

Chapter:	390	CONTROL OF OBSCENE AND INDECENT ARTICLES ORDINANCE	Gazette Number	Version Date
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		Long title		30/06/1997
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To control articles which consist of or contain material that is obscene or indecent (including material that is violent, depraved or repulsive), to establish tribunals to determine whether an article is obscene or indecent, or whether matter publicly displayed is indecent, and to classify articles as obscene or indecent or neither obscene nor indecent, and for matters incidental thereto.

(Enacted 1987)

[1 September 1987] *L.N. 278 of 1987*

(Originally 9 of 1987)

Part:	I	PRELIMINARY		30/06/1997
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Section:	1	Short title		30/06/1997
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This Ordinance may be cited as the Control of Obscene and Indecent Articles Ordinance.

(Enacted 1987)

Section:	2	Interpretation	L.N. 163 of 2013	03/03/2014
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- (1) In this Ordinance, unless the context otherwise requires-
- "adjudicator" (審裁委員) means an adjudicator appointed to the panel of adjudicators under section 5;
- "application" (申請) means an application under section 13 and "applicant" (申請人) shall be construed accordingly;
- "article" (物品) means any thing consisting of or containing material to be read or looked at or both read and looked at, any sound recording, and any film, video-tape, disc or other record of a picture or pictures;
- "assisting officer" (協助人員) means any police officer or any member of the Customs and Excise Service assisting an authorized officer under section 34(2) in the execution of a warrant;
- "authorized officer" (獲授權人員) means any person authorized by a warrant issued under section 34;
- "classification" (評定類別) means a classification by a Tribunal under Part III and includes an interim classification and "classified" (經評定) shall be construed accordingly;
- "full hearing" (全面聆訊) means a full hearing of a Tribunal under section 15;
- "inspector" (督察) means a public officer authorized under section 36B(1); (Added 73 of 1995 s. 2)
- "interim classification" (暫定類別) means an interim classification made by a Tribunal under section 14;
- "juvenile" (青少年) means a person under the age of 18 years;
- "panel of adjudicators" (審裁委員小組) means the panel of adjudicators established under section 5;
- "place of business" (營業地點) includes in relation to-
- (a) a company incorporated in Hong Kong under the Companies Ordinance (Cap 622) or under a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (Cap 622), its registered office; and
 - (b) a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap 622), the address of any person whose name has been delivered to the Registrar of Companies for registration under Part XI of the Companies Ordinance (Cap 32) as in force at the time of the delivery or under Part 16 of the Companies Ordinance (Cap 622); (Added 73 of 1995 s. 2. Amended 28 of 2012 ss. 912 & 920)
- "presiding magistrate" (主審裁判官) means a magistrate appointed to preside under section 7;
- "Registrar" (司法常務官) means the Registrar of the High Court; (Amended 25 of 1998 s. 2)

"Tribunal" (審裁處) means an Obscene Articles Tribunal appointed under section 6;

"warrant" (手令) means a warrant issued under section 34(1).

(2) For the purposes of this Ordinance-

- (a) a thing is obscene if by reason of obscenity it is not suitable to be published to any person; and
- (b) a thing is indecent if by reason of indecency it is not suitable to be published to a juvenile.

(3) For the purposes of subsection (2), "obscenity" (淫褻) and "indecency" (不雅) include violence, depravity and repulsiveness.

(4) For the purposes of this Ordinance, other than section 24(1E) and (1F), a person publishes an article if he, whether or not for gain- (Amended 73 of 1995 s. 2)

- (a) distributes, circulates, sells, hires, gives or lends the article to the public or a section of the public;
- (b) in the case of an article-
 - (i) consisting of or containing material to be looked at; or
 - (ii) that is a sound recording or a film, video-tape, disc or other record of a picture or pictures, shows, plays or projects that article to or for the public or a section of the public. [cf. 1959 c. 66 s. 1(2) U.K.]

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

- (a) "article" (物品) includes anything which is intended to be used, either alone or as one of a set, for the purpose of manufacturing or reproducing an article; and [cf. 1964 c. 74 s. 2(1) U.K.]
- (b) "person" (人、人士) and "public" (公眾人士) include, respectively, a person having the control or management of anything which is or purports to be a club, and the members of that club.

(6) For the purposes of this Ordinance, in determining whether any matter publicly displayed is indecent-

- (a) there shall be disregarded any part of that matter which is not exposed to view; and
- (b) account may be taken of the effect of juxtaposing one thing with another. [cf. 1981 c. 42 s. 1(5) U.K.]

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

- (a) any public street or pier, or public garden; and
- (b) any place to which the public have or are permitted to have access (whether on payment or otherwise) except a place to which the public are permitted to have access only on payment which is or includes payment for a display of indecent matter,

shall for the purposes of this Ordinance be deemed to be matter publicly displayed. [cf. 1981 c. 42 s. 1(2) U.K.]

(Enacted 1987)

Section:	3	Ordinance not to apply in case of certain films, etc.	48 of 2000	07/07/2000
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This Ordinance shall not apply in relation to any-

- (a) film within the meaning of section 2(1) of the Film Censorship Ordinance (Cap 392) as regards its exhibition within the meaning of section 2 of that Ordinance-
 - (i) in respect of which there is in force a certificate of exemption issued under section 9, or a certificate of approval issued under section 13, of that Ordinance; or
 - (ii) subject to section 32(2A) of that Ordinance, which is approved for exhibition under regulation 5 of the revoked regulations within the meaning of section 32(3) of that Ordinance;
- (aa) videotape or laserdisc in respect of which there is approval under section 15A of the Film Censorship Ordinance (Cap 392) for publication within the meaning of section 2 of that Ordinance; (Added 63 of 1993 s. 22)
- (ab) packaging in respect of which a certificate has been issued under section 15B of the Film Censorship Ordinance (Cap 392); (Added 63 of 1993 s. 22)
- (ac) advertising material-
 - (i) in respect of which a certificate has been issued under section 15K(5) of the Film Censorship Ordinance (Cap 392); or
 - (ii) which the Film Censorship Authority has refused to approve under section 15K(5)(b) of that Ordinance; (Added 74 of 1995 s. 30)
- (b) subject to section 32(2A) of the Film Censorship Ordinance (Cap 392), matter referred to in section 32(1) of that Ordinance which is approved for publication or exhibition under regulation 8 of the revoked regulations within the meaning of section 32(3) of that Ordinance; or
- (c) material within the meaning of section 2(1) of the Broadcasting Ordinance (Cap 562) permitted to be

provided under that Ordinance. (Replaced 48 of 2000 s. 44)

(Replaced 25 of 1988 s. 33. Amended 63 of 1993 s. 22)

Section:	4	Effective date of classification and conditions	30/06/1997
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For the purposes of this Ordinance-

- (a) the classification of any article or matter shall not be regarded as taking effect until notice of that classification is given by the Registrar in accordance with section 19(2); and
- (b) conditions shall not be regarded as imposed under section 8(2)(c) until notice thereof is given by the Registrar in accordance with section 19(2).

(Enacted 1987)

Part:	II	OBSCENE ARTICLES TRIBUNALS	30/06/1997
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Section:	5	Panel of adjudicators	30/06/1997
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- (1) For the purposes of this Ordinance, there shall be established a panel of adjudicators.
- (2) The panel of adjudicators shall consist of such eligible persons as are, from time to time, appointed to it by the Chief Justice by notice in writing.
- (3) For the purpose of subsection (2), a person shall be eligible to be appointed to the panel of adjudicators if, in the opinion of the Chief Justice, he is-
 - (a) ordinarily resident in Hong Kong and has so resided for at least 7 years; and
 - (b) proficient in written English or written Chinese.
- (4) A person appointed under subsection (2) shall be a member of the panel of adjudicators for such period, not exceeding 3 years, as may be specified in his notice of appointment and shall be eligible for reappointment.
- (5) A member of the panel of adjudicators may resign by giving notice in writing to the Chief Justice.
- (6) The name of any adjudicator may be removed from the panel of adjudicators by the Chief Justice by notice in writing if that adjudicator-
 - (a) ceases to be ordinarily resident in Hong Kong;
 - (b) is convicted of any offence;
 - (c) is declared a bankrupt; or
 - (d) in the opinion of the Chief Justice, neglects or is unable to perform his duty.
- (7) The Chief Justice shall give notice in the Gazette of-
 - (a) any appointment by him under subsection (2); and
 - (b) any removal of the name of an adjudicator by him under subsection (6).

(Enacted 1987)

Section:	6	Appointment of Obscene Articles Tribunals	30/06/1997
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- (1) The Registrar may appoint such number of tribunals as may from time to time be necessary for the purposes of this Ordinance.
- (2) A tribunal appointed under this section shall be known as an Obscene Articles Tribunal.

(Enacted 1987)

Section:	7	Membership of Tribunal	30/06/1997
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- (1) Subject to section 15(1A), a Tribunal shall consist of the following persons appointed by the Registrar- (Amended 73 of 1995 s. 3)
 - (a) a magistrate who shall preside; and
 - (b) 2 or more adjudicators selected from the panel of adjudicators.
- (2) Subject to subsection (3), in the event of any difference between the members of a Tribunal, the decision of that Tribunal shall be that of the majority of them or, in the event that they are equally divided, that of the presiding magistrate.

(3) Any point of law arising during any proceedings before a Tribunal shall be determined by the presiding magistrate who shall give reasons therefor in writing.

(Enacted 1987)

Section:	8	Jurisdiction	L.N. 232 of 2003	19/12/2003
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(1) In relation to any article, or any matter publicly displayed, referred to it by a court or magistrate under Part V a Tribunal may determine for the purposes of this Ordinance whether- (Amended 31 of 2003 s. 22)

- (a) the article is obscene or indecent;
- (b) the matter is indecent; or
- (c) the ground of defence under section 28 is proved in respect of the publication of an article or the public display of any matter.

(2) In relation to any article submitted to it under section 13, a Tribunal shall refuse an application to make a classification if it is of the opinion that the article may be child pornography within the meaning of section 2(1) of the Prevention of Child Pornography Ordinance (Cap 579), and may in any other case- (Amended 31 of 2003 s. 22)

- (a) refuse an application to make a classification in respect of any article if it considers that article cannot be adequately described for the purpose of giving notice of classification under section 19; or
- (b) make a classification that the article is-
 - (i) a Class I article if it is of the opinion that the article is neither obscene nor indecent;
 - (ii) a Class II article if it is of the opinion that the article is indecent; or
 - (iii) a Class III article if it is of the opinion that the article is obscene; and
- (c) in respect of any classification that an article is a Class II article and at the time of making that classification, impose conditions relating to the publication of that article.

(3) For the purposes of subsection (1)(c) the opinion of an expert as to the ground of defence in section 28 may be admitted either to establish or negative that ground.

(Enacted 1987)

Section:	9	Immunity		30/06/1997
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Any-

- (a) member of a Tribunal; and
- (b) witness, party to any proceedings, representative or other person appearing before a Tribunal,

shall have the same privileges and immunities in any proceedings before a Tribunal or in the exercise of a Tribunal's functions as he would have before a court.

(Enacted 1987)

Section:	10	Guidance to Tribunal		30/06/1997
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(1) In determining whether an article is obscene or indecent or whether any matter publicly displayed is indecent, or in classifying an article, a Tribunal shall have regard to-

- (a) standards of morality, decency and propriety that are generally accepted by reasonable members of the community, and in relation thereto may, in the case of an article, have regard to any decision of a censor under section 10 of the Film Censorship Ordinance (Cap 392) in respect of a film within the meaning of section 2(1) of that Ordinance; (Replaced 25 of 1988 s. 33)
- (b) the dominant effect of an article or of matter as a whole;
- (c) in the case of an article, the persons or class of persons, or age groups of persons, to or amongst whom the article is, or is intended or is likely to be, published;
- (d) in the case of matter publicly displayed, the location where the matter is or is to be publicly displayed and the persons or class of persons, or age groups of persons likely to view such matter; and
- (e) whether the article or matter has an honest purpose or whether its content is merely camouflage designed to render acceptable any part of it.

(2) The opinion of an expert as to any of the matters to which a Tribunal must or may have regard under subsection (1) may be admitted in any proceedings before a Tribunal either to establish or negative that matter.

[cf. 1963 No. 22 s. 11 NZ]

(Enacted 1987)

Section:	11	Powers		30/06/1997
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A Tribunal-

- (a) when exercising its jurisdiction under Part V shall have the powers of a magistrate under the Magistrates Ordinance (Cap 227) and for that purpose references in that Ordinance to a magistrate shall be deemed to include references to a Tribunal; (Amended L.N. 272 of 1990)
- (b) when exercising its jurisdiction under Part III may, subject to that Part and Part VIII, determine its own procedure and in particular may-
 - (i) receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, notwithstanding that such material would not be admissible in evidence in civil or criminal proceedings;
 - (ii) by notice in writing signed by the presiding magistrate, require any person to attend before it at any hearing and to give evidence and produce documents;
 - (iii) administer oaths and affirmations;
 - (iv) examine on oath, affirmation or otherwise any person attending before it at any hearing and require such person to answer all questions put by or with the consent of that Tribunal;
 - (v) determine the manner in which the material mentioned in sub-paragraph (i) shall be received; and
 - (vi) determine the manner in which any article shall be viewed, seen or examined by that Tribunal;
- (c) may do all things-
 - (i) ancillary to the powers conferred by this section; or
 - (ii) reasonably necessary for the discharge of its functions under this Ordinance.

(Enacted 1987)

Section:	12	Offences relating to a Tribunal		30/06/1997
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Any person who-

- (a) refuses or fails to comply with any lawful order, requirement or direction of a Tribunal; or
 - (b) disturbs or otherwise interferes with the proceedings of a Tribunal,
- commits an offence and is liable to a fine of \$10000 and to imprisonment for 6 months.

(Enacted 1987)

Part:	III	CLASSIFICATION OF ARTICLES BY A TRIBUNAL		30/06/1997
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Section:	13	Submission of article to Tribunal	L.N. 362 of 1997	01/07/1997
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(1) The author, printer, manufacturer, publisher, importer, distributor or owner of the copyright of any article or any person who commissions the design, production or publication of any article may, by application in the prescribed form, submit that article to the Registrar for classification by a Tribunal.

(2) The Secretary for Justice and any public officer authorized in that regard by the Chief Secretary for Administration may, by application in the prescribed form, submit any article to the Registrar for classification by a Tribunal. (Amended L.N. 362 of 1997)

(Enacted 1987)

Section:	14	Interim classification		30/06/1997
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- (1) Subject to section 17(2), where an article is submitted under section 13 a Tribunal shall-
 - (a) consider it in private and without the attendance of the applicant or any other person and, within 5 days of that submission, make an interim classification in respect of that article; or
 - (b) subject to subsection (2), if at the expiry of the period mentioned in paragraph (a) it has not made an interim assessment, consider that application as if it were a requirement for a full hearing under section 15.
- (2) The presiding magistrate may, at any time during the period mentioned in subsection (1)(a), extend that

period by any period not exceeding 5 days and shall give notice of that extension to the applicant.

- (3) Subject to section 7(3), a Tribunal- (Amended 73 of 1995 s. 4)
 - (a) shall not be required to give any reasons for any interim classification; (Added 73 of 1995 s. 4)
 - (b) may give guidance to the applicant in relation to the article submitted; and (Added 73 of 1995 s. 4)
 - (c) shall identify the part of the article which causes the obscenity or indecency. (Added 73 of 1995 s. 4)
- (Enacted 1987)

Section:	15	Requirement for full hearing	L.N. 362 of 1997	01/07/1997
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(1) Where a Tribunal makes an interim classification in respect of an article any person who submitted, or would have been entitled to submit, the article under section 13 may-

- (a) within 5 days of that interim classification taking effect; and
- (b) by notice in writing in the prescribed form to the Registrar,

require a Tribunal to review that interim classification at a full hearing.

(1A) Subject to subsection (2)(b), the Tribunal for a full hearing held pursuant to subsection (1) or section 17 shall consist of the following persons appointed by the Registrar-

- (a) a magistrate who shall preside; and
- (b) 4 or more adjudicators selected from the panel of adjudicators. (Added 73 of 1995 s. 5)

(2) At a full hearing-

- (a) any person who submitted the article the subject of that full hearing and any person who would have been entitled to submit it under section 13(1), the Secretary for Justice, and their representatives, may appear and be heard; and (Amended L.N. 362 of 1997)
- (b) any adjudicator shall not be competent to sit as a member of the Tribunal at that full hearing if he was a member of the Tribunal which made the interim classification. (Amended 73 of 1995 s. 5)

(3) The Registrar shall, at least 5 days prior to a full hearing, give notice of that full hearing once each in an English language newspaper and a Chinese language newspaper published daily and circulating generally in Hong Kong but nothing in this subsection shall require the Registrar to give notice of any adjourned hearing of that full hearing.

(4) If in accordance with subsection (3) notice is published in the newspapers referred to in that subsection on different days, notice shall be deemed to have been given on the last of those days.

(5) If under subsection (1) no person requires a review of an interim classification at a full hearing, that interim classification shall be deemed to be the classification of the Tribunal which made it.

(6) At a full hearing, the Tribunal shall identify the part of the article which causes the obscenity or indecency. (Added 73 of 1995 s. 5)

(Enacted 1987)

Section:	16	Full hearing to be in public		30/06/1997
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(1) Subject to subsections (2) and (3), a full hearing shall be conducted in public.

(2) Where a Tribunal is of the opinion that the interests of public morality require that all or any persons should be excluded from a full hearing the presiding magistrate may direct that those persons be excluded accordingly; but the power conferred by this subsection shall not be exercised for the purpose of excluding any person who submitted the article, or any person who would have been entitled to submit it, under section 13 or his representative, or any bona fide reporter for any newspaper, magazine or radio or television station.

(3) A Tribunal may, whether or not it gives a direction under subsection (2), make an order forbidding the broadcasting, whether by radio or television, or other publication of any report or account of the whole or any part of any evidence adduced before it.

(Enacted 1987)

Section:	17	Reconsideration of article		30/06/1997
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(1) Subject to subsection (2), a Tribunal may of its own motion, or at the request of any person who submitted an article or of any person who would have been entitled to submit it under section 13, reconsider the classification of the article and may alter or confirm that classification.

(2) A Tribunal may refuse a request to reconsider the classification of any article submitted under section 13 if

that article was classified within a period of 3 years prior to that submission.

(3) This Part shall apply to any motion or request to reconsider a classification as if such motion or request were a requirement for a full hearing under section 15.

(Enacted 1987)

Section:	18	Publisher etc. to give notice of classification		30/06/1997
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(1) The printer, manufacturer, publisher, distributor and importer of any article which is classified as a Class I or Class II article shall give notice in the prescribed manner of that classification and of any conditions imposed under section 8(2)(c) to any person to whom after that classification has taken effect he publishes more than 2 copies.

(2) Any person who contravenes subsection (1) commits an offence and is liable to a fine of \$200000 and to imprisonment for 12 months.

(Enacted 1987)

Section:	19	Registrar to give notice	L.N. 232 of 2003	19/12/2003
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(1) The Registrar shall give notice in accordance with subsection (2)-

(aa) of any refusal of an application under section 8(2) in relation to an article that, in the opinion of a Tribunal, may be child pornography; (Added 31 of 2003 s. 23)

(a) of any interim classification;

(b) of any classification-

(i) made at a full hearing;

(ii) deemed to be the classification of a Tribunal under section 15(5); or

(iii) made following a reconsideration under section 17; and

(c) of any conditions imposed under section 8(2)(c).

(2) Notice under subsection (1) shall be given once each in an English language newspaper and a Chinese language newspaper published daily and circulating generally in Hong Kong.

(3) If notice in accordance with subsection (2) is published in the newspapers referred to in that subsection on different days, notice shall be deemed to have been given on the last of those days.

(4) The Registrar shall keep and maintain, in such form as he thinks fit, a register of notices given under this section.

(Enacted 1987)

Section:	20	Registrar to keep repository		30/06/1997
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(1) The Registrar shall keep and maintain, in such manner as he thinks fit, a repository for the keeping of articles submitted for classification under section 13.

(2) Except with the consent of a Tribunal all articles submitted for classification under section 13 shall be kept in the repository for a period of 5 years from the date on which it is classified and may thereafter be disposed of in accordance with the directions of the Registrar.

(Enacted 1987)

Part:	IV	OFFENCES		30/06/1997
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Section:	21	Prohibition on publishing obscene articles	48 of 2000	07/07/2000
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(1) Subject to subsection (2) any person who-

(a) publishes;

(b) possesses for the purpose of publication; or

(c) imports for the purpose of publication,

any obscene article, whether or not he knows that it is an obscene article, commits an offence and is liable to a fine of \$1000000 and to imprisonment for 3 years.

(2) It shall be a defence to a charge-

- (a) under subsection (1) for a defendant to prove that, at the time the offence is alleged to have been committed, the article the subject of the charge was classified as a Class III article; but he may be convicted of any other offence under this Part established by the evidence as if he had been charged with that other offence;
- (b) under subsection (1) for a defendant to prove that the article the subject of the charge is, or was at the time the offence is alleged to have been committed, classified as a Class I or a Class II article;
- (c) under subsection (1) (b) or (c) for a defendant to prove that, at the time the offence is alleged to have been committed, the article the subject of the charge was possessed or imported- (Amended 80 of 1997 s.102)
 - (i) by him for the purpose of submitting it, a copy thereof or a print therefrom to the Registrar under section 13; or (Amended 80 of 1997 s. 102)
 - (ii) by a person licensed under the Broadcasting Ordinance (Cap 562) for the purpose of submitting it under that Ordinance for provision under that Ordinance; (Replaced 48 of 2000 s. 44)
- (d) under subsection (1)(b) for a defendant to prove that, at the time that offence is alleged to have been committed, he-
 - (i) had had no reasonable opportunity to inspect the article the subject of the charge; and
 - (ii) had reasonable grounds for believing that article was not obscene; and
- (e) under subsection (1) (c) for a defendant to prove that, at the time that offence is alleged to have been committed, he had reasonable grounds for believing that the article the subject of the charge was not obscene.

(Enacted 1987)

Section:	22	Prohibition on publishing an indecent article to a juvenile		30/06/1997
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(1) Subject to subsection (2), any person who publishes any indecent article to a person who is a juvenile, whether or not he knows that it is an indecent article or that such person is a juvenile, commits an offence and is liable to a fine of \$400000 and to imprisonment for 12 months on his first conviction, and to a fine of \$800000 and to imprisonment for 12 months on a second or subsequent conviction. (Amended 73 of 1995 s. 6)

- (2) It shall be a defence to a charge under this section to prove that-
 - (a) the article the subject of the charge is, or was at the time that the offence is alleged to have been committed, classified as a Class I article;
 - (b) at the time that the offence is alleged to have been committed, the person so charged inspected an identity card or passport purporting to be the identity card or passport of the juvenile and believed on reasonable grounds that the juvenile was not a juvenile; or
 - (c) the indecent article was published in compliance with conditions relating to its publication imposed by a Tribunal under section 8(2)(c).

(Enacted 1987)

Section:	23	Prohibition on display of indecent matter	48 of 2000	07/07/2000
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(1) If any indecent matter is publicly displayed the person making the display and any person causing or permitting the display to be made, whether or not he knows that the matter is indecent, commits an offence and is liable to a fine of \$400000 and to imprisonment for 12 months on his first conviction, and to a fine of \$800000 and to imprisonment for 12 months on a second or subsequent conviction. (Amended 73 of 1995 s. 7)

- (2) Nothing in this section shall apply in relation to any matter-
 - (a) included in a television programme service provided by a company licensed under the Broadcasting Ordinance (Cap 562); or (Replaced 48 of 2000 s. 44)
 - (b) included in the display of an article in a bona fide art gallery or museum and visible only from within that gallery or museum.

[cf. 1981 c. 42 s. 1 U.K.]
(Enacted 1987)

Section:	24	Restriction on publishing indecent article		30/06/1997
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- (1) A person shall not publish an indecent article-

- (a) where-
 - (i) the article has no cover or packaging or the covers or packaging is not indecent, unless the article (together with its covers or packaging, if any) is sealed in a transparent wrapper;
 - (ii) either the front cover or back cover of the article or both such covers are indecent (whether or not the article has any packaging and whether or not the packaging is indecent), unless the article (together with the covers, and packaging if any) is sealed in a completely opaque wrapper; or
 - (iii) the packaging of the article is indecent (whether or not the article has any cover and whether or not the covers are indecent), unless the article (together with the covers, if any, and the packaging) is sealed in a completely opaque wrapper;

- (b) where the article is an article-
 - (i) described in paragraph (a)(i), unless the article bears; or
 - (ii) described in paragraph (a)(ii) or (iii), unless the article and the completely opaque wrapper each bears,

a notice which is in the form specified in subsection (1D) and is displayed in accordance with subsection (1C); and

- (c) unless the article, and its transparent wrapper or completely opaque wrapper, as the case may be, comply with the relevant requirements in subsections (1A) and (1B). (Replaced 73 of 1995 s. 8)

(1A) Subject to subsections (1B) and (1C), where an indecent article is published-

- (a) if it is an article which is sealed in a completely opaque wrapper, nothing other than the name of the article, its date of publication, issue number and selling price shall be displayed on its completely opaque wrapper; or
- (b) if it is an article which is sealed in a transparent wrapper, nothing shall be displayed on its transparent wrapper. (Added 73 of 1995 s. 8)

(1B) Where an indecent article is published-

- (a) it shall have-
 - (i) where it has no packaging, printed either on its front cover or back cover;
 - (ii) where it has any packaging, (whether or not it has any covers) printed on its packaging; or
 - (iii) where it has no cover or packaging, printed on a label affixed to the article and which occupies the whole article; and
- (b) where it is sealed in a completely opaque wrapper, it shall have in addition to the requirement in paragraph (a) printed on either side of the completely opaque wrapper,

clearly and conspicuously, the name, the full address of place of business and the telephone number of the publisher. (Added 73 of 1995 s. 8)

(1C) Where an indecent article is published, the notice referred to in subsection (1) shall be displayed so that it is easily noticeable-

- (a) (i) on both the front and back covers of the article;
- (ii) on the packaging of the article if the article has no cover; or
- (iii) on a label affixed to the article and which occupies the whole article if the article has no cover or packaging; and
- (b) on both sides of its completely opaque wrapper where the article (together with its covers or packaging, if any) is sealed in a completely opaque wrapper. (Added 73 of 1995 s. 8)

(1D) The notice referred to in subsection (1) shall be in the following form-

"WARNING: THIS ARTICLE CONTAINS MATERIAL WHICH MAY OFFEND AND MAY NOT BE DISTRIBUTED, CIRCULATED, SOLD, HIRED, GIVEN, LENT, SHOWN, PLAYED OR PROJECTED TO A PERSON UNDER THE AGE OF 18 YEARS

警告：本物品內容可能令人反感；不可將本物品派發、傳閱、出售、出租、交給或出借予年齡未滿18歲的人士或將本物品向該等人士出示、播放或放映。";

and the following shall apply in respect of the notice-

- (a) the letters and characters constituting the notice shall occupy at least-
 - (i) (A) 20% of each cover of the article;
 - (B) 20% of the packaging of the article if the article has no cover; or
 - (C) 20% of a label affixed to the article and which occupies the whole article if the article has no cover or packaging; and
 - (ii) 20% of each side of its completely opaque wrapper where the article (together with its covers or

- packaging, if any) is sealed in a completely opaque wrapper;
- (b) the letters and characters referred to in paragraph (a) shall be of a colour which contrasts with the colour of the background upon which they are printed;
- (c) the area within which the notice is displayed shall not contain anything other than the letters and characters constituting the notice. (Added 73 of 1995 s. 8)

- (1E) (a) (i) In case the publisher and the printer of the indecent article are the same person, that person; or
(ii) in any other case, the publisher of the article,
shall ensure that the requirements of subsections (1A), (1B), (1C) and (1D) are complied with.
- (b) Subject to subsection (3), any publisher or printer, as the case may be, who contravenes paragraph (a), whether or not he knows that the article is an indecent article, commits an offence and is liable to a fine of \$400000 and to imprisonment for 12 months on his first conviction, and to a fine of \$800000 and to imprisonment for 12 months on a second or subsequent conviction.
- (c) Any person who is not the publisher of an indecent article but wilfully or knowingly allows his name to be printed on it or its completely opaque wrapper (as may be appropriate) as the publisher of it, commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months. (Added 73 of 1995 s. 8)

(1F) In subsection (1E), with respect to an indecent article-

"the publisher" (出版人) means the person who causes, manages or controls the printing, manufacturing or reproduction of it, as the case may be;

"the printer" (印刷人) means the person who prints, manufactures or reproduces it, as the case may be. (Added 73 of 1995 s. 8)

(2) Subject to subsection (3), any person who contravenes subsection (1), whether or not he knows that the article is an indecent article, commits an offence and is liable to a fine of \$400000 and to imprisonment for 12 months on his first conviction, and to a fine of \$800000 and to imprisonment for 12 months on a second or subsequent conviction. (Amended 73 of 1995 s. 8)

(3) It shall be a defence to a charge under this section to prove that the article the subject of the charge is, or was at the time the offence is alleged to have been committed, classified as a Class I article.

(Enacted 1987)

Section:	25	Offences in relation to interim classification		30/06/1997
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Where an article is classified as a Class III article by virtue only of an interim classification, any person who publishes that article, whether or not he knows it has been so classified, commits an offence and is liable to a fine of \$1000000 and to imprisonment for 3 years.

(Enacted 1987)

Section:	26	Prohibition on publishing Class III article		30/06/1997
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Any person who-

- (a) publishes;
- (b) possesses for the purpose of publication;
- (c) imports for the purpose of publication,

any article classified by a Tribunal, other than by virtue only of an interim classification, as a Class III article, whether or not he knows it has been so classified, commits an offence and is liable to a fine of \$1000000 and to imprisonment for 3 years.

(Enacted 1987)

Section:	27	Restriction on publishing Class II article		30/06/1997
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Where, in relation to any article classified as a Class II article, a Tribunal has imposed conditions under section 8(2)(c), any person who publishes that article otherwise than in accordance with those conditions, whether or not he knows it has been so classified or that those conditions have been imposed, commits an offence and is liable to a fine of \$400000 and to imprisonment for 12 months on his first conviction, and to a fine of \$800000 and to imprisonment for 12 months on a second or subsequent conviction.

(Amended 73 of 1995 s. 9)
(Enacted 1987)

Section:	27A	Prohibition on possession of indecent article for the purpose of publication	48 of 2000	07/07/2000
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(1) Subject to subsection (2), any person who possesses for the purpose of publication any indecent article in respect of which any requirement of section 24 or any condition imposed under section 8(2)(c) is contravened, whether or not he knows that it is an indecent article, or that the indecent article contravenes any requirement of section 24 or that any condition imposed under section 8(2)(c) is contravened, commits an offence and is liable to a fine of \$400000 and to imprisonment for 12 months on his first conviction, and to a fine of \$800000 and to imprisonment for 12 months on a second or subsequent conviction.

(2) It shall be a defence to a charge under this section for the defendant to prove that-

- (a) the article the subject of the charge is, or was at the time the offence is alleged to have been committed, classified as a Class I article;
- (b) at the time the offence is alleged to have been committed, the article the subject of the charge was possessed by him-
 - (i) for the purpose of submitting it, a copy thereof or a print therefrom to the Registrar under section 13; or
 - (ii) as a person licensed under the Broadcasting Ordinance (Cap 562) for the purpose of submitting it under that Ordinance for provision under that Ordinance; (Replaced 48 of 2000 s. 44)
- (c) at the time the offence is alleged to have been committed, he-
 - (i) had had no reasonable opportunity to inspect the article the subject of the charge; and
 - (ii) had reasonable grounds for believing that the article was not indecent; or
- (d) at the time the offence is alleged to have been committed, he had good and sufficient reasons to believe that the requirements of section 24 and the conditions imposed under section 8(2)(c) had been complied with.

(Added 73 of 1995 s. 10)

Section:	28	Defence of public good		30/06/1997
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It shall be a defence to a charge under this Part in respect of the publication of an article or the public display of matter if that publication or display, as the case may be, is found by a Tribunal to have been intended for the public good on the ground that such publication or display was in the interests of science, literature, art or learning, or any other object of general concern.

(Enacted 1987)

Part:	V	DETERMINATION BY A TRIBUNAL		30/06/1997
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Section:	29	Tribunal to have exclusive jurisdiction	L.N. 232 of 2003	19/12/2003
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(1) A Tribunal shall have exclusive jurisdiction to determine for the purposes of this Ordinance whether- (Amended 31 of 2003 s. 24)

- (a) any article is obscene or indecent;
- (b) any matter that is publicly displayed is indecent; or
- (c) the ground of defence under section 28 is proved in respect of the publication of an article or the public display of any matter.

(2) Subject to subsection (3), where in any civil or criminal proceedings before a court or magistrate a question arises for the purposes of this Ordinance as to any of the matters mentioned in subsection (1), that court or magistrate shall refer that question to a Tribunal; and the parties to those civil or criminal proceedings and, in the case of proceedings to which a public officer is not a party, the Secretary for Justice or their representatives, may appear and be heard at any hearing of that Tribunal relating to that reference. (Amended L.N. 362 of 1997)

(3) Where in any civil or criminal proceedings before a court or magistrate a person admits for the purposes of

this Ordinance that an article is obscene or indecent or that any matter publicly displayed is indecent the court or magistrate may accept that admission and so find against that person, and subsections (1) and (2) shall not apply.

(Amended 31 of 2003 s. 24)
 [cf. 1963 No. 22 s. 12 N.Z.]
 (Enacted 1987)

Part:	VI	APPEALS		30/06/1997
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Section:	30	Appeal	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) Any party to any proceedings before a Tribunal may appeal to the Court of First Instance against a decision of that Tribunal on a point of law by giving notice of appeal in writing setting out the grounds of that appeal to the Registrar within 14 days of that decision. (Amended 25 of 1998 s. 2)

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

Section:	31	Procedure on hearing appeal	79 of 1995 s. 50; 25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

In the case of any appeal under section 30-

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

(Amended 79 of 1995 s. 50; 25 of 1998 s. 2)
 (Enacted 1987)

Part:	VII	ENFORCEMENT		30/06/1997
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Section:	32	Presumptions relating to publication		30/06/1997
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For the purposes of this Ordinance, a person shall-

- (a) be deemed to possess an article for publication if he possesses it with the intention of manufacturing or reproducing a copy of it for publication; and
- (b) be presumed, in the absence of evidence to the contrary, to possess an article for publication if he possesses more than 2 copies of it in circumstances that give rise to a reasonable suspicion that he intends to publish it. (Amended 73 of 1995 s. 11)

(Enacted 1987)

Section:	33	Proof of certain matters		30/06/1997
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(1) A document purporting to be under the hand of the Registrar certifying that-

- (a) an article was at any time classified as a Class I, a Class II or a Class III article;
- (b) notice in accordance with section 19(2) was given in the manner and on the date specified in that document in respect of that article,

shall be admissible on its production and without further proof in any proceedings and such document shall be conclusive evidence of the facts contained in it unless it is proved that the document was not signed by the Registrar.

(2) A document purporting to be under the hand of a presiding magistrate stating a decision or determination of a Tribunal shall be admissible on its production and without further proof in any proceedings and such document shall be conclusive evidence of the facts contained in it unless it is proved that the document was not signed by a presiding magistrate.

(Enacted 1987)

Section:	34	Search and seizure under warrant	30/06/1997
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(1) A magistrate may, if he is satisfied by information on oath that there is reasonable ground for suspecting that there is in or on any premises, place, vessel, aircraft or vehicle-

- (a) any article in respect of which an offence under section 21, 24, 26 or 27A has been or is being or is about to be committed; or (Amended 73 of 1995 s. 12)
- (b) anything which is, or contains, evidence of the commission of any such offence,

issue a warrant authorizing any person being a police officer or member of the Customs and Excise Service to enter such premises, place, vessel, aircraft or vehicle, and search for, seize, remove and detain any such article or thing.

(2) An authorized officer may-

- (a) if he is a police officer, call on any member of the Customs and Excise Service; or
- (b) if he is a member of the Customs and Excise Service, call on any police officer,

to assist him in the exercise of the powers conferred by this section.

(3) An authorized officer or an assisting officer may, at any time of the day or night-

- (a) enter and search any premises or place named in the warrant; or
- (b) stop, board and search any vessel, aircraft or vehicle named in the warrant.

(4) An authorized officer or an assisting officer may seize, remove and detain-

- (a) any article in respect of which he reasonably suspects that an offence under section 21, 24, 26 or 27A has been or is being or is about to be committed; or (Amended L.N. 245 of 1987; 73 of 1995 s. 12)
- (b) anything whatever which he reasonably suspects to be, or to contain, evidence of the commission of such an offence.

(5) In this section-

"aircraft" (飛機) does not include a military aircraft;

"vessel" (船隻) does not include a ship of war or a ship having the status of a ship of war.

(Enacted 1987)

Section:	35	Ancillary powers of officers under warrant	30/06/1997
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An authorized officer or an assisting officer may in relation to his powers under a warrant-

- (a) use such force as is reasonably necessary to enter any premises or place which he is empowered to enter and search;
- (b) use such force as is reasonably necessary to stop, board, or search any vessel, aircraft or vehicle which he is empowered to stop, board and search;
- (c) use such force as is reasonably necessary to remove any person or thing obstructing him in the exercise of those powers;
- (d) detain any person found in or on any premises, place, vessel, aircraft or vehicle which he is empowered to enter and search until it has been searched; and
- (e) prevent any person from approaching, boarding or leaving any vessel, aircraft or vehicle which he is empowered to enter and search until it has been searched.

(Enacted 1987)

Section:	36	Seizure by member of Customs and Excise Service		30/06/1997
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In addition to any power he may have under section 34, any member of the Customs and Excise Service may seize, remove and detain-

- (a) any article in respect of which he reasonably suspects that an offence under section 21(1)(c) or 26(c) has been or is being or is about to be committed; and
- (b) anything whatever which he reasonably suspects to be, or to contain, evidence of the commission of such an offence.

(Enacted 1987)

Section:	36A	Seizure by police officer		30/06/1997
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In addition to any power he may have under section 34, any police officer may seize, remove and detain-

- (a) any article in a public place, in respect of which he reasonably suspects that an offence under section 22, 23, 24, 27 or 27A has been committed or is being committed; and
- (b) anything whatever in a public place, which he reasonably suspects to be, or to contain, evidence of the commission of such an offence.

(Added 73 of 1995 s. 13)

Section:	36B	Seizure by inspector	L.N. 18 of 2012	01/04/2012
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(1) The public officer appointed by the Secretary for Commerce and Economic Development may authorize in writing any public officer to be an inspector for the purposes of this Ordinance. (17 of 2011 s. 28)

(2) An inspector may seize, remove and detain-

- (a) any article in a public place, in respect of which he reasonably suspects that an offence under section 23, 24, 27 or 27A has been committed or is being committed; and
- (b) anything whatever in a public place, which he reasonably suspects to be, or to contain, evidence of the commission of such an offence.

(Added 73 of 1995 s. 13)

Section:	37	Detained article to be taken before magistrate		30/06/1997
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Any article or thing which has been detained under section 34, 36, 36A or 36B and is liable to forfeiture under section 39 shall, as soon as practicable after that detention, be taken before a magistrate to be dealt with in accordance with this Part; but this section shall not apply in the case of any article which is the subject of a charge under Part IV.

(Amended 73 of 1995 s. 14)

(Enacted 1987)

Section:	38	Obstruction		30/06/1997
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(1) Any person who-

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

commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months. (Amended 63 of 1993 s. 23; 73 of 1995 s. 15)

(2) Any person who obstructs any police officer or inspector in exercising a power conferred by section 36A or 36B respectively commits an offence and is liable to a fine at level 3 and to imprisonment for 6 months. (Added 73 of 1995 s. 15)

(Enacted 1987)

Section:	39	Liability to forfeiture	30/06/1997
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(1) Any article which is-

- (a) obscene; or
- (b) classified, other than by virtue only of an interim classification, as a Class III article,

shall be liable to forfeiture.

(2) Subject to subsection (3), any-

- (a) machinery or apparatus used for projecting or showing; or
- (b) machinery, plate, implement, utensil, photographic film or material used for the purpose of printing copies of,

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

(2A) Any article seized, removed or detained under section 34, 36A or 36B shall be liable to forfeiture. (Added 73 of 1995 s. 16)

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

(Enacted 1987)

Section:	40	Order for forfeiture	30/06/1997
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(1) Subject to subsection (2) and section 41, where an application is made to a magistrate for an order for forfeiture-

- (a) he shall, in the case of an article that is before him and is liable to forfeiture under section 39(1), order it to be forfeited;
- (b) he may, in the case of a thing that is before him and is liable to forfeiture under section 39(2), order it to be forfeited;
- (c) he may, in the case of an article that is before him and is liable to forfeiture under section 39(2A), order it to be forfeited. (Added 73 of 1995 s. 17)

(2) An order for forfeiture shall not be made under subsection (1) if any ground of defence under section 21 (2)(b), (c), (d) or (e), 22(2), 23(2), 24(3) or 27A(2), or section 28 in respect of the publication of an article, as the case may be, is proved. (Amended 73 of 1995 s. 17)

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

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

(Enacted 1987)

Section:	41	Procedure in relation to forfeiture	30/06/1997
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(1) Subject to subsections (3) and (4), before making an order for forfeiture of any article or thing under section 40 the magistrate shall issue a summons to-

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

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

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

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

(4) If any summons issued under subsection (1) has not for any reason been served and the magistrate is satisfied that all reasonable efforts were made to serve the summons on the person named in the summons he may make an order of forfeiture under section 40 notwithstanding that the summons was not served and that the person

named in the summons is not given an opportunity to show cause why the article or thing should not be forfeited.

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

(6) In this section "owner" (擁有人)-

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

(Enacted 1987)

Section:	42	Obliteration of indecent matter	30/06/1997
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(1) Subject to subsection (2) and section 43, if, upon the application of any public officer, a magistrate is satisfied that any indecent matter is publicly displayed on any building or other structure he may order the owner of the building or structure to remove or efface that indecent matter.

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

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

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

(5) The Commissioner of Police may apply to a magistrate for an order that a person who has failed to comply with an order made against him under subsection (1) shall pay any expenses reasonably incurred by a police officer in the execution of the order under subsection (3) and the magistrate may make an order for such payment under section 69 of the Magistrates Ordinance (Cap 227) notwithstanding that it may exceed the amount mentioned in that section.

(Enacted 1987)

Section:	43	Procedure in relation to obliteration	30/06/1997
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(1) Before making an order to remove or efface any indecent matter under section 42 the magistrate shall, unless he is satisfied that the owner of the building or other structure mentioned in that section 42 cannot for any reason be found or ascertained, issue a summons to him to appear on a day specified in the summons to show cause why an order should not be made to remove or efface that indecent matter.

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

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

(Enacted 1987)

Part:	VIII	RULES, REGULATIONS AND THE POWERS OF THE REGISTRAR	30/06/1997
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Section:	44	Chief Justice may make rules	30/06/1997
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The Chief Justice may make rules relating to the practice and procedure to apply to proceedings before a Tribunal, or magistrate, or in any court, under this Ordinance and to appeals under this Ordinance and, in particular, may make rules to provide for-

- (a) the manner of making application under this Ordinance;
- (b) the reference of questions from a court or magistrate to a Tribunal;
- (c) the method of recording a classification or determination of a Tribunal;

- (d) the service of documents;
- (e) the form of any document for the purpose of any proceedings in a Tribunal or for any appeal;
- (f) rights of audience before a Tribunal;
- (g) the giving of notice relating to any proceedings before a Tribunal or any appeal under section 30; and
- (h) the award, taxation and recovery of costs relating to any proceedings in a Tribunal.

(Enacted 1987)

Section:	45	Powers of Registrar		30/06/1997
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The Registrar may-

- (a) give directions as to the distribution and disposal of the business of a Tribunal;
- (b) determine any form of document to be made or issued by a Tribunal; and
- (c) permit such person or class of person as he thinks appropriate on payment of any prescribed fee to search-
 - (i) the register of notices kept by him under section 19(4); and
 - (ii) the repository of articles kept by him under section 20.

(Enacted 1987)

Section:	46	Regulations	55 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 55 of 1999 s. 3

The Chief Executive in Council may make regulations to provide for- (Amended 55 of 1999 s. 3)

- (a) fees;
- (b) the manner of giving of notice under section 18;
- (c) the empowering of a Tribunal or the Registrar to waive any prescribed fee; and
- (d) the payment of fees and allowances to adjudicators.

(Enacted 1987)

Part:	IX			30/06/1997
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Section:	47	(Omitted as spent)		30/06/1997
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Section:	48	(Omitted as spent)		30/06/1997
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