) The period for which a warrant is requested; and
 - (e) Whichever of the following is applicable:
 - 25 (i) The other investigative procedures and techniques that have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case, and the reasons why they have failed in that respect; or
 - 30 (ii) The reasons why it appears that other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case, or are likely to be too dangerous to adopt in the particular case; or
 - 35 (iii) The reasons why it is considered that the case is so urgent that it would be impractical to carry out the Police investigation using only investigative procedures and techniques other than the interception of private communications.
 - 40

15. Matters on which Judge must be satisfied in respect of applications—On an application made to him in accordance with section 14 of this Act, the Judge may grant an

interception warrant if he is satisfied that it would be in the best interests of the administration of justice to do so, and that—

- (a) There are reasonable grounds for believing that a person has committed, or is committing, or is about to commit a drug dealing offence; and 5
- (b) There are reasonable grounds for believing that evidence relevant to the investigation of the offence will be obtained through the use of a listening device to intercept private communications; and 10
- (c) Whichever of the following is applicable:
 - (i) Other investigative procedures and techniques have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case; or 15
 - (ii) Other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case, or are likely to be too dangerous to adopt in the particular case; or 20
 - (iii) The case is so urgent that it would be impractical to carry out the Police investigation using only investigative procedures and techniques other than the interception of private communications; and 25
- (d) The private communications to be intercepted are not likely to be privileged in proceedings in a Court of law by virtue of section 8 of the Evidence Act 1908 or of any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and his client. 30

16. Contents and term of warrant—(1) Every interception warrant shall—

- (a) State the offence in respect of which the warrant is granted; and 35
- (b) State the name and address of the suspect, if known, whose private communications may be intercepted, or, where his name and address are not known, the premises or place in respect of which private communications may be intercepted, being premises or a place believed to be used for any purpose by any person involved in the drug dealing offence; and 40

- (c) Specify the commissioned officer of Police who (with any other member of the Police or proper officer of Customs for the time being assisting him) may intercept the private communications; and
 - 5 (d) Where the Judge considers it necessary, contain express authority to enter (with force, where necessary) any aircraft, ship, hovercraft, carriage, vehicle, or premises for the purpose of placing, servicing, or retrieving a listening device; and
 - 10 (e) Contain such additional terms and conditions as the Judge considers advisable in the public interest.
- (2) Without limiting subsection (1) of this section, where it is proposed to place a listening device in the residential or business premises of a person who is a barrister or solicitor,
- 15 or a clergyman, or a registered medical practitioner, the Judge shall prescribe such conditions (if any) as he considers desirable to avoid so far as practicable the interception of communications of a professional character to which the barrister or solicitor or clergyman or registered medical practitioner is a party.
- 20 (3) Every interception warrant shall be valid for such period, not exceeding 30 days, as the Judge shall specify in the warrant.

17. **Renewal of warrants**—(1) Any Judge of the Supreme Court may from time to time grant a renewal of an interception warrant upon application made to him at any time before the warrant (or any current renewal thereof) has expired.

(2) Every application for the renewal of an interception warrant shall be made in the manner provided by section 14 of this Act, and shall give—

- (a) The reason and period for which the renewal is required; and
- 35 (b) Full particulars, together with times and dates, of any interceptions made or attempted under the warrant, and an indication of the nature of the information that has been obtained by every such interception.

(3) Every such application shall be supported by such information as the Judge may require.

(4) A renewal of an interception warrant may be granted under this section if the Judge is satisfied that the circumstances described in section 15 of this Act still obtain.

(5) Every renewal of an interception warrant shall be valid for such period, not exceeding 30 days, as the Judge shall specify in the renewal.

(6) A renewal of an interception warrant may be granted upon an application made within the time prescribed by subsection (1) of this section notwithstanding that the warrant (or any renewal thereof) has expired before the application is determined. 5

(7) Nothing in this section shall prevent a Judge from granting a second or subsequent renewal of an interception warrant upon an application duly made to him. 10

18. Emergency permits—(1) In any case where a Judge is satisfied that circumstances exist that would justify the grant of an interception warrant under section 15 of this Act, but the urgency of the situation requires that the interception should begin before a warrant could with all practicable diligence be obtained, the Judge may, orally or otherwise, grant an emergency permit for the interception of private communications in respect of particular premises or a particular place and in a particular manner. 15 20

(2) No emergency permit shall authorise the interception of telephonic communications.

(3) Any application for an emergency permit may be made orally, but otherwise every such application shall comply with the requirements of section 14 of this Act. 25

(4) Where the Judge grants the application for an emergency permit, he shall forthwith make a note in writing of the particulars of the application and of the terms of the permit. The note shall be filed in the Supreme Court Registry nearest to where the application is made, and shall, for the purposes of section 19 (1) of this Act, be deemed to be a document relating to the application for the permit. 30

(5) The provisions of section 16 of this Act, so far as they are applicable and with the necessary modifications, shall apply to emergency permits in the same manner as they apply to interception warrants. 35

(6) Every emergency permit shall remain valid for 48 hours from the time when it is given, and shall then expire.

(7) On filing the report required by section 27 of this Act, the member of the Police who applied for the emergency permit (or, if he is not the member filing the report, then ~~that member~~) may apply to the Judge who granted the permit (or, if he is not the Judge receiving the report, then that Judge) for a certificate confirming the permit pursuant to subsection (9) of this section. 40 45

(8) Where the Police, within the period of 48 hours during which the emergency permit is valid, apply for an interception warrant in place of the permit, the member of the Police applying for the warrant may also apply for a certificate
5 confirming the permit pursuant to subsection (9) of this section.

(9) The Judge to whom an application is made pursuant to subsection (7) or subsection (8) of this section shall issue a certificate confirming the permit if he is satisfied, having
10 regard to the requirements of section 15 of this Act, that if the original application for the emergency permit had been an application for an interception warrant, he would have granted a warrant.

(10) For the purposes of section 24 of this Act, an inter-
15 ception of a private communication pursuant to an emergency permit shall be deemed to have been made unlawfully unless the Judge to whom an application is made in accordance with subsection (7) or subsection (8) of this section issues a certificate confirming the permit pursuant to subsection
20 (9) of this section.

19. Security of applications—(1) As soon as an application for an interception warrant or for a renewal of an interception warrant or for an emergency permit or for a certificate confirming an emergency permit has been determined by the
25 Judge, the Registrar shall place all documents relating to the application (except the warrant or renewal or permit or certificate itself) in a packet, seal the packet, and thereafter keep it in safe custody, subject to the succeeding provisions of this section.

(2) Notwithstanding any enactment or rule of law or rules of Court entitling any party to any proceedings to demand the production of any documents, no such party shall be entitled to demand the production of any documents held in safe custody pursuant to subsection (1) of this section,
35 except in accordance with the succeeding provisions of this section.

(3) Every such party who requires the production of any document held in safe custody pursuant to subsection (1) of this section shall, except in a case to which subsection (9) or
40 subsection (10) of this section applies, apply in writing to the Registrar, who shall forthwith notify the senior Police officer in the district.

(4) If, within 3 days after notice is given to the senior Police officer in the district under subsection (3) of this section, that officer gives written notice to the Registrar that he intends to oppose the production of the documents, the Registrar shall refer the matter to a Judge. 5

(5) Where the senior Police officer in the district does not give written notice to the Registrar as aforesaid, the Registrar shall produce the documents to the party applying for production.

(6) Where a matter is referred to a Judge pursuant to subsection (4) of this section, both the person requesting production of the documents and the member of the Police opposing production shall be given an opportunity to be heard. 10

(7) If the Judge is satisfied that information in any document the production of which is in dispute— 15

(a) Identifies or is likely to lead to the identification of a person who gave information to the Police, or of any member of the Police whose identity was concealed for the purpose of any relevant investigation and has not been subsequently revealed; and 20

(b) Was not essential to the grant of the warrant or renewal or permit,—

he may, if he believes it in the public interest to do so, order that the whole or any specified part of the document be not produced. 25

(8) Subject to the provisions of subsection (7) of this section, the Judge shall order the production of the documents to the party requesting it.

(9) Where a request for the production of any document kept in safe custody pursuant to subsection (1) of this section is made in the course of any proceedings presided over by a Judge and the request is opposed, the Judge shall adjudicate upon the matter as if it had been referred to him pursuant to subsection (4) of this section. 30 35

(10) Where such a request is made in the course of any other proceedings, the presiding judicial officer shall forthwith refer the matter to a Judge for adjudication as aforesaid.

20. Destruction of irrelevant records made by use of listening device—(1) Every person who intercepts a private communication in pursuance of an interception warrant or any emergency permit shall, as soon as practicable after it has
5 been made, destroy any record, whether written or otherwise, of the information obtained by that interception if none of the information directly or indirectly relates to the commission of a drug dealing offence.

(2) Every person who fails to comply with subsection (1)
10 of this section commits an offence and is liable on summary conviction to a fine not exceeding \$500.

21. Destruction of relevant records made by use of listening device—(1) The Commissioner of Police shall ensure that every record (other than a record produced in any proceedings),
15 whether written or otherwise, of the information obtained by the Police from the interception of a private communication in pursuance of an interception warrant or an emergency permit, being information that relates wholly or partly and directly or indirectly to the commission of a
20 drug dealing offence, is destroyed as soon as it appears that no proceedings, or no further proceedings, will be taken in which the information would be likely to be required to be produced in evidence.

(2) Every report made to a Judge in accordance with section 27
25 of this Act shall state whether or not subsection (1) of this section has yet been complied with, and, if it has not, the Judge shall give such directions relating to the eventual destruction of the record as he thinks necessary to ensure compliance with that subsection, including a requirement
30 that he be advised when the record has been destroyed.

22. Prohibition on disclosure of private communications lawfully intercepted—(1) No person who—

(a) Intercepts or assists in the interception of a private communication in pursuance of an interception
35 warrant or emergency permit; or

(b) Acquires knowledge of a private communication as a direct or indirect result of that interception—
shall knowingly disclose the substance, meaning, or purport of that communication, or any part of that communication,
40 otherwise than in the performance of his duty.

(2) Every person who acts in contravention of subsection (1)
of this section commits an offence and is liable on summary conviction to a fine not exceeding \$500.

23. Notice to be given of intention to produce evidence of private communication—A private communication intercepted pursuant to an interception warrant or an emergency permit shall not be received in evidence by any Court against any person unless the party intending to adduce it has given to that person reasonable notice of his intention to do so, together with— 5

- (a) A transcript of the private communication where he intends to adduce it in the form of a recording, or a written statement setting forth the full particulars of the private communication where he intends to adduce oral evidence of it; and 10
- (b) A statement of the time, place, and date of the private communication, and of the names and addresses of the parties to the communication, if they are known. 15

24. Inadmissibility of evidence of private communications unlawfully intercepted—(1) Subject to subsections (2) and (3) of this section, where a private communication intercepted by means of a listening device otherwise than in pursuance of an interception warrant or emergency permit properly issued under this Act has come to the knowledge of a person as a direct or indirect result of that interception or its disclosure, no evidence of that communication, or of its substance, meaning, or purport, and no evidence obtained as a direct or indirect result of the interception or disclosure of that communication, shall be given against any person who was a party to the communication, except in proceedings relating to the unlawful interception of a private communication by means of a listening device or the unlawful disclosure of a private communication unlawfully intercepted in that manner. 20 25 30

(2) Where in any criminal proceedings for a drug dealing offence, the Court is of the opinion that any evidence that is inadmissible by virtue of subsection (1) of this section— 35

- (a) Is relevant; and
- (b) Is inadmissible by virtue of that subsection merely because of a defect of form or an irregularity in procedure, not being a substantive defect or irregularity, in the application for or the granting of the interception warrant or emergency permit, or in the manner in which the evidence was obtained,— 40

and that the defect in form or irregularity in procedure was not the result of bad faith, the Court may admit that evidence.

(3) Subsection (1) of this section shall not render inadmissible evidence of a private communication that has, in the manner referred to in that subsection, come to the knowledge of the person called to give evidence, if all the parties to the communication (other than any person referred to in section 10 (2) (b) of this Act) consent to that person giving the evidence.

25 **25. Inadmissibility of evidence of private communications lawfully intercepted**—Where a private communication intercepted in pursuance of an interception warrant or an emergency permit discloses evidence relating to any offence other than a drug dealing offence, no evidence of that communication, or of its substance, meaning, or purport, shall be given in any Court.

15 **26. Privileged evidence**—Where evidence obtained by the interception of a private communication would, but for the interception, have been privileged by virtue of—

(a) Section 8 of the Evidence Act 1908; or

20 (b) Any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and his client,—

such evidence remains privileged and shall not be given in any Court, except with the consent of the person entitled to waive that privilege.

25 **27. Report to be made to Judge on use of warrant or permit**—(1) As soon as practicable after an interception warrant or an emergency permit has expired, the member of the Police who applied for it, or (if he is unable to act) another commissioned officer of Police, shall make a written report to the Judge who granted the warrant or permit, or (if he is unable to act) to another Judge, on the manner in which the power conferred by the warrant or permit has been exercised and the results obtained by the exercise of that power.

35 (2) Without limiting the generality of subsection (1) of this section, every report made for the purposes of that subsection shall contain the following information:

(a) Where the listening device was placed:

40 (b) The number of interceptions made by means of the listening device:

- (c) Whether any relevant evidence was obtained by means of the listening device:
 - (d) Whether any relevant evidence has been, or is intended to be, used in any criminal proceedings:
 - (e) Whether any records of a private communication intercepted pursuant to the warrant or permit have been destroyed in accordance with section 20 or section 21 of this Act, and, if not, why they have not been destroyed: 5
 - (f) Whether the listening device has been retrieved, and, if not, why it has not been retrieved. 10
- (3) On receiving a report under this section, the Judge may require such further information relating to the matter as he thinks fit, and (in addition to any directions he gives for the purposes of section 21 (2) of this Act) he may give 15 such directions as he thinks desirable, whether relating to the retrieval of the listening device, or otherwise.

28. Commissioner of Police to give information to Parliament—The Commissioner of Police shall include in every annual report prepared by him for the purposes of section 65 of the Police Act 1958 the following information in respect of the period under review: 20

- (a) The number of applications for warrants made under section 14 of this Act; and
- (b) The number of applications for renewals of warrants made under section 17 of this Act; and 25
- (c) The number of applications for emergency permits made under section 18 of this Act; and
- (d) The number of such applications referred to in each of the preceding paragraphs of this subsection that were granted, and the number that were refused; and 30
- (e) The average duration of warrants (including renewals).

Bail

35

29. Bail not allowable in certain cases without order of Judge—No person who is charged with or convicted of a drug dealing offence shall be granted bail, except by order of a Judge of the Supreme Court.

30. Judge may impose conditions of bail—(1) Whenever a Judge grants a defendant bail under section 29 of this Act, he may impose as a condition of the defendant's release—

- 5 (a) A condition that the defendant shall report to the Police at such time or times and at such place or places as the Judge orders:
 - 10 (b) Any other condition that appears to the Judge to be likely to result in the defendant attending personally at the time and place, or times and places, to which the hearing of the charge against the defendant or the passing of sentence on the defendant or the hearing of an appeal by or against the defendant is or may be from time to time adjourned:
 - 15 (c) Any other condition that appears to the Judge to be necessary or desirable in the interests of justice or for the prevention of crime.
- (2) Where a Judge imposes any condition of bail pursuant to paragraph (b) or paragraph (c) of subsection (1) of this section, he shall not require any surety to be found in respect
20 of that condition.

31. Arrest of defendant who has absconded or is about to abscond while on bail—(1) Notwithstanding anything in section 320 of the Crimes Act 1961, where a defendant has been released on bail pursuant to section 29 of this Act, any
25 member of the Police may arrest that person without warrant if—

- 30 (a) The member of the Police believes, on reasonable grounds, that the defendant has absconded or is about to abscond for the purpose of evading justice; or
 - 35 (b) The Police have been notified in writing by any surety for the defendant that the surety believes that the defendant has absconded or is about to abscond for the purpose of evading justice, and the member of the Police is satisfied that there are reasonable grounds for that belief.
- (2) Every defendant who has been arrested pursuant to subsection (1) of this section shall be brought before a Judge as soon as practicable, and in any event not later than 24
40 hours.
- (3) Where any defendant is brought before a Judge pursuant to subsection (2) of this section, the Judge shall, on being satisfied that the defendant had absconded or was about to abscond, remand the defendant in custody.

32. Arrest of defendant who fails to comply with any conditions of bail—(1) Where a defendant has been released on bail pursuant to section 29 of this Act, and any condition was imposed by the Judge on the grant of bail pursuant to section 30 of this Act, any member of the Police may arrest that person without warrant if— 5

- (a) The member of the Police believes, on reasonable grounds, that the defendant has broken, is breaking, or is about to break, any such condition of bail; or 10
- (b) The Police have been notified in writing by any surety for the defendant that the surety believes that the defendant has broken, is breaking, or is about to break, any such condition of bail, and the member of the Police is satisfied that there are reasonable grounds for that belief. 15

(2) Every defendant who has been arrested pursuant to subsection (1) of this section shall be brought before a Judge as soon as practicable, and in any event not later than 24 hours. 20

(3) Where a defendant is brought before a Judge pursuant to subsection (2) of this section, the Judge may, subject to section 47 of the Criminal Justice Act 1954,—

- (a) On being satisfied that the defendant has broken, was breaking, or was about to break any condition of bail, remand the defendant in custody; or 25
- (b) Release the defendant, in which case the defendant shall continue to be on bail and his bail bond shall continue in force in all respects as if he had not been arrested pursuant to this section. 30

(4) Notwithstanding anything in subsection (3) (b) of this section, in any case where the defendant was arrested pursuant to subsection (1) (b) of this section, the Judge shall release the defendant pursuant to the said subsection (3) (b) only if the surety consents in writing to the release. 35

(5) Where the surety does not consent in writing to the release, the Judge shall release the defendant pursuant to subsection (3) (b) of this section only on a fresh bail bond.

33. Application of certain provisions of Summary Proceedings Act 1957—(1) Nothing in sections 46, 49 (1), 51 to 54, 56, 125, 126, and 153 (a), (d), (f), and (g) of the Summary Proceedings Act 1957 shall apply in respect of any person charged with or convicted of a drug dealing offence. 40

(2) Except as provided in subsection (1) of this section, the provisions of sections 47 to 59, 125 to 128, and 153 of the Summary Proceedings Act 1957 shall apply in respect of any person charged with or convicted of a drug dealing
5 offence as if every reference to a Court or Magistrate or Justice in those provisions were a reference to a Judge of the Supreme Court.

34. Appeals against decisions of Judge relating to bail—

(1) Every person who applies for but is refused bail under
10 section 29 of this Act may appeal to the Court of Appeal against that refusal.

(2) Every person who is granted bail pursuant to section 29 of this Act subject to any condition imposed under section 30 of this Act may appeal to the Court of Appeal against the
15 imposition of that condition.

(3) Where any person is granted bail pursuant to section 29 of this Act, the Crown may appeal to the Court of Appeal against that grant, or against any failure or refusal to impose any condition that could have been imposed under section 30
20 of this Act.

(4) Every person wishing to appeal under this section against any decision of a Judge made pursuant to section 29 or section 30 of this Act shall file notice of his intention to appeal with the Registrar of the Court of Appeal within 10
25 days after the date of the decision to be appealed against.

(5) Every appeal under this section that is not heard before the date on which the decision appealed against ceases to be of any effect shall lapse on that date, and shall be deemed to have been dismissed by the Court of Appeal for
30 want of prosecution.

(6) No decision of a Judge appealed against under this section shall be suspended merely because that notice of appeal has been given.

35. Court of Appeal to hear and determine appeal—

(1) The Court of Appeal shall hear and determine every
35 appeal under this section, and may confirm the decision appealed against, or, if it is satisfied that the Judge in making that decision exercised his discretion wrongly, it may reverse or modify that decision.

(2) Where, on any appeal under section 34 of this Act against a refusal to grant bail, the Court of Appeal determines that bail shall be granted, it shall have the same powers to impose any condition of bail that a Judge of the Supreme Court has under section 30 of this Act.

5

36. Execution of decision of Court of Appeal—(1) Where, on any appeal under section 34 of this Act against a refusal to grant bail, the Court of Appeal determines that bail shall be granted, the Judge whose decision was appealed against, or, if he is unable to act, another Judge of the Supreme Court, shall, on receiving notice of the decision of the Court of Appeal, order that the defendant be released on bail, subject to such conditions as the Court of Appeal may have specified in its decision.

10

(2) Where, on an appeal under section 34 of this Act against a condition of bail, the Court of Appeal cancels or amends that condition or substitutes any other condition, the Registrar of the Court whose decision was appealed against shall send written notice to the defendant and to every surety requiring them to attend at a specified time and place for the execution of a fresh bail bond containing the conditions (if any) required to give effect to the Court of Appeal's decision.

20

(3) If, in any case to which subsection (2) of this section applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond as aforesaid, the Registrar shall refer the matter to a Judge, who may issue a warrant for the arrest of the defendant.

25

(4) Where, on an appeal under section 34 of this Act against a grant of bail, the Court of Appeal determines that bail shall not be granted, the defendant shall be remanded in custody.

30

(5) For the purpose of giving full effect to any decision of the Court of Appeal under section 35 of this Act, the provisions of sections 31 to 33 of this Act, so far as they are applicable and with the necessary modifications, shall apply as if the decision were made by a Judge of the Supreme Court under sections 29 and 30 of this Act.

35

Imposition of Fines

37. Court may impose greater fine having regard to previous dealings—(1) In any case where any person is convicted of a drug dealing offence (in this section referred to as the
5 primary offence) and the Court by which he is convicted is, on the application of the Crown, satisfied on the balance of probabilities that any money or assets owned by the offender at the date of his trial has or have been acquired by him
10 directly or indirectly from any conduct (other than conduct that constituted the primary offence) that constitutes a drug dealing offence, the Court may, having regard to the amount of such money or the value of such assets, impose a fine greater than it would otherwise have imposed on the offender for the primary offence.

15 (2) Where the prosecutor intends to seek leave to adduce evidence of the matters referred to in subsection (1) of this section, he shall give written notice of his intention and of the particulars of the evidence to be adduced to the Court and to the defendant as soon as practicable after the con-
20 viction is entered, and in any event not later than 5 days before the date set for sentencing.

(3) Notwithstanding anything in subsection (2) of this section, where the Court is satisfied that the information on which such an application for the exercise of the Court's
25 powers could be based has come into the prosecutor's hands too late for him to give 5 days' notice as required by that subsection, the Court may allow the prosecutor to give such shorter notice as may be necessary in the circumstances, but shall, if requested to do so by the defendant, postpone sentenc-
30 ing to a date not earlier than 5 days after the prosecutor gives such notice.

38. Court's power not to be exercised in certain cases—

(1) The power conferred by section 37 (1) of this Act shall not be exercised by any Court—

35 (a) In respect of any conduct in relation to which the defendant has been charged with a drug dealing offence but acquitted of that charge:

(b) In respect of any money or assets in relation to which the power has been previously exercised by any
40 Court.

(2) The power conferred by section 37 (1) of this Act shall not be exercised by any Magistrate's Court so as to impose a fine greater than the maximum prescribed by section 6 (3) of the principal Act.

39. Inability of offender to explain source of money or assets may be evidence—Where, on any application for the exercise of the Court's power under section 37 of this Act, the offender is unable to explain to the Court's satisfaction the source of any money or assets owned by him, the Court may accept that as evidence that the money or assets was or were derived by the offender from previous drug dealing offences. 5

40. Court may treat alienated property as offender's—Where, on any application made to it under section 37 of this Act, it appears to the Court that any disposition of money or assets has been made, whether for value or not, by or on behalf of or by direction of or in the interests of the defendant to defeat the exercise of the Court's power under that section, the Court may, on the application of the prosecutor or of its own motion, treat the money or assets as belonging to the offender for the purposes of that section. 10 15

Enforcement of Fines

41. Enforcement of fines imposed in Supreme Court—Where the Court sentences an offender on conviction on indictment of a drug dealing offence to pay a fine and that fine is not paid within 14 days thereafter, or within such further time as may be allowed or fixed for the payment thereof, the following provisions shall apply: 20

(a) The Registrar shall inquire into the means of the offender, and shall— 25

(i) Where the offender is detained in a penal institution, issue a warrant to produce the offender; or

(ii) Issue a summons in the form prescribed for the purpose of section 89 (1) (a) of the Summary Proceedings Act 1957 (with any necessary modifications) requiring the offender, unless he sooner pays the amount outstanding under the conviction, to appear at the time and place appointed in the summons; or 30 35

(iii) If in the opinion of the Registrar a warrant is necessary to compel the attendance of the defendant, issue a warrant to arrest him and bring him before the Court— 40
to enable the offender to be orally examined as to his means:

- 5 (b) For the purpose of the Registrar's inquiry into the offender's means the provisions of subsections (2) to (10) and (12) to (17) of section 89 of the Summary Proceedings Act 1957, with any necessary modifications, shall apply:
- 10 (c) In addition to the powers conferred on the Registrar by subsection (4) of section 89 of the Summary Proceedings Act 1957, the Registrar may issue a warrant for the production of any inmate (other than the offender) of a penal institution whom he believes may be able to furnish him with any relevant information:
- 15 (d) On completion of his inquiry, the Registrar shall make a report as to the offender's means, so far as he has been able to ascertain them, to the Judge who imposed the fine or, if that Judge is unable to act, any other Judge:
- 20 (e) The Judge to whom a report is made under paragraph (d) of this section shall consider the report, and may make such order as he thinks fit, including an order—
- (i) For the remission of either the whole or part of the fine; or
 - 25 (ii) For the issue of a writ of sale; or
 - (iii) For the immediate imprisonment of the offender; or
 - (iv) Allowing time for payment or allowing payment by instalments:
- 30 (f) For the purposes of sections 19E and 19F of the Crimes Act 1961, any order made by a Judge under paragraph (e) of this section shall be deemed to have been made under section 19D of that Act:
- 35 (g) Any money or assets treated as the offender's pursuant to section 40 of this Act shall be deemed to be property of the offender and amenable as such to any order of the Judge under paragraph (e) of this section.

42. Enforcement of fines imposed in Magistrate's Court—
Where any Magistrate's Court sentences an offender on conviction of a drug dealing offence to pay a fine the following provisions shall apply:

- (a) For the purpose of his inquiry into the offender's means under section 89 of the Summary Proceedings Act 1957, the Registrar shall, where the offender is detained in a penal institution, issue a warrant to produce the offender to enable the offender to be orally examined as to his means: 5
- (b) In addition to the powers conferred on the Registrar by subsection (4) of section 89 of the Summary Proceedings Act 1957, the Registrar may issue a warrant for the production of any inmate (other than the offender) of a penal institution whom he believes may be able to furnish him with any relevant information: 10
- (c) Any money or assets treated as the offender's pursuant to section 40 of this Act shall be deemed to be the property of the offender and amenable as such to any order of the Court or the Registrar under any of the provisions of Part III of the Summary Proceedings Act 1957. 15

43. Fine imposed in Magistrate's Court may be enforced in Supreme Court—Where any Magistrate's Court sentences an offender on conviction of a drug dealing offence to pay a fine and the Registrar of that Court is satisfied that payment of that fine may be more effectively enforced in the Supreme Court, he may file a certificate to that effect under his hand in that Court, containing full particulars of the conviction and the amount of the fine, and thereafter payment of the fine shall be enforced as if the fine had been imposed in the Supreme Court. 20 25

44. Garnishee proceedings—(1) For the purpose of enforcing the payment of any fine imposed by any Court on conviction of an offender of a drug dealing offence, a sum that stands to the credit of the offender with any person (including a bank or savings bank) and that is on deposit with that person or is held by him in a current or other account (including a deposit account) shall be deemed to be a sum due or accruing to the Registrar enforcing the fine and shall be attachable accordingly, notwithstanding that any of the following conditions applicable to the deposit or account, that is to say— 30 35

(a) Any condition that notice is required before any money is withdrawn: 40

(b) Any condition that a demand for payment must be made:

(c) Any condition that a personal application must be made before any money is withdrawn:

5 (d) Any other condition (other than a condition that a deposit book, receipt for money deposited, or other like document must be produced before any money is withdrawn)—
has not been satisfied.

(2) In exercising his powers under section 41 of this Act or sections 19 to 19E of the Crimes Act 1961 or, as the case may
10 require, under Part III of the Summary Proceedings Act 1957, the Registrar may require any person who has in his possession or knows the whereabouts of any deposit book, receipt for money deposited, or other like document relating to the deposit or account of the offender to deliver that book,
15 receipt, or document to the Court or to disclose its whereabouts to the Court, as the case may require; and for that purpose the Registrar may summon any such person to appear before him at such time and place as he may specify, or issue a warrant for the arrest of that person so that he
20 may be brought before the Registrar.

(3) In this section the term "savings bank" includes the Post Office Savings Bank, a trustee savings bank established under the Trustee Savings Banks Act 1948, and a private savings bank established under the Private Savings Banks
25 Act 1964.

Parole

45. Parole—(1) Where any person is convicted of a drug dealing offence and is sentenced to imprisonment for a term of 10 years or more, the Judge imposing the sentence may at
30 the same time make an order to the effect that the offender shall not have his case for release under Part V of the Criminal Justice Act 1954 considered by the Prisons Parole Board until the expiration of such period, not exceeding 7 years commencing with the date on which the order is made,
35 as the Judge may specify in the order.

(2) Where any person is convicted of a drug dealing offence and is sentenced to imprisonment for a term of less than 10 years, the Judge imposing the sentence may at the same time
40 make an order to the effect that the offender shall not be recommended by the Prisons Parole Board for release under Part V of the Criminal Justice Act 1954 until the expiration of such period, not exceeding seven-tenths of the term of the sentence commencing with the date on which the order is made, as the Judge may specify in the order.

Administration of Part

46. Part to be administered in Department of Justice—
This Part of this Act shall be administered in the Department of Justice.

PART III

5

AMENDMENTS TO CRIMINAL JUSTICE ACT 1954

47. Part to be read with Criminal Justice Act 1954—This Part of this Act shall be read together with and deemed part of the Criminal Justice Act 1954* (in this Part referred to as the principal Act). 10

48. Functions of Prisons Parole Board—(1) Section 33A of the principal Act (as substituted by section 4 of the Criminal Justice Amendment Act 1961) is hereby amended by inserting in subsection (2), after paragraph (c) (as substituted by section 26 (1) of the Criminal Justice Amendment Act 1962), 15 the following paragraph:

“(ca) In the case of every offender undergoing imprisonment for life consequent upon his conviction for an offence against section 6 of the Misuse of Drugs Act 1975, as soon as may be practicable 20 after the expiry of 7 years from the date of his reception in the prison, and at least once in every period of 12 months thereafter:”.

(2) The said section 33A is hereby further amended by inserting in subsection (2), after paragraph (d) (as substituted by section 26 (1) of the Criminal Justice Amendment Act 1962), the following paragraph: 25

“(da) In the case of every offender undergoing imprisonment in respect of whom an order is in force under section 45 (1) of the Misuse of Drugs Amendment Act 1978, as soon as may be practicable after the expiry of the period specified in the order, and at least once in every period of 12 months thereafter:”.

(3) The said section 33A is hereby further amended by inserting in paragraph (e) (as substituted by section 15 (3) of the Criminal Justice Amendment Act 1975) of subsection (2), after the words “the case of every”, the word “other”. 35

*Reprinted 1973, Vol. 2, p. 1267

Amendments: 1975, No. 47; 1975, No. 67; 1976, No. 4; 1976, No. 156

(4) The said section 33A is hereby further amended by repealing subsection (5), and substituting the following subsection:

5 “(5) Notwithstanding anything in subsection (2) of this section or any order of the Court made under section 45 of the Misuse of Drugs Amendment Act 1978, any member of the Prisons Parole Board may at any time request the Board to consider any case, including the case of any offender who is undergoing imprisonment for any term less than 5 years, and on any such request the Board shall consider the case at its next meeting.”

(5) The said section 33A is hereby further amended by inserting, after subsection (7), the following subsection:

15 “(7A) The Prisons Parole Board shall not recommend the release of any offender in respect of whom an order is in force under section 45 (2) of the Misuse of Drugs Amendment Act 1978 until the expiry of the period specified in that order, except in any case where the matter is brought before the Board pursuant to subsection (5) of this section.”

20 (6) The Criminal Justice Amendment Act 1975 is hereby amended by inserting in the item in the Second Schedule relating to section 33A (5) of the principal Act, after the words “from subsection (5)”, the words “(as substituted by section 2 (4) of the Criminal Justice Amendment Act 1978)”.

25 (7) The following enactments are hereby consequentially repealed:

(a) Section 7 (1) (d) of the Criminal Justice Amendment Act 1967:

30 (b) Section 15 (5) of the Criminal Justice Amendment Act 1975.

PART IV

AMENDMENTS TO PENAL INSTITUTIONS ACT 1954

35 49. Part to be read with Penal Institutions Act 1954—This Part of this Act shall be read together with and deemed part of the Penal Institutions Act 1954* (in this Part referred to as the principal Act).

*1957 Reprint, Vol. 11, p. 667

Amendments: 1961, No. 18; 1963, No. 36; 1964, No. 104; 1965, No. 104; 1969, No. 34; 1975, No. 48; 1976, No. 113

50. Remission of sentence—(1) Section 31 of the principal Act (as originally enacted) is hereby amended by inserting, after subsection (1c) (as inserted by section 2 of the Penal Institutions Amendment Act 1964), the following subsection: 5

“(1D) Notwithstanding anything in subsection (1c) of this section, no person shall be eligible for remission under that subsection while he remains subject to an order made under section 45 of the Misuse of Drugs Amendment Act 1978.”

(2) Section 31 of the principal Act (as substituted by section 14 (1) of the Penal Institutions Amendment Act 1975) is hereby amended by inserting, after subsection (2), the following subsection: 10

“(2A) Notwithstanding anything in subsection (2) of this section, no person shall be eligible for release under that subsection while he remains subject to an order made under section 45 of the Misuse of Drugs Amendment Act 1978.” 15

(3) Subsection (2) of this section shall come into force on the date appointed for the commencement of section 14 of the Penal Institutions Amendment Act 1975, and, on that date, subsection (1) of this section shall be repealed. 20

PART V

AMENDMENTS TO SUMMARY PROCEEDINGS ACT 1957

51. Part to be read with Summary Proceedings Act 1957—This Part of this Act shall be read together with and deemed part of the Summary Proceedings Act 1957* (hereinafter referred to as the principal Act). 25

52. Defendant may not be released where charged with certain drug dealing offences—(1) Section 46 of the principal Act is hereby amended by inserting, after the words “as the case may be, may”, the words “, subject to section 29 of the Misuse of Drugs Amendment Act 1978,”. 30

(2) Section 125 (1) of the principal Act is hereby amended by inserting, before the words “An appellant”, the words “Subject to section 29 of the Misuse of Drugs Amendment Act 1978,”. 35

53. Certain offences may be tried summarily—The principal Act is hereby amended by inserting in Part I of the First Schedule, in their appropriate numerical order, the following heading and items: 40

*Reprinted 1975, Vol. 4, p. 3107
Amendments: 1976, No. 169; 1977, No. 84

“Part IXA—Crimes Against Personal Privacy

“216B	Prohibition on use of listening devices.
“216C	Prohibition on disclosure of private communications unlawfully intercepted.
“216D	Prohibition on offering listening devices for sale to public.”

PART VI

AMENDMENTS TO CRIMES ACT 1961

54. Part to be read with Crimes Act 1961—This Part of this Act shall be read together with and deemed part of the Crimes Act 1961* (in this Part referred to as the principal Act).

55. New Part (relating to crimes against personal privacy) inserted—The principal Act is hereby amended by inserting, after Part IX, the following Part:

10

“PART IXA

“CRIMES AGAINST PERSONAL PRIVACY

“216A. Interpretation—(1) In this Part of this Act, unless the context otherwise requires,—

15

“‘Intercept’, in relation to a private communication, includes hear, listen to, record, monitor, or acquire the communication:

20

“‘Listening device’ means any electronic, mechanical, or electromagnetic instrument, apparatus, equipment, or other device that is used or is capable of being used to intercept a private communication; but does not include a hearing aid or similar device used to correct subnormal hearing of the user to no better than normal hearing; and does not include a device exempted from the provisions of this Part of this Act by the Governor-General by Order in Council:

25

“‘Private communication’ means any oral communication made under circumstances that may reasonably be taken to indicate that any party to the communication desires it to be confined to the parties to the

30

*1961, No. 43
Amendments: 1963, No. 120; 1966, No. 98; 1969, No. 73; 1973, No. 118; 1977, No. 113; 1978, No. 6

communication; but does not include such a communication occurring in circumstances in which any party ought reasonably to expect that the communication may be intercepted by some other person not having the express or implied consent of any party to do so. 5

“(2) A reference in this Part of this Act to a party to a private communication is a reference to—

“(a) Any originator of the communication and any person intended by the originator to receive it; and 10

“(b) A person who, with the express or implied consent of any originator of the communication or any person intended by the originator to receive it, intercepts the communication.

“216B. **Prohibition on use of listening devices**—(1) Subject to subsection (2) of this section, every one is liable to imprisonment for a term not exceeding 2 years who intentionally intercepts any private communication by means of a listening device. 15

“(2) Subsection (1) of this section does not apply where the person intercepting the private communication— 20

“(a) Is a party to that private communication; or

“(b) Does so pursuant to, and in accordance with the terms of, any authority conferred on him by or under any enactment. 25

“216C. **Prohibition on disclosure of private communications unlawfully intercepted**—(1) Subject to subsection (2) of this section, where a private communication has been intercepted in contravention of section 216B of this Act, every one is liable to imprisonment for a term not exceeding 2 years who intentionally— 30

“(a) Discloses or makes use of the private communication, or the substance, meaning, or purport of the communication, or any part of it; or

“(b) Discloses the existence of the private communication,— 35

if he knows that it has come to his knowledge as a direct or indirect result of a contravention of section 216B of this Act.

“(2) Subsection (1) of this section does not apply where the disclosure is made— 40

“(a) To a party to the communication, or with the express or implied consent of such a party; or

“(b) In the course, or for the purpose, of—

“(i) An investigation by the Police into an alleged offence against this section or section 216B of this Act; or

5 “(ii) Giving evidence in any civil or criminal proceedings relating to the unlawful interception of a private communication by means of a listening device or the unlawful disclosure of a private communication unlawfully intercepted by that

10 means; or
 “(iii) Giving evidence in any other civil or criminal proceedings where the disclosure is otherwise admissible; or

15 “(iv) Determining whether the disclosure is admissible in any civil or criminal proceedings.

 “216D. **Prohibition on offering listening devices for sale to public**—(1) Every one is liable to imprisonment for a term not exceeding 1 year who issues an invitation to the public to purchase, or offers or exposes for sale to the public, any

20 listening device or any component thereof knowing that the design of such a device renders it primarily useful for the surreptitious interception of private communications.

 “(2) In this section the term ‘public’ includes any section of the public.”