

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,217 of 5th April, 2001



I ASSENT,

P. SPELLER,

ACTING GOVERNOR.

5th April, 2001.



GIBRALTAR

No. 9 of 2001

AN ACT to amend the Drug Trafficking Offences Act 1995.

ENACTED by the Legislature of Gibraltar.

Citation.

1. This Act may be cited as the Drug Trafficking Offences Act 1995 (Amendment) Act 2001.

Amendment of the Drug Trafficking Offences Act 1995.

2. The Drug Trafficking Offences Act 1995 shall be amended by inserting the following new Section after Section 43.

“43A.(1) A customs or police officer may, for the purpose of an investigation into drug trafficking, apply to a judge for an order under sub-section (2) in relation to particular material or material of a particular description.

(2) If on such an application the judge is satisfied that the conditions in sub-section (4) are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—

- (a) produce it to a customs or police officer to take away, or
- (b) give a customs or police officer access to it,

within such period as the order may specify.

(3) The period to be specified in an order under sub-section (2) shall be seven days unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in sub-section (2) are—

- (a) that criminal proceedings have been instituted against a person in a country or territory, being a Convention state, or, as the case may be, a territory of such a state to which application of the Vienna Convention has been extended, outside Gibraltar or that a person has been arrested in the course of a criminal investigation carried on there;
- (b) that the conduct constituting the offence which is the subject of the proceedings or investigation constitutes

an offence under this Act or under the Drugs (Misuse) Act if it had occurred in Gibraltar;

- (c) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
- (d) that there are reasonable grounds for suspecting that the materials 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
- (e) 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.

(5) Where the judge makes an order under sub-section (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.

(6) An application under sub-section (1) or (5) may be made ex parte to a judge in chambers.

(7) Provision may be made by rules of court as to—

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

(b) proceedings relating to such orders.

(8) Where the material to which an application under sub-section (1) relates consists of information contained in a computer—

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

(9) An order under sub-section (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.

(10) No application for an order shall be made by virtue of sub-section (2) except in pursuance of a direction given by the Attorney General with the prior consent of the Government expressed in writing by the Chief Secretary in response to a request received—

- (a) from a court or tribunal exercising criminal jurisdiction in the overseas country or territory in question; or
- (b) from any other authority in that country or territory which appears to him to have the function of making requests for the purposes of this section;

and any evidence seized by a customs or police officer by virtue of this section shall be furnished by him to the Attorney General for transmission to that court, tribunal or authority.

(11) If in order to comply with the request it is necessary for any such evidence to be accompanied by a certificate, affidavit or other verifying document, the customs or police officer shall also furnish for transmission such document of that nature as may be specified in the direction given by the Attorney General.

(12) Where the evidence consists of a document, the original or a copy shall be transmitted, and where it consists of any other article, the article itself or a description, photograph or other representation of it, shall be transmitted, as may be necessary in order to comply with the request.”.

Passed by the Gibraltar House of Assembly on the 26th day of March, 2001.

D. J. REYES,

Clerk to the Assembly.