

To: All Officers.

DO.PL No. 252

ENFORCEMENT OF THE PROVISIONS OF SECTIONS
127 (A) AND 127 (B) OF THE CUSTOMS ORDINANCE

ARREST OF PERSONS CAPABLE OF INTERFERING WITH
INVESTIGATIONS OR CONSIDERED NECESSARY TO
KEEP SUCH PERSONS IN CUSTODY FOR THE PROPER
INVESTIGATION

1.0 Arrest of persons reasonably suspected of an offence under
the Customs Ordinance.

1.1 In terms of Section 127, every offence under the Customs Ordinance is deemed as cognizable within the meaning of the Code of Criminal Procedure Act. Any officer of Customs appointed under Section 2 of the Customs Ordinance, or any person employed for the prevention of smuggling in terms of Section 3 of the Customs Ordinance, is empowered under Section 127 of the Customs Ordinance, to arrest any person against whom reasonable suspicion exists that such person has been guilty of any offence under the Customs Ordinance. Such persons so arrested shall with all convenient despatch, be taken to the nearest Custom House and produced before the nearest Director General of Customs to be dealt with according to law before the Director General of Customs, as defined in Section 167 of the Customs Ordinance, and a report be given as to the cause of such arrest.

2.0 Persons arrested to be produced before a Magistrate

2.1 Every person so arrested under the provision of Section 127 of the Customs Ordinance, if not released within twenty four hours of such arrest should be produced before a Magistrate, if such person has to be kept for the purpose of any investigation in terms of Section 127 (A) of the Customs Ordinance.

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2.2 This arrangement is permitted as spelt out in the Law under two circumstances:-

(a) If such person is capable of interfering with the investigation; or

(b) The nature of the offence is such that it is desirable to keep such person in custody for the purpose of investigation of the offence.

2.3 Every such person arrested and produced before a Magistrate, from whom permission is obtained to keep such person in custody should be handed over to the Legal Authority in charge of the Remand Prison. Under no circumstances such persons so arrested should be detained beyond twenty four hours in customs custody with or without the permission of the Magistrate. It has to be noted that a Customs House does not have a Remand Prison to house those suspects deemed for investigations.

2.4 Officers should note that it is mandatory for the Director General of Customs to express an opinion relating to the nature of the offence and the involvement of the persons so arrested for the purposes of Section 127(A) of the Customs Ordinance. Therefore, an explicit report in the form of an application should be prepared and signed by the Director of the Division concerned when seeking permission from the Magistrate, to keep any person in custody.

3.0 Access to persons in custody for purpose of investigation

3.1 Section 127(B) provides for a Customs Officer conducting investigation under the Customs Ordinance in respect of any person arrested and kept in remand custody to have the right of access to such person. It also provides for the officer to take such person during reasonable hours to any place for the purpose of investigation. It has to be noted that such right has to be exercised with caution and after duly notifying and obtaining permission from a Magistrate. "Any place for the purpose of investigation" means any

Custom House where the investigation is carried out, or, a warehouse, or place of deposit in when the goods seized are stored or a place or site which has to be identified for the purpose of corroboration of any evidence led in the investigation.

4.0 Treatment of suspects

4.1 Statement made to a Customs officer is admissible in evidence. Therefore, utmost care should be taken in recording statements and dealing with persons from whom statements are recorded, so that no iota of doubt is created that such statement is recorded under threat, intimidation, duress or inducement.

4.2 It is the responsibility of the Head of the Unit or the Senior Officer acting on his behalf to ensure that all arrangements are made for the supply of meals and refreshments to suit the habits and needs of the suspects. Liquor should not be served under any circumstance. Suitable refreshments should also be provided to the suspects during the Customs Inquiry.

5.0 This circular is issued with the concurrence of the Attorney General.



~~P. Weerasekera,~~
Director General of Customs.

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