



MISUSE OF DRUGS (AMENDMENT) ACT, 2012

(Act 4 of 2012)

I assent



A handwritten signature in black ink, appearing to read 'Michel'.

J. A. Michel
President

30th July, 2012.

AN ACT to amend the Misuse of Drugs Act (Cap 133).

ENACTED by the President and the National Assembly.

1. This Act may be cited as the Misuse of Drugs (Amendment) Act, 2012. Short title

Amendment of
Cap 133, as last
amended by
Act 15 of 2008

2. The Misuse of Drugs Act, 1990 (Cap 133) is amended as follows—

(a) in section 2—

- (i) by inserting immediately after the definition of “article liable to seizure” the following new definition—

““authorised person” means a person authorised under section 24A(1)(a) to act as an undercover officer, which authorisation has not been revoked;”

- (ii) by repealing the definition of “cannabis” and substituting therefor the following definition—

““cannabis” means any part, including the seeds, of a plant of the genus cannabis from which the resin has not been extracted, by whatever name it may be designated;”

- (iii) by inserting immediately after the definition of “cannabis resin” the following new definition—

““chief officer of the NDEA” means a person appointed under section 12(1) of the National Drugs Enforcement Agency Act, 2008;”

- (iv) by inserting immediately after the definition of “corresponding law” the following new definition—

““cultivation by enhanced indoor means” in relation to a controlled drug, means

cultivation of a plant inside a building or a structure involving at least one of the following processes—

- (a) nurturing the plant in nutrient enriched water, with or without mechanical support;

- (b) application of an artificial source of light or heat;

- (c) suspending the plant's roots and spraying them with nutrient solution;”

- (v) by inserting immediately after the definition of “manufacture” the following new definition—

““NDEA agent” means a person appointed under section 13(1) of the National Drugs Enforcement Agency Act, 2008;”

- (vi) by inserting immediately after the definition of “trafficking” the following new definition—

““undercover officer” means a person authorised under section 24A(1)(a) to assist in the detection of the commission of an offence under this Act and whose identity is concealed for the time being;”

- (b) by inserting after section 8 the following new sections—

8A. Subject to this Act, a person shall not unlawfully produce, manufacture, import,

“Precursors,
equipment or
materials

export, transport, offer, sell, distribute, deliver on any terms whatsoever, consign, dispatch, purchase or offer to purchase or hold precursors, equipment or materials —

- (a) for the purpose of using them in or for the unlawful cultivation, production or manufacture of a controlled drug; or
- (b) knowing that the precursors, equipment and materials are to be used for any of the purposes specified in paragraph (a).

Prohibition on cultivation by enhanced indoor means

8B. Subject to this Act, a person shall not cultivate by enhanced indoor means a plant of the genus *cannabis*, a plant of the species *papaver somniferum*, a plant of the genus *erythroxyton* from which cocaine may be extracted or prepared or any other plant which the Minister may, by Notice in the Gazette, specify and from which a controlled drug may be extracted or prepared.

Driving under the influence of controlled drugs

8C. Subject to this Act, a person shall not drive a motor-powered vehicle, steer a motor-powered marine craft or fly a motor-powered aircraft while under the influence of a controlled drug.”

- (c) in section 14—
 - (i) in paragraph (c), by repealing the word “or” after the semi-colon “;”;
 - (ii) in paragraph (d), by repealing the comma “,” after the word “resin” and substituting therefor a semi-colon “;” and the word “or”;
 - (iii) by inserting after paragraph (d) the following new paragraph—

“(e) 2 grammes of any other Class A drug, Class B drug or Class C drug.”;

- (d) by inserting after section 24 the following new sections —

*Authorised person

24A.(1)(a) The Commissioner of Police or the chief officer of the NDEA may authorise a person, in writing, to act as an undercover officer for the purpose of detecting the commission of an offence under this Act.

- (b) An authorisation granted under paragraph (a) may be revoked in writing.

(2) For the purpose of subsection (1) (a), an authorised person may acquire and have in his or her possession a controlled drug.

(3) An authorised person who exercises the powers conferred on him or her by subsection (2) is not an accomplice in respect of, and does not commit, any offences detected in the exercise of his or her powers and his or her evidence is admissible in any proceedings against an accused person for such offences.

(4) An authorised person other than a police officer or an NDEA agent who, after having acquired a controlled drug under subsection (2), fails to deliver such controlled drug as soon as possible, to a police officer or an NDEA agent commits an offence.

(5) The Commissioner of Police or the chief officer of the NDEA shall warn an authorised person who is not a police officer or

an NDEA agent, in writing, of the provisions of subsection (4).

(6) A certificate issued and signed by the Commissioner of Police or the chief officer of the NDEA stating that the person named therein is an authorised person during the specified period shall, until the contrary is proved, be evidence of the matters stated therein.

Powers of
Investigation

24B.(1) Where a Judge in Chambers is satisfied by information on oath that there is reasonable ground to suspect that an offence under this Act has been or is likely to be committed, he may issue a warrant authorising a police officer or an NDEA agent to —

- (a) tap or place under surveillance, for a period not exceeding 6 months, the telephone lines used by any person suspected of participation in the commission of such an offence;
- (b) have access to the computer systems used by any person suspected of participation in the commission of such an offence and place them under surveillance;
- (c) place a bank account under surveillance when it is suspected of being used for operations related to such an offence;
- (d) have access to all banks, financial and commercial

records that may reasonably concern transactions related to such an offence.

(2) Notwithstanding any other enactments, a person shall not, on the ground of professional secrecy or otherwise refuse, to comply with the requirements of a warrant issued under subsection (1).

Controlled
delivery

24C.(1) The Commissioner of Police, the chief officer of the NDEA, or a person authorised, in writing, by the Commissioner of the Police or the chief officer of the NDEA in writing, may authorise the passage or entry into Seychelles of any consignment of controlled drug suspected of being dispatched with a view to the commission of an offence under this Act, for the purpose of identifying the persons involved in the commission of such an offence.

(2) The Commissioner of Police, the chief officer of the NDEA or a person authorised under subsection (1) may, if he thinks fit, cause the consignment to be lawfully intercepted and allowed to proceed upon its way either intact or after seizure of the controlled drugs contained therein and may also direct their replacement by substances other than controlled drugs.

(3) The exercise of any of the powers contained in this section shall not afford any defence to a person charged with an offence under this Act.

Power to destroy
plants and
substances
containing
controlled drug

24D. The court may, on application by the prosecution, order the destruction of the plants and substances containing a controlled drug

before the completion of legal proceedings for an offence under this Act if—

- (a) the prosecution has led scientific evidence of the content of the plants or substances and has given the accused person 7 days notice of intention to make such an application,
 - (b) there are photographic or video evidence of the nature, quality, quantity, size packaging and location of the plants or substances containing a controlled drug, and
 - (c) the accused person fails to give good reasons why the plants and substances should not be destroyed before completion of legal proceedings.”
- (f) the First Schedule is amended in Part II - CLASS B DRUGS, as follows—
- (i) by inserting after item (h) in paragraph 1, the following new item—
“(hA) Methylenedioxymethamphetamine;”
 - (ii) by inserting after item (o) in paragraph 1, the following new item—
“(p) Buprenorphine;”
- (g) by repealing the Second Schedule and substituting therefor the following new Schedule—

“SECOND SCHEDULE (Section 29)

Penalties

1	2	3	4	5	6	7
Section creating offence	General nature of offence	Punishment in respect of class A drug	Punishment in respect of Class B drug	Punishment in respect of Class C drug	Punishment for unauthorised import, export or manufacture of or traffic in controlled drug	Punishment for offences not involving a controlled drug or irrelative of nature of controlled drug
3 read with 26(1)(a)	unauthorised import or export of a controlled drug	maximum 60 years and SCR500,000; minimum 20 years for the first offence and 25 years for second or subsequent offence;	maximum 50 years and SCR500,000; minimum 16 years for the first offence and 18 years for second or subsequent offence;	maximum 40 years and SCR500,000; minimum 16 years for the first offence and 18 years for second or subsequent offence;	life imprisonment;	life imprisonment;
4 read with 26(1)(a)	unauthorised manufacture of a controlled drug				life imprisonment;	
5 read with 26(1)(a)	unauthorised traffic in a controlled drug except as otherwise provided in this Schedule					
5 read with 26(1)(a)	unauthorised traffic in a controlled drug where the quantity is more than 250 grammes					life imprisonment;

6(a) read with 26(1)(a)	unauthorised possession of a controlled drug except as otherwise provided in this Schedule	maximum 15 years and SCR300,000; subject to section 29(3), minimum 8 years for second or subsequent offence;
6(a) read with 26(1)(a)	unauthorised possession of not more than 25 grammes of cannabis or cannabis resin	<p>maximum 10 years; subject to 29(3), minimum 3 years for the third offence of possession of not more than 25 grammes of cannabis or cannabis resin or for the first such offence subsequent to —</p> <p>(i) 2 previous offence of smoking, consuming or self-administering of cannabis or cannabis resin;</p> <p>(ii) any other offence under this Act;</p>

6(b) read with 26(1)(a)	unauthorised smoking, consuming or self-administering a controlled drug except as otherwise provided in this Schedule	maximum 15 years and SCR300,000; subject to section 29(3), minimum 5 years for first offence and 10 years for second or subsequent offence;
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6(b) read with 26(1)(a)	unauthorised smoking, consuming or self-administering of cannabis or cannabis resin	<p>maximum 10 years; subject to 29(3), minimum 3 years for the third offence of unauthorised smoking, consuming or self-administering of cannabis or cannabis resin or for the first such offence subsequent to —</p> <p>(i) 2 previous offences of possession of not more than 25 grammes of cannabis or cannabis resin; or</p> <p>(ii) any other offence under this Act;</p>
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7(1) read with 26(1)(a)	possession of pipe, syringe, utensil, apparatus or other article intended for smoking, consumption or administration of controlled drug	maximum 5 years and SCR100,000; minimum 3 years for first offence and 5 years for second or subsequent offence;
7(2) read with 26(1)(a)	possession of instrument, utensil, apparatus or equipment intended for the manufacture of controlled drug	maximum 30 years and SCR500,000; minimum 10 years;
8 read with 26(1)(a)	cultivation of cannabis, a plant of species papaver somniferum or genus erythroxyton from which cocaine may be extracted or prepared or any plant specified by the Minister in a Notice in the <i>Gazette</i>	maximum 30 years and SCR500,000; minimum 10 years;



8A read with 26(1)(a)	production, manufacture, import, export, transport, offer, sell, distribute, deliver in any terms whatsoever, consign, dispatch, purchase or hold precursors, equipment or materials	maximum 30 years and SCR500,000; minimum 10 years;
8B read with 26(1)(a)	cultivation by enhanced indoor means a plant of the genus cannabis, a plant of the species papaver somniferum, a plant of the genus erythroxyton from which cocaine may be extracted or prepared or any other plant specified by the Minister in a notice in the <i>Gazette</i>	maximum 30 years and SCR500,000; minimum 10 years;

8C read with 26(1)(a)	driving a motor powered vehicle, steering a motor-powered marine craft or fly a motor-powered aircraft while under the influence of a controlled drug	maximum 10 years and SCR100,000; minimum 2 years;			
9 read with 26(1)(a)	owner, occupier or person in charge of or concerned with the management of land, place or premises who permits or suffers the land, place or premises to be used for certain activities in relation to controlled drug	<table border="0" style="width: 100%;"> <tr> <td style="width: 33%;">maximum 30 years and SCR500,000; minimum 8 years;</td> <td style="width: 33%;">maximum 10 years and SCR200,000; minimum 5 years;</td> <td style="width: 33%;">maximum 10 years and SCR200,000; minimum 5 years;</td> </tr> </table>	maximum 30 years and SCR500,000; minimum 8 years;	maximum 10 years and SCR200,000; minimum 5 years;	maximum 10 years and SCR200,000; minimum 5 years;
maximum 30 years and SCR500,000; minimum 8 years;	maximum 10 years and SCR200,000; minimum 5 years;	maximum 10 years and SCR200,000; minimum 5 years;			



10 read with 26(1)(a)	aiding, abetting counselling, inciting or procuring the commission of an offence outside Seychelles which is punishable under a corresponding law or doing an act preparatory to, or in furtherance of, an act outside Seychelles which is an offence under this Act	maximum 10 years and SCR200,000;
11 read with 26(1)(a)	assisting another to retain the benefit of drug trafficking	maximum 10 years and SCR200,000;
24A(4) read with 26(1)(a)	failure by an authorised person who is not a police officer or NDEA agent to deliver controlled drug to a police officer or NDEA agent	maximum 5 years and SCR200,000;
26(1)(b)	obstructing a person in exercise of his functions	maximum 5 years and SCR100,000;

26(1)(c)	making false declaration or giving false information	maximum 5 years and SCR100,000;
26(1)(d)	disposing of any property or asset contrary to an order of forfeiture or order of prohibition or failing to comply with an order of the court	maximum 30 years and SCR500,000;
26(1)(e)	failing to provide specimen of urine or blood	maximum 5 years and SCR100,000;
26(1)(f)	failing to provide information, return or other document	maximum 5 years and SCR 100,000;
26(1)(g)	contravening any regulations	maximum 5 years and SCR100,000;

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 24th July, 2012.



Azarel Ernesta
Clerk to the National Assembly