CHAPTER III

THE BETTING ORDINANCE 1953

(1) INTRODUCTION

The Betting Bill 1953 was first presented to the Federal Legislative Council on the third of September 1953 to improve the existing law in the former Federated Malay States and Straits Settlement and to extend it throughout the former unfederated Malay States. The legal position then was that whilst there were measures to control betting in the Straits Settlements and the former Federated Malay States, there were no measures at all to control betting in the former Unfederated Malay States. The Straits Settlements Ordinance (Cap 29) and the Federated Malay States' Enactment (Cap.48) was substantially similar*1 and the Bill presented followed closely the Betting Ordinance of the Straits Settlement (Cap.29). It is also complimentary to the Common Gaming Houses Ordinance 1953, six*2 of the administrative provisions of which have been incorporated in the Bill in order to tighten up the law against betting.

For example in clause 8, which was new so far is the legislation in the former Federated Malay States and Straits Settlements were concerned. It was provided that any person accepting stakes or wages or found in possession of any

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1. See (TABLE A) to show the substantial similarity between the various betting legislation.

~~1. See Comparative Table~~

2. Up to date, the number has been increased to eight, see sections II and 24(2) of the CSHO 1953 and sections 14A and 18(2) of the Betting Ord. 1953 (as amended in 1967) of the Comparative Table (Table A).

books, accounts, documents etc. which are used or appear to be used in connection with or to relate to the business of a bookmaker shall be presumed, if it is done in a public place to be frequenting or loitering on such places for the purpose of bookmaking. That is the presumption and its up to the accused to dispel that presumption.

The West Malaysian Ordinance was substantially amended in 1961 by Act 8 of 1961, which on the whole made it more similar to the Singapore Ordinance. Among the amendments made was the substitution of the definations of the terms "bookmaker" and "common gaming house". The new defination of "bookmaker" includes a runner and a penciller and these two latter terms are defined.

The Betting Ordinance 1953 seeks to suppress betting in public places, bookmaking and common betting houses. Otherwise betting is allowed, in fact some is legalised for example one being a member of the Turf Club, bets through the Tote. Betting with a "bookie" is illegal, [3] just as if its done in a common betting house, which is deemed to be a common nuisance and contrary to law under s.3. Any person found guilty of such an offence shall be liable to imprisonment.

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3 see S.6(1) (as amended by A.8/61).

for two years or to a fine of twenty thousand dollars or to both such imprisonment and fine.

2) BOOKMAKER

The defination of a bookmaker is wide. It does not only include an individual who

(1) receives or negotiates bets or wages, whether on a cash or credit basis and whether for money or money's worth

or (2) in any manner holds himself out or permits himself to be held out in any manner as a person who receives or negotiates such bets or wages,

but also envelopes such persons who help this individual either as a penciller, runner servant or agent.[4] Therefore anybody who forms part of the whole system, be it the Kingpin or a mere servant will be deemed a bookmaker.

Section 6 (3) is the penalty clause for any person who acts as a bookmaker or who for the purpose of bookmaking or betting etc. frequents, loiters in any street, roadway etc.

A question arises whether a punter (a person who places the bets ~~in~~ with the "bookies") would escape liability under this section. An ingenious argument was forwarded by defence Counsel in the case of P.P. vs. LEE YOKE KAI [5].

He argued that the Respondent might have placed his bets with a bookie (instead of the Respondent being a bookie himself

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4 "penciller" means a person who helps a bookmaker to keep his accounts or records of bets in connection with horse-races.
"runner" means a person employed by a bookmaker to collect and settle bets, either on salary or on commission.

5 (1967) 1 MLJ 213.

as charged by the Prosecution) in which case he would be a punter and could therefore not be caught by the provisions of section 6(3)(a) of the Ordinance.

It was held that if the bets had been placed with a bookie, then PI[6] would be a document which relates or appears to relate to the business of a bookmaker under section 8(1).

Section 8 (1) reads as follows:-

> "Any person accepting or receiving bets, stakes or wages, or found in possession of any books, accounts documents, telegrams, writings, circulars, cards or other articles which are used or appear to have been used, or intended to be used in connection with or which relate or appear to relate to the business of a bookmaker shall be presumed until the contrary is proved to be acting as a bookmaker".

In view of the presumption under this section it would be for the Respondent to prove that he did not act as a bookmaker but only as a punter, in which case then he would expose himself to prosecution under section 6 (1) of the Ordinance.

It can at one be seen that the law extends its hands both ways, i.e. both the one who bets and the persons who accepts the bets to make it more

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6. The document in issue.

difficult for a person, involved in any way in the business of bookmaking, to escape liability. Infact, an individual may not actually act as a bookmaker to be liable, suffice if he in any manner holds himself out or permits himself to be held out in any manner as a person who receives or negotiates such bets or wages[7].

Prior to the amendment made in 1961 from section 8 it would appear that time would be an essence of a change under it i.e. if the documents or articles seized relate to a past (or race or any other contingency) then it would not be "articles which are used or appear to be used in connection, with or to relate to the business of a bookmaker ....."[8]. Hence the presumption implicit in the section would not operate if the accused can show that the articles and documents relate to a past event. Thus lacunae seemed to have been remedied by the amendment, with the inclusion of the phrase "or intended to be used in connection" with obvious reference to a future

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7. See S.2(11).

8. See S.8 unamended by Act 8/61.

contingency.

In a Singapore case, TAM BIAN OUM vs. P.P.[9] the point was clarified. The accused had been charged with the offence of acting as a bookmaker under a S.5(3) (a) of the Singapore Betting Ordinance. The learned Magistrate acquitted the accused as he held that time was the essence of the charge, and as the races to which the document found on the accused related had been run he could no longer be a bookmaker in respect of them. The deputy public prosecutor appealed and it was then held that the section refers to the possession of documents or other articles which are used or appear to have been used or intended to be used for bookmaking and once possession of the document is established the time factor is immaterial and irrelevant and the person found in possession is presumed to be a bookmaker.

Since the amendments were specially enacted to run parallel to the corresponding legislation in Singapore, this case would be of strong persuasive authority. Thus a person cannot now escape by the mere fact that the articles found upon him relate to a race already run or a contingency already past.

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9. (1966) 1 MLJ 68.

10. See our amended s.8(1).

3) COMMON BETTINGS HOUSE (CBH)

As already mentioned, a common betting house shall by virtue of S.3 be deemed to be a common nuisance and contrary to law. And the offences relating to common betting house is laid down generally in section 4. A presumption arises against any person who occupies or has the use temporaily of a place which is kept or used by another person as a common betting house that he has permitted such place to be so kept or used. [11]

CBH is quite clearly defined in the Ordinance in S.2. It is specifically laid out in three sub sections when a place is held to be a common betting house. If a place falls under either one of the three then it would be deemed a common betting house. It was held in R vs. LI KENG CHUAN[12] that if a place is used for wagering it may be a common betting house even though the wagering is upon the result of a game of skill.

A very interesting discussion on the issue of what makes a common betting house can be found in the Supreme Court decision of R vs. LIN KIM POAT [13], in 1933 in Singapore. It appeared that the action of the Appellant amounted to this: that they being members of the Club made bets in the Members Enclosure with other members of the Clubs. The substance of the first change was that the Appellants

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11. See S.4(2)

12. (1933) MLJ 212.

13. (1933) MLJ 164.

used a place in front of the Totalisator as a common betting house. The second charge repeats this first charge with the addition of the words "which place" (i.e. the betting house) was habitually used for betting".

The defination of "place" and "betting house" are contained in S.2 of the Ordinance.

Common betting house means any place kept or used for betting or wageninc on any event or contingency of or relating to any horse race or other race, fight, game, sport or exercise to which the public, or any class of the public has, or may have, access, and any place kept or used for habitual betting or wagening on any such event or contingency as aforesaid, whether the public has or may have access thereto or not".

"Place" is as defined in the present Ordinance.

MURISON C.J. Looked at a new angle in his decision, i.e. the long title of the Ordinance, which was "To suppress Betting Houses and betting in public [14] He held that the word "Place" which the Ordinance defines can refer prima facie only to public places, given by the title of the

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14. The title of an ordinance can be looked at in deciding the construction and general scope of the Ord: CRAIG ON STATUTE LAW 7th EDITION p.36.

Cases: FIELDINGS vs. MORELEY CORPORATION (1899) 1 CH.3

But See IN THE GOODS OF GROSS (1904) 73 L.J.P. 82 as further authority that an Ord. is not limited by its title.

Ordinance the Legislature announce that (unless there is something else in the context) that is the only kind of place to which the Ord. shall apply. It was clear then, in his opinion, the Members Enclosures was not a public place. On the contrary it was a private place i.e. a place for members only.

The learned C.J. divided the defination of common betting house into 2 parts (1) the 1st part deals with a place where betting is carried on and the public or any class of the public has access to it. If his view was right that the Turf Club is not a class of the public this part does not involve the Appellant in any offence.

(2) The 2nd part deals with a place used for habitual betting whether the public has or has not access thereto.

These last words conflict with the title of the Ordinance but the operation of the Ordinance is not limited by its title. The result therefore is that betting, even in a place to which the public have no access, is an offence if the place is habitually used for gaming.

It would appear at first sight that this provision makes it an offence for anyone to play any game anywhere even in one's own private house. It seems hardly possible that the legislature could have contemplated so extraordinary an event. The really essential word in both definations is the word "habitual". This word was expressed by Stevens J. in R vs. FONG CHONG CHENG,[15]

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15. (1930) SSLR 139.

as referring to a place to which the general public can resort for gaming or a place to which though barred to the public, is kept or used by the owners or occupiers primarily for gaming. A private residence, he says, does not become a common gaming house because the owner makes a practise of inviting his friends to it to gamble, nor do the premises of an ordinary social club become a common gaming house merely because the club provides facilities for its members to gamble and some of them habitually use the premises for that purpose. Using the above argument, his Lordship held that the Singapore Turf Club is primarily a bona fide Club for the sport of horse racing. At page 166[16] , he says:

"The Sport is the essential : betting the accident. The fact that many members of the club go to the races and bet can give us no right to strain an Act of Parliament which was passed foradifferent purpose, i.e. for the suppression of common betting house not for the suppression of horse racing. If this view given was correct then all the Appellant did was, as a member of a bona fide club, to make bets with other members of that club upon the result of horse races

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16. (1933) Vol. 2 MLJ.

which was the primary object of the existence of the club. And that then, for the reasons given above, is not an offence within the Ordinance.

It should also be noted that should the Appellant be found guilty, then the committee would likewise be liable in permitting the Appellant to keep a common betting house on the Club premises.

In the same case, a different conclusion was arrived at by Whitley J. His Lordship found the Appellant guilty, apart from other reasons, because the evidence established a clear case of betting by making a book on each race on two successive race days.[17]

He stressed on the fact that the place which they were charged with using was not the Turf Club premises nor the enclosure but this particular bench was within the enclosure. The definition of "place" was clearly designed to give the word the widest possible meaning. There can be no doubt then that the bench in question comes within the definition of "place" in S.2 of the Ord. In answer to the question of whether the place was a common betting house within the meaning of the Ordinance, His Lordship held that the first half of the definition cannot apply because only members of the Turf Club had access to the place in question and members

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17. The 2nd Appellant abetted him by bringing the slips to that spot thereby rendering himself under S.114 of the Penal Code guilty as a principal of any offence which the first Appellant may have held to have committed

of a club are not the public or a class of the public.[18] In order to bring this place within the second half of defination the Court must be satisfied that the place in question was "used by the Appellant for habitual betting on contingencies relating to horse races. The distinction between the first and second halves of the defination lies in the addition of the word "habitual". If the place is a public one to which the public or a class thereof have access it is only necessary to prove use for betting on one occasion but if it is not public as in the present case it is necessary to prove that it has been used habitually. His Lordship was of the opinion that there can be no doubt on the evidence that the place was used by them for betting on such contingencies and the fact that it was so used during every race for two days is sufficient to establish that it was so used by them habitually. Hence he held that the Appellant committed the offence charged and was properly convicted.

His Lordship then ventured further to discuss certain cogent points which were raised in the course of the hearing as tending to show that it cannot have been the intention of the Legislature to bring within the Ordinance Acts such as those proved against the Appellant. He refuted the too narrow interpretation given to the long title of the Ordinance and held that the object is to suppress betting in public places and also in CBH and by the defination

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18. In the case of PP vs. LAU TIM & KAI (1955) MLJ 206 it was held that the evidence showed that the general public did not have access to the office of the manager and therefore the prosecution had failed to prove that the office was used as a common betting house. Persons having business with a certain office, even if they have access, are not a class

(continue next page)

of the public. This decision is consistent with the reasoning of the case being discussed above offered by Whitley J. If a club is held not to be a public place where the public a class of the public can have access, there's more reason then not to hold an office as a public place.

in S.2 a CBH may be either a place to which the public have access i.e. a public place or a place to which the public have no access which is a private place and would include a club. Upon the reasoning his Lordship was of the opinion that nothing in the Long title of the Ord. prevented the application of the Ordinance to the facts established in the case.

With regards to the case of FONG CHONG CHENG vs. P.P. [18] Whitley J agreed with the ratio decidendi of that case as being an accurate statement of the law and if applied to the particular facts of that case there can be no doubt that no offence was committed. But His Lordship felt that it did not follow that betting between members on the premises of a club can under no circumstances be illegal.

What was suggested was that in this case the 2 members not the club, were during those two days using the bench as a club and in his learned opinion the Lordship felt that the bench was used habitually, primarily and exclusively for betting and whether that betting was done with members or outsiders or both it seems to ~~me~~ him to come within the

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18. ~~See judgment of Stevens J (1930) SSCR 139.~~

18. (1930) SSLR 139 judgment of Stevens J.

mischief aimed at by the Ord. The 2 Appellants displayed great astuteness and set up their little betting saloon on a small corner of the club's premises and there encouraged betting by accepting commissions on credit, a far more dangerous and insidous form of vetting than that provided by the totalisator ..... ~~I should be prepared to hold that of on Race Days a member of the Singapore Club were to stand in the hall of the Club throughout the afternoon accepting bets on the races from members he would be using the sopt as a CBH and would be punishable under this Ord.....~~

The matter stands as it is even with the amendment made to S.2. The defination of Club remains the same in substance although it has been broken up into 3 parts, the last being a new addition to encompass the places used by the bookmakers to accept or negotiate bets even though the transactions were made through the telephone or post or even telegrams. [20.]

It is my humble submission that Whitley J's reasoning is preferable especially if our attention is drawn to the intention of the Ord. as a whole i.e. to either eradicate or otherwise control betting. Otherwise members of a club would shade behind the immunity afforded to them and they can then bet to their hearts content with fellow members -

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20. This added provision has thus overruled the decision laid down in the case of ABDUL KAREEM vs. R (1957) MLJ 185 where it was held that although there was evidence that bets were laid by telephone this did not amount to access within the meaning of the defination and as there was no other evidence that the public had access to the accused's room it was not a club within the first limb of the defination of club. This case is further multified because the word "access" has been defined to include access through the telephone, by post or by telegram by the amendment in 1961.

without the long aim of the law reaching them.

4) ON THE QUESTION OF EVIDENCE

In gaming cases the need for expert evidence is inevitable Usually the prosecution [21] in in trying to build its case would call up an expert witness to testify that a certain document is indeed a record of stake on horses etc. but the weight to be attached on these witnesses to a large extent seemed to depend on the totality of the evidence offered than in any particular point. Cogent reasons must be given to back up a fact, although sometimes self explanatory entries are accepted and requires no expert to say that they are a record of stakes and horses.[22]

A conviction was quashed on appeal in the case of TAN TUCK LOCK vs. R[23]. There was insufficient evidence to support the conviction. The judge felt that the evidence given by one of the two prosecution witnesses was entirely meritical and based on numbers and hieroglyplics found in the Race Books, in the spaces provided for making such entries. The only other witness was a clerk employed in the Turf Club and his evidence was inconclusive as to whether the Appellant was or was not a member of the Turf Club. There was no evidence of any person placing any bets with the accused or of any money parting out. The only evidence was that the second accused would come up and whisper to him.

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23. (1953) MLJ 60.

22. See P.P. vs. LEE YOKE KAI (1967) MLJ 213.

21. The relevant provision of the Betting Ord. renders it unnecessary for the prosuction in order to establish prima facie case, to prove anything more than that the document in question appeared to relate to bookmaking.

The learned Magistrate felt that all these things by themselves were nothing but matters arousing strong suspicion. However if they were taken in conjunction with the markings in the book, and the experts opinion on them, they build up into a formidable case against one of the two accused at least. The judge however, emphasised on the importance of the presence of real factual evidence against either of the accused. Had this been present, the further evidence tendered by the police officer would have been invaluable. In the absence of the former, he held that it was unsafe to convict the accused.

A new section was introduced in 1961 which was as follows:

"S.14A: In all proceedings under this Ordinance any evidence given by a police officer not below the rank of sergeant that any book, account, document, telegram writing, circular, card or other article produced before the Court had been used or intended to be used for betting or wagening shall until the contrary is proved, be deemed to be sufficient evidence of the fact."

It appears from the wording of this ection that the intention of the legislature was to deprive the court of its discretionary power to eject the evidence of any police officer not below the rank of a sergeant if he testified that the document before the Court had been used or was intended to be used for betting or wagening.

This possible interpretation appears to have provoked the consternation of H.T. ONG, F.J. in the case of LOH TECK CHONG vs. P. P.[24] where the learned Magistrate had convicted the accused despite the evidence of the police expert who had frankly admitted that it was impossible for him to say that the marks on the racing programme related to bookmaking. It was because of that H.T.ONG, F.J. when allowing the appeal remarked that the Appellant should have been acquitted at the close of the prosecution case.

He said that S.14A was a startling departure from standard practice as to expert evidence.
PER H.T. ONG, F.J. at p.8.: "The section was introduced by the Betting (Amendment) Act, 1961 Baldly stated, it dispenses completely with the need for expert evidence so that, in effect, any policeman, however unversed in the ways of the bookmaker, or in any form of betting whasoever, becomes qualified to testify in the capacity of expert on a subject in which he may be an absolute ignoramus and his opinion, a simple ipse dixit then suffices to raise a presumption of guilt until the contrary is proved by the hapless suspect. To say that I am astounded by this piece of legislation is to put

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24. (1966) MLJ 7

it mildly. Parliament, it was said, can do anything except make a man a woman or a woman a man. The Act of 1961 must I think, be an egragious instance of omnipotence when the bray of an ass can be metamorphosed into the voice of the expert - the only limitations being that the policeman should have attained a certain rank, however he did it, including of course, climbing up by the ageing process."

He went on further to say, at the same page

".... however unfathomable the collective wisdom of the legislature should be to lesser men, the legal presumption raised by section 14A is a rebuttable one. It does not in any manner shut out closer scrutiny and evaluation of the evidence. On the contrary being so lightly raised, it imposes on the courts a correspondingly heavier duty to be even more diligent to satisfy itself of the guilt of an accused before convicting."

It is my humble submission that the strict interpretation given by ONG H.T., F.J. is binding on all related points. Hence then a heavier duty is imposed and the authority of the evidence should be checked first.

In fact, we can also ~~continue~~ construe it another way. The section says that "evidence" given by a police offer touching the matter in question shall be deemed sufficient evidence of the fact. But this section does not say that anything

short of evidence is sufficient evidence of the fact. It should logically follow then that of a police while purporting to give expert evidence bases his opinion on a hunch or intuition or where his opinion is unsupported by reason, the court will surely not be debarred from rejecting that opinion as not being evidence within the meaning of that word under the provision of the Evidence Enactment. Surely it does not mean that the Court is obliged to accept each and every evidence given especially where it has obviously been fabricated, where it is pure madness to accept it as a piece of admissible evidence .

Finally it is to be remembered that in accepting the evidence of an accomplice there is the need for corroboration "Corroboration" can take many form, for example, a marked note or as in SAMINATHAN vs. P.P.[25] the accused's conduct in swallowing a number of bits of papers and some note books and other documents found in his room.

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25. (1937) MLJ 39.

TABLE A

A COMPARATIVE TABLE DENOTING THE SUBSTANTIAL SIMILIRITIES IN THE VARIOUS BETTING LEGISLATION

BETTING BILL '53	BETTING ORD.1953 (revised 1961)	STRAITS SETTLEMENT BETTING ORDINANCE (CAP. 29)	F.M.S. BETTING ENACTMENT (CAP.48)	COMMON GAMING HOUSES ORDINANCE 1953.
CLAUSE	SECTION	SECTION	SECTION	SECTION
1	Short title	short title	-	-
2(1)	S.2(1)	-	-	-
"Bookmaker"	2(1)	2	-	-
common betting house	2(1)	2	2	-
"Place"	2(1)	2	2	-
"Senior Police Officer"	2(1)	-	2	-
	access	-	-	-
	Penciller	-	-	-
	runner	-	-	-
2(2)	2(2)	2	2	-
-	2(3)	-	-	-
2(3)	4	2	2	-
3	3	2	3	-
4(1)	4(1):with increased punishment	3	4	-
(2)	4(2)	-	-	4(2)
5	5	4	5	-
6(1)	6(1) amended Act 8/61	5(1)	5(1)	-
6(2)	6(2)	5(2)	6(ii)	-
6(3)	6(3)repealed and substituted by Act 8/61.	5(3)	11(i)	-
6(4)	6(4)	5(4)	11(i)	-

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BETTING BILL '53	BETTING ORD.1953 (revised 1961)	STRAITS SETTLEMENT BETTING ORDINANCE (CAP. 29)	F.M.S. BETTING ENACTMENT (CAP.48)	COMMON GAMING HOUSES ORDINANCE 1953.
CLAUSE	SECTION	SECTION	SECTION	SECTION
1	Short title	short title	-	-
2(1)	S.2(i)	-	-	-
"Bookmaker"	2(1)	2	-	-
common betting house	2(1)	2	2	-
"Place"	2(1)	2	2	-
"Senior Police Officer"	2(1)	-	2	-
	access	-	-	-
	Penciller	-	-	-
	runner	-	-	-
2(2)	2(2)	2	2	-
-	2(3)	-	-	-
2(3)	4	2	2	-
3	3	2	3	-
4(1)	4(1):with increased punishment	3	4	-
(2)	4(2)	-	-	4(2)
5	5	4	5	-
6(1)	6(1) amended Act 8/61	5(1)	5(1)	-
6(2)	6(2)	5(2)	6(ii)	-
6(3)	6(3)repealed and substituted by Act 8/61.	5(3)	11(i)	-
6(4)	6(4)	5(4)	11(i)	-

BETTING BILL '53	BETTING ORD.1953 (revised 1961)	STRAITS SETTLEMENT BETTING ORDINANCE (CAP.29)	F.M.S. BETTING ENACTMENT (CAP. 18)	COMMON GAMING HOUSES ORDINANCE 1953.
6(5)(a)(b)	6(5)(a)(b)	5 (5)	11 (11)	-
-	6A	-	-	-
7(1)(2)	7(1)(2)	6(1) (2)	7	-
8	8(1)(2)amended by 8!61	-	-	11
9	9	10	10	-
10(1)(2)(3)	10(1)(2)(3)	-	-	20(1)(2)(3)
11	11	-	-	21
12(1)(2)(3)	12(1)(2)(3)	7(1)(2)(3)	3(i)(ii)	-
13	13	-	-	17
-	13A	-	-	-
14 (1)	14 (1)	8	0	-
(2)	14 (2)	-	-	18 (2)
-	14A	-	-	11
15(1)(2)(3)	15(1)(2)(3)	9(1)(2)(3)	-	-
16(1)(2)(3)	-	11(1)(2)	12(1)(11)	-
17	-	12(1)(2)	13	-
18(1)	18(1)	13	14 (1)	-
-	18 (2)	-	-	24 (2)
18(2)	18 (3)	-	14 (11)	-
19	19	14	15	-
20	-	15	16	-
-	20	-	-	+
21	21	16	-	-
22	22	repeal	repeal	-