



ANALYSIS

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1978, No. 65

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 [16 October 1978]

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 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:

“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 treatment and rehabilitation of persons suffering from the misuse of drugs.”

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:

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

“(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:

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

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

(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”.

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:

“(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 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 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 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 section:

“34A. (1) In this section the term ‘undercover officer’ means a member of the Police whose identity is for the time being concealed for the purpose of a particular investigation of any suspected offence against this Act or of any person suspected of such an offence; and includes any other member of the Police who is for the time being directing or assisting that member in the course of that investigation.

“(2) No prosecution for an offence against this Act, or against any regulations made under this Act, shall be commenced or continued against any member of the Police in respect of any act committed by him at a time or during a period when he was acting as an undercover officer, except with the leave of the Attorney-General.

“(3) A certificate signed by the Commissioner of Police to the effect that, at any specified time or during any specified period, the member of the Police named in the certificate was acting as an undercover officer shall, for the purposes of subsection (2) of this section, be conclusive evidence of that fact.”

PART II

SPECIAL PROVISIONS RELATING TO DETECTION, ENFORCEMENT, AND SENTENCING

10. Interpretation—(1) In this Part of this Act, unless the 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:

“Emergency permit” means a permit granted under section 19 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 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.

11. Application of Part—This Part of this Act shall apply notwithstanding anything in the Post Office Act 1959 or the Customs Act 1966.

Special Powers of Police and Customs Officers

12. Allowing delivery of unlawfully imported drugs for purpose of detection, etc.—(1) Where any proper officer of 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 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 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 of the consignee; or

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

(as the case may require).

(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 course of his duties, does any thing in respect of any postal packet returned to the Post Office in accordance with that subsection (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) No report made under subsection (3) of this section shall form part of the Court records, but the Registrar shall cause every such report to be kept in safe custody for at least 6 years. At the expiration of that period, the Registrar may destroy the report.

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.
- (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:
- (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 description of the manner in which it is proposed to intercept private communications; and
 - (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
 - (d) The period for which a warrant is requested; and
 - (e) Whichever of the following is applicable:
 - (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
 - (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
 - (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.

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
- (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
- (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
 - (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
 - (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
- (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.

16. Contents and term of warrant—(1) Every interception warrant shall be issued in the form set out in the Schedule to this Act, and shall—

- (a) State the offence in respect of which the warrant is granted; and
- (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

- (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
- (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
- (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, 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.

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

17. Effect of warrant—Every interception warrant shall have effect, according to its terms, to authorise the interception of private communications by means of a listening device.

18. 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
- (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 other 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.

(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.

19. 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 in writing, grant an emergency permit for the interception of private communications in respect of particular premises or a particular place and in a particular manner.

(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.

(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. The note shall be filed in the Supreme Court Registry nearest to where the application is made, and shall, for the purposes of section 20 (1) of this Act, be deemed to be a document relating to the application for the permit. The Judge shall also make a note of the terms of the permit.

(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.

(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 28 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.

(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 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 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 25 of this Act, an interception 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 (9) of this section.

20. 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 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, 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 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) 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.

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

(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.

(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.

(11) Notwithstanding anything in this section, every Judge or Magistrate who is presiding over any proceedings in which the issue of an interception warrant or emergency permit is in issue shall be entitled to inspect any relevant document held under subsection (1) of this section.

21. 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 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) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$500.

22. Destruction of relevant records made by use of listening device—(1) The Commissioner of Police shall ensure that every record, 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 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) Nothing in subsection (1) of this section shall apply to—

(a) Any record of any information adduced in proceedings in any Court, or (in any case where the defendant pleads guilty) of any record of any information that, in the opinion of the Judge to whom the report referred to in subsection (3) of this section is made, would have been adduced had the matter come to trial:

(b) Any record of any information contained in any transcript or written statement given to any person in accordance with section 24 (a) of this Act.

(3) Every report made to a Judge in accordance with section 28 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 that he be advised when the record has been destroyed.

23. 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 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, 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.

24. Notice to be given of intention to produce evidence of private communication—Particulars of 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—

(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

(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.

25. 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 issued under this Act or of any authority conferred by or under any other enactment 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, 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.

(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—

(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,—

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 against any party to a private communication evidence of that 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 consent to that person giving the evidence.

26. 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.

27. 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
- (b) Any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and his client,—

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

28. 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.

(2) Notwithstanding anything in section 20 of this Act, the Judge who receives a report under subsection (1) of this section shall be entitled to inspect any relevant document held under subsection (1) of that section.

(3) 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:
- (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 21 or section 22 of this Act, and, if not, why they have not been destroyed:
- (f) Whether the listening device has been retrieved, and, if not, why it has not been retrieved.

(4) 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 22 (3) of this Act) he may give such directions as he thinks desirable, whether relating to the retrieval of the listening device, or otherwise.

29. 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:

- (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 18 of this Act; and
- (c) The number of applications for emergency permits made under section 19 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
- (e) The average duration of warrants (including renewals); and
- (f) The number of prosecutions that have been instituted in which evidence obtained directly or indirectly from an interception carried out pursuant to a warrant or permit has been adduced, and the result of those prosecutions.

Bail

30. 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.

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

- (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:

- (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:
- (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 of that condition.

32. 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 30 of this Act, any member of the Police may arrest that person without warrant if—

- (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
- (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 48 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.

33. Arrest of defendant who fails to comply with any conditions of bail—(1) Where a defendant has been released on bail pursuant to section 30 of this Act, and any condition was

imposed by the Judge on the grant of bail pursuant to section 31 of this Act, any member of the Police may arrest that person without warrant if—

- (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
- (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.

(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 48 hours.

(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
- (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.

(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.

(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.

34. 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.

(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 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.

35. Appeals against decisions of Judge relating to bail—

(1) Every person who applies for but is refused bail under section 30 of this Act may appeal to the Court of Appeal against that refusal.

(2) Every person who is granted bail pursuant to section 30 of this Act subject to any condition imposed under section 31 of this Act may appeal to the Court of Appeal against the imposition of that condition.

(3) Where any person is granted bail pursuant to section 30 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 31 of this Act.

(4) Every person wishing to appeal under this section against any decision of a Judge made pursuant to section 30 or section 31 of this Act shall file notice of his intention to appeal with the Registrar of the Court of Appeal within 10 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 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.

36. Court of Appeal to hear and determine appeal—

(1) The Court of Appeal shall hear and determine every 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 35 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 31 of this Act.

37. Execution of decision of Court of Appeal—(1) Where, on any appeal under section 35 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 being informed 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.

(2) Where, on an appeal under section 35 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.

(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.

(4) If, on an appeal under section 35 of this Act against a grant of bail, the Court of Appeal determines that bail shall not be granted, and the defendant is not then in custody, the Registrar of the Court whose decision was appealed against shall issue a warrant for the arrest of the defendant, and when the defendant is brought before the Court pursuant to the warrant, he shall be remanded in custody.

(5) For the purpose of giving full effect to any decision of the Court of Appeal under section 36 of this Act, the provisions of sections 32 to 34 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 30 and 31 of this Act.

Imposition of Fines

38. Fine may reflect illicit gains—In any case where any person is convicted of a drug dealing offence and the Court by which he is convicted is 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 directly or indirectly from the 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 offence.

39. 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 primary offence) and the Court by which he is convicted is, on the application of the Crown,—

(a) Satisfied beyond reasonable doubt that, before the commission of the primary offence, the offender had engaged in any conduct (other than conduct that constituted the primary offence) that constitutes a drug dealing offence; and

(b) 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 directly or indirectly from such conduct,—

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.

(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 conviction 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 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 sentencing to a date not earlier than 5 days after the prosecutor gives such notice.

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

(1) The power conferred by section 39 (1) of this Act shall not be exercised by any Court—

- (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 Court.
- (2) The powers conferred by sections 38 and 39 (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.

41. Inability of offender to explain source of money or assets may be evidence—(1) Where, in any case to which section 38 of this Act applies, the offender fails 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 the offence.

(2) Where, on any application for the exercise of the Court's power under section 39 of this Act, the Court is satisfied in accordance with subsection (1) (a) of that section that the offender has committed any previous drug dealing offence, and the offender fails 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 that previous drug dealing offence.

42. Court may treat alienated property as offender's—Where, in any case to which section 38 or section 39 of this Act applies, 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 those sections, 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 those sections.

Enforcement of Fines

43. 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:

- (a) The Registrar shall inquire into the means of the offender, and shall—
- (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
 - (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—
to enable the offender to be orally examined as to his means:
- (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:
- (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:
- (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:
- (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
 - (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:
- (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:
- (g) Any money or assets treated as the offender's pursuant to section 42 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.

44. 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:
- (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:
- (c) Any money or assets treated as the offender's pursuant to section 42 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.

45. 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.

46. 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—

- (a) Any condition that notice is required before any money is withdrawn:
- (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:
- (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 43 of this Act or sections 19 to 19E of the Crimes Act 1961 or, as the case may 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, 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 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 Act 1964.

Parole

47. 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 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, 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 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

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

SCHEDULE

Section 16 (1)

INTERCEPTION WARRANT

(Sections 14 to 16, Misuse of Drugs Amendment Act 1978)

1. To [*Full name of commissioned officer of Police*] and every other member of the Police or proper officer of Customs for the time being assisting you:

2. I am satisfied on an application made to me in writing and on oath 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

(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

(c) [*Whichever of the following is applicable*]:

*Other investigative procedures and techniques have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case; and

or

*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; and

or

*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

(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; and

(e) It would be in the best interests of the administration of justice to grant an interception warrant.

3. The offence in respect of which the warrant is granted is
(*being an offence against section 6 of the Misuse of Drugs Act 1975 in relation to a Class A or Class B controlled drug*).

4. This is to authorise you at any time or times within days from the date of this warrant—

*To use a listening device to intercept the private communications of [*Name and address of suspect*]:

or

*To intercept private communications at [*Premises or place, being premises or a place believed to be used for any purpose by a person involved in the drug dealing offence*]:

*To enter, with force where necessary, [*State vehicle, place, or premises that may be entered*] for the purpose of placing, servicing, or retrieving the listening device:

SCHEDULE—*continued*

*5. The following terms and conditions are imposed in the public interest:

*6. The following conditions are imposed to avoid so far as practicable the interception of communications of a professional character:

Dated at this day of 19 .

.....
Judge of the Supreme Court.

*To be deleted where not applicable.



This Act (except Part II and the Schedule) is administered in the Department of Health. Part II of this Act and the Schedule to this Act are administered in the Department of Justice.

