



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**CODE OF CRIMINAL PROCEDURE
(SPECIAL PROVISIONS)**

A

BILL

to provide for the extension of the period of detention of persons arrested without a warrant in order to facilitate the conduct of investigations; for dispensing with the conduct of the non-summary inquiry in certain cases; to provide for the taking of depositions of witnesses for the prosecution; and to make provision for matters connected therewith or incidental thereto.

Presented by the Minister of Justice on 11th October, 2012

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[Bill No. 186]

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STATEMENT OF LEGAL EFFECT

This Bill seeks to amend to Economic Service Charge Act, No. 13 of 2006 and the legal effect of such amendments are to provide for—

- (a) the rate of the Economic Service Charge being paid on the turnover arising on or after April 1, 2008 from the export of any articles or goods not to exceed
0.25 per centum ;
- (b) the remainder if any, of the amount paid as Economic Service Charge paid prior to March 1, 2006, after the deduction of income tax therefrom, shall be deemed to be a payment made in respect of the quarter commencing on April 1, 2008 ;
- (c) amendments to be made to the Schedule to the Act, by amending the rate in items 4, 5 and 11 of the Schedule and the insertion of two new items 4a and 11a to such Schedule.

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L.D.-O. 51/2011

AN ACT TO PROVIDE FOR THE EXTENSION OF THE PERIOD OF DETENTION OF PERSONS ARRESTED WITHOUT A WARRANT IN ORDER TO FACILITATE THE CONDUCT OF INVESTIGATIONS; FOR DISPENSING WITH THE CONDUCT OF THE NON-SUMMARY INQUIRY IN CERTAIN CASES; TO PROVIDE FOR THE TAKING OF DEPOSITIONS OF WITNESSES FOR THE PROSECUTION; AND TO MAKE PROVISION FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

1. This Act may be cited as the Code of Criminal Procedure (Special Provisions) Act, No. of 2012. Short title.

5 2. Notwithstanding anything contained in the Code of Criminal Procedure Act, No. 15 of 1979 other than the provisions of section 43 (A) of that Act, any peace officer shall not detain in custody or otherwise confine a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the presence of the Magistrate: Period of detention of persons arrested not to be more than twenty-four hours or forty-eight hours.

10

15 Provided that, where the arrest is in relation to an offence as is specified in the Schedule to this Act, such period of detention in police custody may, on production before him of the person arrested and on a certificate filed by a police officer not below the rank of the Assistant Superintendent of Police submitted prior to the expiration of the said period of

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twenty-four hours, to the effect that it is necessary to detain such person for the purpose of further investigations, be extended upon an Order made in that behalf by the Magistrate for a further period not exceeding twenty-four hours, so
5 however that the aggregate period of detention shall not exceed forty-eight hours:

Provided further, that any person arrested and detained for a further period shall be afforded an opportunity to consult an Attorney-at-Law of his choice and to communicate with
10 any relative or friend of his choice during the period of such detention.

3. (1) Notwithstanding anything contained in the Code of Criminal Procedure Act, No. 15 of 1979, where there are aggravating circumstances or circumstances that give rise to
15 public disquiet inconnection with the commission of an offence, specified in the Second Schedule to the Judicature Act, No. 2 of 1978, it shall be lawful for the Attorney-General to forward indictment directly to the High Court.

Direct indictment in case of offence committed in aggravating circumstances.

(2) The Attorney-General may in forwarding indictment
20 directly in terms of subsection (1) proceed to do so *ex mero motu* or upon receipt of the relevant record from the Magistrate.

4. (1) Notwithstanding anything contained in the Code of Criminal Procedure Act, No. 15 of 1979, where there are
25 aggravating circumstances or circumstances that give rise to public disquiet inconnection with the commission of an offence, specified in the Second Schedule to the Judicature Act, No. 2 of 1978, the Magistrate shall not hold a preliminary inquiry in terms of Chapter XV of the Code of Criminal
30 Procedure Act, No. 15 of 1979 and shall forthwith forward the record of the proceedings to the Attorney-General and

Magistrate to forward record to Attorney-General.

thereafter abide by the instructions of the Attorney-General.

(2) Upon receipt of the record of the proceedings by the Magistrate in terms of subsection (1), the Attorney-General shall—

- 5 (a) where he is of the opinion that there are aggravating circumstances or circumstances that give rise to public disquiet in connection with the commission of the aforesaid offence, forward indictment directly to the High Court;
- 10 (b) where he is of the opinion that the circumstances do not warrant the forwarding of direct indictment to the High Court, return the record to the Magistrate within thirty days of the receipt of the same and direct that a preliminary inquiry be held in terms of Chapter XV of the Code of Criminal Procedure Act, No. 15 of 1979.
- 15

(3) If the Magistrate proceeds to hold a preliminary inquiry in terms of Chapter XV of the aforesaid Code, the Attorney-
20 General shall, call for the record of the proceedings, for the purpose of considering the forwarding of indictment directly to the High Court. In such an event the Magistrate shall forthwith suspend proceedings and forward the record of the proceedings to the Attorney-General and shall thereafter
25 abide by the instructions of the Attorney-General.

5. Any proceedings in terms of the provisions of this Act shall be concluded within a period of ninety days from the date of the commencement of proceedings under Chapter XV of the Code of Criminal Procedure Act, No. 15 of 1979. Proceedings to be terminated within ninety days.

30 6. (1) Notwithstanding anything contained in Chapter XV of the Code of Criminal Procedure Act, No. 15 of 1979, in the course of holding of an inquiry under the aforesaid Depositions.

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Chapter, the following provisions shall apply to the taking of statements of persons who know the facts and circumstances of the case.

(2) Subject to the provisions of subsection (11), the
5 Magistrate shall read out, or cause to be read out to every
witness produced against the accused, in the presence and
hearing of the accused, the statement made by the witness in
the course of the investigation conducted in terms of Chapter
10 XI of the Code of Criminal Procedure Act, No. 15 of 1979
and shall ask the witness whether the statement is an accurate
record of what he had stated to the police.

(3) (a) If the witness states, in response to an inquiry made
of him under subsection (1), that the statement is an accurate
15 record of what he had stated to the police, the Magistrate
shall record that fact. The Magistrate shall permit the witness,
if the witness so desires, to make such additions or alterations
to his original statement. Every such addition or alteration
shall be recorded.

(b) The Magistrate shall not permit any cross examination
20 of the witness by the accused or his pleader, but the Magistrate
may put to the witness, any clarification required by the
accused or his pleader of any matter arising from the statement
made by the witness in the course of the investigation or any
25 additions or alterations to his original statement if any, and
may put to the witness any clarification which the Magistrate
himself may require of any such matter. Every clarification
so made shall be recorded:

Provided that, having considered the nature of the material
contained in the statement of a witness made to the police,
30 the prosecution may tender the witness for cross examination
by the accused or his pleader.

(4) The Magistrate shall thereafter read out or cause to be read out to the witness, the statement made by the witness to Court affirming the accuracy of the statement made by him in the course of the investigation and the clarifications if any
5 made by him under subsection (2), and additions or alterations to his original statement if any, made by him under subsection (3), and shall require the witness to swear or affirm to the truth of the matters recorded.

(5) (a) If on the other hand, the witness states in response
10 to an inquiry made of him under subsection (1), that the statement is not, in its entirety or in part, an accurate record of what he had stated to the police, the Magistrate shall permit the witness to give an account of the circumstances relating to the offence, or as the case may be, to make such additions
15 or alterations to his original statement as the witness may wish to make.

(b) The Magistrate shall not permit any cross-examination of the witness by the accused or his pleader but the Magistrate may put to the witness, any clarification required by the
20 accused or his pleader of any matter arising from the account given, or additions or alterations made by the witness or may put to the witness any clarification that the Magistrate himself may require of any such matter:

Provided that, having considered the nature of the material
25 contained in the statement of a witness made to the police, the prosecution may tender the witness for cross examination by the accused or his pleader.

(c) The Magistrate shall record the account given, or the additions or alterations made by the witness under paragraph
30 (a) and any clarifications made by the witness under paragraph (b) and read out the same or cause the same to be read out to the witness and shall require the witness to swear or affirm to the truth of the matter so recorded.

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(6) Before a witness is produced against the accused, the Magistrate shall permit the accused or his pleader to peruse in open court, the statement made by that witness to the Police in the course of the investigation.

5 (7) The Magistrate shall sign, and shall cause the witness to sign a certified copy of the statement made by the witness to the Police in the course of the investigation and cause the same to be filed of record. The copy so filed shall for all purposes form part of the record of the inquiry.

10 (8) The Magistrate shall not summon an expert witness or a police officer but shall cause the report of such expert witness or the affidavit of such police officer, as the case may be, to be produced and filed of record:

15 Provided that the Magistrate may, for reasons to be recorded and in the case of an expert witness, with the prior sanction of the Attorney-General summon an expert witness or police officer to be present in Court for examination.

20 (9) Where an expert witness or a police officer appears in Court in response to summons issued on him under subsection (8) the Magistrate shall not permit any cross examination of such expert witness or police officer by the accused or his pleader but may put to such expert witness or police officer, any clarifications that the accused or his pleader may require, of any matter arising from the report of the expert witness or 25 the affidavit of the police officer, as the case may be, or from the examination of such expert witness or police officer, as the case may be and the Magistrate may himself put to the witness any clarification that he may require of any such matter. Every clarification so made shall be recorded.

30 (10) A statement made by an expert-witness or police officer and the deposition made by a witness tendered for cross examination under this section, shall be deemed to be

admissible in evidence in terms fo section 33 of the Evidence Ordinance (Chapter 14).

(11) (a) Where the accused—

- (i) is absconding or has left the island; or
- 5 (ii) is unable to attend or remain in Court by reason of illness and has consented either to the commencement or continuance of the inquiry in his absence, such inquiry may commence or continue without
10 prejudice to him; or
- (iii) by reason of his conduct in Court is obstructing or impeding the progress of the inquiry,

15 the Magistrate may, if satisfied of these facts, commence and proceed or continue with the inquiry in the absence of the accused.

(b) An Attorney-at-Law may appear for such absent accused.

20 (c) The inquiry shall proceed as far as is practicable in accordance with the provisions of this Act except that the provisions of section 416 of the Code of Criminal Procedure Act, No. 15 of 1979 shall not apply to the depositions recorded where there is a trial on indictment in the High
25 Court whether the accused is present in the High Court or not.

(12) The statement made by a witness to the police in the course of the investigation together with, as the case may be, his statement and clarifications, if any, recorded under
30 subsection (3) or the additions, alterations and clarifications made and recorded under subsection (4) or the account given and recorded under subsection (5), shall be regarded for the purposes of this Act, as the deposition of that witness.

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(13) Every witness produced against the accused at the inquiry shall be entitled to be represented by an Attorney-at-Law.

(14) If after the conclusion of the procedure set out above, 5 the Magistrate does not consider that the case should be dealt with in accordance with the provisions of section 153 of the Code of Criminal Procedure Act, No. 15 of 1979, the Magistrate shall read the charge to the accused and explain the nature thereof in ordinary language and inform him that 10 he has a right to call witnesses and, if he so desires to give evidence on his own behalf.

(15) The provisions of Chapter XV of the Code of Criminal Procedure Act, No. 15 of 1979 shall *mutatis mutandis* apply to any preliminary inquiry held under the 15 provisions of this Act.

7. (1) The provisions of this Act shall be in operation for a period of two years commencing from the date of coming into operation of this Act. Duration of the Act.

(2) The Minister may, at any time within one month prior 20 to the expiration of the period of operation of this Act, by Order published in the *Gazette*, extend for a further period the operation of the Act, so however that the aggregate period of any one extension shall not exceed two years from the date of the extension so granted.

25 (3) The Order made under subsection (2) shall be operative when the signature of the Minister is affixed thereto and every such Order shall be published in *the Gazette*.

(4) Every Order made under subsection (3) shall be placed before Parliament within three months from the date of 30 publication of such Order in the *Gazette*.

(5) A notification specifying of the date on which Parliament has approved the Order shall be published in the *Gazette*.

8. Where during the period commencing on May 31, 2009 and ending on the date of the coming into operation of this Act, any power, duty or function was exercised, performed or discharged by any person to whom such power, duty or function was assigned by or under Criminal Procedure (Special Provisions) Act, No. 42 of 2007, such power, duty or function which was so exercised, performed or discharged, as the case may be, shall, notwithstanding that the provisions of the said Criminal Procedure (Special Provisions) Act, No. 42 of 2007 was not in operation during the aforementioned period, be deemed to have been validly exercised, performed or discharged, as the case may be, as if the said Act was in operation during such aforementioned period.

Validation.

9. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text to prevail in case of inconsistency.

Schedule

(Section 2)

Column I	Column II
1. Abetment of an offence set out in the Schedule, if the act abetted is committed	Section 102-Penal Code
2. Conspiracy for the abetment or commission of any offence set out in the Schedule	Section 113B-Penal Code
3. Murder	Section 296-Penal Code
4. Culpable Homicide not amounting to murder	Section 297-Penal Code
5. Attempt to commit murder	Section 300-Penal Code
6. Kidnapping or abduction to commit murder	Section 355-Penal Code
7. Kidnapping or abduction with intent to wrongfully confine a person	Section 356-Penal Code
8. Kidnapping or abduction with intent to wrongfully subject	

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person to grievous hurt	Section 358-Penal Code
9. Concealing or keeping in confinement a kidnapped person	Section 359-Penal Code
10. Rape	Section 364-Penal Code
11. Theft, preparation having being made to cause death &c.,	Section 371-Penal Code
12. Robbery with attempt to cause death or grievous hurt	Section 383-Penal Code
13. Attempt to commit robbery when armed with deadly weapon	Section 384-Penal Code
14. Attempt to commit any of the above offences	Section 490-Penal Code
15. An offence committed with the use of explosives, an offensive weapon or a gun	Explosive as defined in the Explosives Act (Chapter 183); offensive weapon as defined in the Offensive Weapons Act, No. 18 of 1966 and a Gun as defined in the Firearms Ordinance (Chapter 182)

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