

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,077 of 10th December, 1998



I ASSENT,
RICHARD LUCE,
GOVERNOR.

10th December, 1998.



GIBRALTAR

No. 49 of 1998

AN ACT to amend the Drug Trafficking Offences Act 1995.

ENACTED by the Legislature of Gibraltar.

PART I

PRELIMINARY

Title and Commencement

1. This Act may be cited as the Drug Trafficking Offences Act 1995 (Amendment) Act 1998.

PART II

**AMENDMENTS TO THE DRUG TRAFFICKING OFFENCES
ACT 1995**

Amendments to the Drug Trafficking Offences Act 1995

2. The Drug Trafficking Offences Act 1995 shall be amended in accordance with sections 3 to 13.

Amendments to Section 2 (1)

3. In Section 2(1) -

(a) for the definition of “satisfied” there shall be substituted the following definition -

““satisfied” in relation to a confiscation order, has the meaning given to it in subsection (16) (b) and in section 33;”

(b) for the definition of “subject to appeal” there shall be substituted the following definition -

“An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside;”.

Amendment to Section 2 (2)

4. For paragraph (e) of Section 2 (2) there shall be substituted the following paragraph -

“(e) using any ship for illicit trafficking of a controlled drug in circumstances which amount to the commission of an offence under section 11D of that Act”.

Amendment to Section 26

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5. For paragraph (a) of section 26 (1) there shall be substituted the following paragraph -

“(a) Proceedings have been instituted in Gibraltar against the defendant for a drug trafficking offence or an application has been made by the prosecutor in respect of the defendant under section 12, 13, 14, 15 or 18;”.

Amendment to Section 27

6. For section 27(3) there shall be substituted -

“27(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 28 or section 11 of the Drug Trafficking Offences Act, 1988.”.

Amendment to Section 30 (3)

7. In paragraph (b) of section 30(3) for the word “reasliable” there shall be substituted “realisable”.

Amendment to Section 30 (7)

8. For Section 30(7) there shall be substituted -

“30(7) Sub-sections (4) to (6) do not apply to property for the time being subject to a charge under section 28 or section 11 of the Drug Trafficking Offences Act, 1988.”

Amendments to Section 60

9. In Section 60(2) for the words “subsection (4)” there shall be substituted “subsection 5”.

10. In Section 60, from the beginning of the first subsection numbered (5) to the end of the section there shall be substituted -

“(5) The conditions referred to in subsection (2) are -

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- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
- (b) that there are reasonable grounds for suspecting that the material to which the application relates-
 - (i) is likely to be of substantial value (whether by itself or together with any other material) to the investigation for the purpose of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege or excluded material; and
- (c) that there are reasonable grounds for believing that it is in the public interest, having regard -
 - (i) to the benefit likely to accrue to the investigation if the material is obtained, and
 - (ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

(6) Where the judge makes an order under subsection (2) (b) in relation to material on any premises he may, on the application of a customs or police officer, order any person who appears to him to be entitled to grant entry to the premises to allow a customs or police officer to enter the premises to obtain access to the material.

(7) An application under subsection (1) or (5) may be made ex parte to a judge in chambers.

(8) Provision may be made by rules of court as to -

- (a) the discharge and variation of orders under this section; and

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(b) proceedings relating to such orders.

(9) Where the material to which an application under subsection (1) above relates consists of information contained in a computer -

(a) an order under subsection (2) (a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and

(b) an order under subsection (2) (b) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(10) An order under subsection (2) -

(a) shall not confer any right to production of, or access to, items subject to legal privilege or excluded material;

(b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and

(c) may be made in relation to material in the possession of the Crown in right of Her Majesty's Government both in Gibraltar and in the United Kingdom."

Amendments to Section 68

11. In Section 68(1) -

(a) for paragraph (a) there shall be substituted the following paragraph -

“(a) giving effect to Council Directive 91/308/EEC or any other Community legal obligation on the prevention

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of the use of the financial system for the purpose of
money laundering;”;

(b) paragraph (b) shall be omitted.

Passed by the Gibraltar House of Assembly on the 3rd day of December,
1998.

D J REYES,
Clerk to the Assembly.