

# UNDCP MODEL DRUG ABUSE BILL 2000

Bill No..... of 2000

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To be presented by the Minister of Justice

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## ***MEMORANDUM OF OBJECTS AND REASONS***

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*The object of this Bill is to provide for the implementation in [name of State] of the provisions of the international drug control conventions.*

**ATTORNEY-GENERAL**

An Act to ensure the availability of certain drugs for exclusively medical, scientific and related purposes, while preventing their abuse; to prevent the diversion from lawful trade of controlled chemicals, controlled equipment and controlled materials for use in the unlawful manufacture of such drugs; to establish drug trafficking and related conduct as serious criminal offences and to ensure that those involved are brought to justice; to establish certain conduct by drug users as criminal offences, and to provide for the treatment and rehabilitation of drug-abusing or dependent offenders; and related purposes.

ENACTED by the President and the Parliament of [name of State], as follows:

### **PART I PRELIMINARY**

#### **1. Short title and commencement**

This Act may be cited as the "Drugs of Abuse Act, 2000" and shall come into force on a date to be appointed by the [Minister of Justice and Minister of Health] by notice in [the Gazette].

#### **2. Extended application of Act**

- (1) Notwithstanding the provisions of any other enactment, this Act applies to the entire territory of [name of State], including any free trade zone.

(2) Part III of the Act applies to conduct engaged in:

- (a) inside or outside **[name of State]** on board a **[name of State]** ship or **[name of State]** aircraft;
- (b) outside **[name of State]** by:
  - (i) a **[name of State]** citizen or any person ordinarily resident in **[name of State]**;
  - (ii) a body corporate incorporated in or carrying on business in **[name of State]**; or
  - (iii) any other person, relating to the supply or possible supply by that person of any drug of abuse, analogue, controlled chemical, or item of controlled equipment or controlled material to a person in **[name of State]**;
- (c) outside **[name of State]** on a ship:
  - (i) registered in or having the nationality of a convention State other than **[name of State]**;
  - (ii) not registered in any State; or
  - (iii) of no nationality, including a ship assimilated under the international law of the sea to a ship of no nationality.

### 3. Definitions

(1) In this Act, unless the context indicates otherwise,

- (a) "acquire" includes to acquire by way of purchase, exchange, lease or hire;
- (b) "analogue" means any substance not listed in any Schedule of this Act whose chemical structure is substantially similar to any drug of abuse whose psychoactive effects it simulates;
- (c) "animal" includes fish, birds, invertebrates or other fauna;
- (d) "authorized officer" means a person or class of persons designated by the **[Minister of Justice]** pursuant to **section 110** as an authorized officer;
- (e) "cannabis" means any part of the cannabis plant (including the seeds and leaves) from which cannabis resin has not been extracted; "cannabis plant" means any plant of the genus *Cannabis*; and "cannabis resin" means the separated resin, whether crude or purified, obtained from the cannabis plant;
- (f) "coca bush" means the plant of any of the species *Erythroxylon*;
- (g) "controlled chemical" means a substance listed in **Schedule V** of this Act, and includes a controlled chemical preparation;
- (h) "controlled equipment" means anything listed as such in **Schedule VI** of this Act;
- (i) "controlled delivery" means the investigative technique of allowing an unlawful or suspect consignment of a drug of abuse, an analogue, a controlled chemical, an innocuous substitute substance, an item of controlled equipment or controlled material, or property believed to be derived directly or indirectly from any offence, to pass into, through or out of **[name of State]** under the supervision of an **[authorized officer]**, with a view to gathering evidence to identify any person involved in any **[serious offence]**, or to facilitate prosecution of that offence;

- (j) “controlled material” means anything listed as such in **Schedule VI** of this Act;
- (k) “convention State” means a party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988;
- (l) "cultivate" includes planting, sowing, scattering the seed, growing, nurturing, tending or harvesting, and also includes the separating of opium, coca leaves, cannabis and cannabis resin from the plants from which they are obtained;
- (m) "data" means representations, in any form, of information or concepts;
- (n) "dentist" means any person who is registered and entitled under the laws of **[name of State]** to practice the profession of dentistry;
- (o) "document" means any record of information, and includes:
  - (i) anything on which there is writing;
  - (ii) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;
  - (iii) anything from which sounds, images or writings can be produced, with or without the aid of anything else; or
  - (iv) a map, plan, drawing, photograph or similar thing;
- (p) "drug abuser," in relation to a drug of abuse or analogue, means any person who uses it:
  - (i) without a medical prescription; and
  - (ii) for a purpose other than a medical, scientific or related purpose;
- (q) "drug dependent person," in relation to a drug of abuse or analogue, means any person who has a condition such that:
  - (i) administration of the drug to him or her results in the person demonstrating impaired control in relation to the use of that drug, or drug-seeking behaviour suggesting such impaired control; or
  - (ii) cessation of the administration of the drug is likely to result in the person experiencing symptoms of mental or physical distress or disorder;
- (r) "drug of abuse" means a prohibited drug, a high-risk drug, or a risk drug, and includes a preparation;
- (s) "encapsulating machine" means any device which may be used to fill shells, capsules or other containers with a drug of abuse or analogue in whatever physical form;
- (t) “foreign State” means:
  - (i) any country other than **[name of State]**; and
  - (ii) every constituent part of such country, including a territory, dependency or protectorate, which administers its own laws relating to drugs of abuse, analogues, controlled equipment and controlled materials;
- (u) "high-risk drug" means a substance listed in **Schedule II** of this Act;

- (v) “inspector” means any person appointed pursuant to **section 66** of this Act;
- (w) “institution” means a hospital, nursing home or other institution used for the accommodation, treatment and care of persons suffering from physical or mental conditions;
- (x) "international drug control conventions" means the Single Convention on Narcotic Drugs done at New York on 30 March 1961, as amended by the 1972 Protocol amending the Single Convention done at Geneva on 25 March 1972; the Convention Against Psychotropic Substances done at Vienna on 21 February 1971; the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances done at Vienna on 20 December 1988; and any other international convention to which **[name of State]** may become party after the commencement of this Act relating in whole or in part to the control of drugs of abuse, controlled chemicals or controlled equipment;
- (y) "manufacture" means to carry out any process by which a drug of abuse, analogue, controlled chemical or controlled material is produced, and includes extracting, refining, formulating, preparing, mixing, compounding, transforming it into another drug, analogue or chemical, making a drug of abuse into dosage form, and packing;
- (z) "medical practitioner" means any person who is registered and entitled under the laws of **[name of State]** to practice the profession of medicine;
- (aa) “Minister” means any minister designated by order in **[the Gazette]** as the minister administering the relevant Part or Division of this Act;
- (bb) “open individual authorization” means an authorization permitting an operator to export from **[name of State]** such quantities of such controlled chemicals, equipment or materials to such countries or regions during such periods as may be specified in the authorization;
- (cc) "operator" means any person who carries on a business of the manufacture, acquisition or supply of:
  - (i) a drug of abuse, intended for medical, scientific use or other lawful use;
  - (ii) a controlled chemical or any item of controlled equipment or controlled material, intended for lawful use,
 or a related business, such as import, export, transit or acting as a broker, but excludes person carrying on a business of customs agent, warehouse depositor or carrier when acting solely in that capacity;
- (dd) "opium poppy" means the plant of the species *Papaver somniferum*;
- (ee) “permit” means a permit of the kind referred to in **section 14, 15, 16 or 17** of this Act, as the case may be;
- (ff) "person" means any natural or legal person;
- (gg) "pharmacist" means any person who is registered and entitled under the laws of **[name of State]** to practice the profession of pharmacy;
- (hh) "place" includes any land (whether vacant enclosed or built upon, or not), and any premises;
- (ii) "practitioner" means:
  - (i) a dentist, medical practitioner or veterinary surgeon;
  - (ii) any person who is entitled under the laws of **[name of State]** to practice any other profession whose members may lawfully prescribe, dispense or administer any drug of abuse;

- (jj) "premises" includes the whole or any part of a structure, building, aircraft, or vessel;
- (kk) "prescription" means a written direction by a practitioner that a stated amount of a drug of abuse be dispensed for the person named therein;
- (ll) "preparation" means a solution or mixture, in whatever physical state, containing:
  - (i) a drug of abuse; or
  - (ii) a controlled chemical;
- (mm) "proceedings" means any procedure conducted by or under the supervision of a judge, magistrate or judicial officer however described in relation to any alleged or proven offence, or property derived from such offence, and includes an inquiry, investigation, or preliminary or final determination of facts;
- (nn) "prohibited drug" means a substance listed in **Schedule I** of this Act;
- (oo) "property" means real or personal property of every description, whether situated in **[name of State]** or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property;
- (pp) "property derived from an offence" means any property derived or realised directly or indirectly from **[a serious offence]** and includes, on a proportional basis, property into which any property derived or realised directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the offence;
- (qq) "record" means any material on which data are recorded or marked and which is capable of being read or understood by a person, computer system or other device;
- (rr) "risk drug" means a substance listed in **Schedule III** of this Act;
- (ss) "serious offence" means an offence against a provision of:
  - (i) **Division 1 of Part III** of this Act;
  - (ii) any other law in **[name of State]**, for which the maximum penalty is death, or imprisonment or other deprivation of liberty for a period of not less than **[12 months]**;
  - (iii) a law of a foreign State, in relation to acts or omissions, which had they occurred in **[name of State]**, would have constituted an offence for which the maximum penalty is death, or imprisonment or other deprivation of liberty for a period of not less than **[12 months] [, including an offence of a purely fiscal character]**;
- (tt) "supply" includes sale, consignment, despatch, transport, delivery, distribution, dispensing, as well as offer to supply;
- (uu) "tableting machine" means any device which may be used to compact or mould a drug of abuse or analogue into a solid tablet;
- (vv) "toxic chemical inhalant" means a substance listed in **Schedule IV** of this Act;
- (ww) "transit" means the physical transfer of any drug of abuse, analogue, controlled chemical or controlled material into and out of the territory of **[name of State]**:
  - (i) without it passing through **[name of State] Customs**; and

- (ii) where **[name of State]** is neither its country of origin nor destination;
  - (xx) "**[name of State]** aircraft" means an aircraft that is:
    - (i) registered in **[name of State]** as a **[name of State]** aircraft in accordance with the **[Civil Aviation Act]**;
    - (ii) owned by or in the possession or control of **[[name of State] Airlines], the Government of [name of State] or an authority of the Government;** or
    - (iii) owned by or in the service of **[the [name of State] Defence Force]**, including an aircraft that is being commanded by or piloted by a member of that **Force** in the course of that member's duties as a member;
    - (iv) registered in a foreign State, and leased with or without crew to a person ordinarily, or having the principal place of business, in **[name of State]**;
  - (yy) "**[name of State]** ship" means:
    - (i) a ship registered in **[name of State]** as a **[name of State]** ship in accordance with the **[Merchant Shipping Act ]**;
    - (ii) an unregistered ship that has **[name of State]** nationality; or
    - (iii) a ship that belongs to any part of the **[name of State] Defence Force**;
  - (zz) "undercover operations" mean operations (which may include conduct which apart from this Act is illegal), for the purpose of providing persons who may have committed, be committing or be about to commit a serious criminal offence with an opportunity to manifest evidence thereof;
  - (aaa) "veterinary surgeon" means any person who is registered and entitled under the laws of **[name of State]** to practice the profession of veterinary medicine.
- (2) A reference in this Act to the law of:
- (a) **[name of State]**;
  - (b) any foreign State,

includes a reference to a written or unwritten law of, or in force in, any part of **[name of State]** or that foreign State, as the case may be.

## **PART II - REGULATION OF DRUGS OF ABUSE, AND CONTROLLED CHEMICALS, EQUIPMENT AND MATERIALS USED TO MAKE THEM**

### *Division 1 - Classification and Scheduling of Drugs of Abuse and Controlled Chemicals*

#### **4. Classification of drugs of abuse and controlled chemicals**

- (1) Each of the drugs of abuse to which this Act applies is classified by the Schedule in which it appears under its international non-proprietary name or, lacking such a name, under its scientific name.

- (2) Different measures of control are specified in this Act for different drugs of abuse according to the classification so adopted, with the strictest measures being applied in relation to drugs of abuse listed in **Schedule I**, less strict measures in relation to those listed in **Schedule II**, and the least strict in relation to those listed in **Schedule III**.
- (3) Each of the controlled chemicals to which this Act applies is classified by the Division of **Schedule V** in which it appears.
- (4) Different measures of control are provided for in this Act for different controlled chemicals according to the classification so adopted in that pre-export notification to the **[Minister of Health]** of exports of controlled chemicals is required only for those listed in **Division I of Schedule V**. Measures of control relating to registration or licensing (**sections 7, 8 and 9**); reporting of material changes (**section 21**), suspicious transactions (**section 23** and loss or theft (**section 40 and 42**); documentation, labelling, record keeping (**sections 31, 32, 33, 34, 35, 37 and 38** generally apply in respect of all such chemicals, equipment and materials, and any supplementary control measures provided for in the Act for the regulatory oversight of lawful trade in controlled chemicals, controlled equipment and controlled materials (open individual authorization (**section 18**), or import, export, transit or redirection permits (**sections 9, 13 and 15**) apply only if the **[Minister of Health]** so determines **under subsection 7(1)**.

## 5. Preparations

- (1) Preparations shall be subject to the same measures of control under this Act as the drugs of abuse or controlled chemicals they contain, and where any preparation contains two or more constituent drugs of abuse, it shall be subject to the measures governing the most strictly controlled constituent.
- (2) The **[Minister of Health]** may by regulations made under **section 126** exempt any preparation containing:
  - (a) a drug of abuse listed in **Schedule II** or **III** from such measure of control provided in this Act, when the Minister is satisfied that:
    - (i) the preparation is compounded in such a way as to present no or negligible risk of abuse; and
    - (ii) the drug of abuse cannot be readily recovered from it in a quantity liable to present such a risk;
  - (b) a controlled chemical, when the Minister is satisfied that it is in such a state that the chemical cannot easily be used for the illicit manufacture of a drug of abuse;
- (3) The **Minister of Health** shall not exempt any preparation pursuant to **subsection (2)**:
  - (a) insofar as it relates to the manufacture, import or export of preparations containing high risk drugs or risk drugs, or the making and keeping of records relating to such activities;
  - (b) otherwise, except to the extent if any to which it may be exempted under any international drug control convention applicable to the particular preparation or class of preparation.
- (4) The **[Minister of Health]** shall maintain a register of the preparations exempted under this section, specifying in relation to each such preparation each control measure from which it is exempted.

## 6. Amendment of Schedules

- (1) The **[Minister of Health]** may by regulations made under **section 126** amend any Schedule to this Act by, in accordance with **subsection (2)**, adding or deleting a drug of abuse, controlled chemical or item of controlled equipment or controlled material to or from the relevant Schedule or, in the case of a drug of abuse, by transferring it from one Schedule to another.

- (2) In deciding whether to, and if so, how to amend **Schedule I, II or III** of this Act in relation to any drug of abuse, the **[Minister of Health]** shall have regard to:
- (a) in the case of a drug of abuse or controlled chemical, whether any international drug control convention to which **[name of State]** may from time to time be a Party applies to it, and if so, to its classification under the relevant convention;
  - (b) any recommendation made to the Minister concerning classification of that drug of abuse by any body exercising public interest supervisory functions in **[name of State]** in relation to pharmacists or practitioners;
  - (c) the extent which any likely public detriment associated with the actual or potential abuse of the drug in **[name of State]** might outweigh any likely public benefit associated with its actual or potential medical or scientific use in **[name of State]**.
- (3) For the avoidance of doubt, the **[Minister of Health's]** powers under **subsection (1)**:
- (a) subject to **subsection (b)**, extend to transferring any drug of abuse listed in **Schedule II or III** of this Act to **Schedule I** and *vice versa*;
  - (b) shall not be exercised in relation to any such drug if to do so would have the effect of reducing controls below the minimum regulatory or control requirements for that substance established by the international drug control conventions.

### *Division 2 - Registration, Licencing and Permit System*

#### **7. Requirement for registration, licensing etc, of controlled chemical, equipment and materials operators**

- (1) To help ensure that there is no significant risk that controlled chemicals, equipment and materials may be diverted from lawful use to the unlawful manufacture of any drug of abuse in **[name of State]** or elsewhere, the **[Minister of Health]**, by **[notice published in the Gazette]**, may determine in relation to any operator or class of operators which control measure or combination of measures specified in **subsection (2)** shall apply for the purposes of this **Division**.
- (2) The control measures or combination of control measures which the **[Minister for Health]** may determine shall apply for the purposes of **subsection (1)** are:
- (a) registration, pursuant to **section 8**;
  - (b) the grant of a licence, pursuant to **section 11**; or
  - (c) in the case of import and export activities, registration or licencing, plus;
    - (i) an open individual authorization issued to the operator by the **[Minister of Health]** under **section 18** for all such activities, provided that the **[Minister]** may by later written notice, restrict the open authorization temporarily or indefinitely, to one of such activities, involving such chemicals, equipment or materials or countries as the **[Minister]** may specify in the notice;
    - (ii) a permit for each intended import or export transaction, or for each transit or redirection, issued under **section 14 or 15**;
    - (iii) an export permit for each intended export transaction, conditional on the prior receipt of an import certificate issued by the competent authorities of the country of intended import; or



- (iv) a pre-export notification made by the operator to the **[Minister of Health]** in accordance with **the prescribed form, within a prescribed period before each export transaction.**
- (3) In determining under **subsection (2)** which control measure shall apply in which cases, the **[Minister]** shall take into account:
- (a) the likely quantities and ultimate uses (lawful or unlawful) of the controlled chemicals, equipment or materials involved;
  - (b) in the case of transit or export, the countries or regions to which any such chemicals, equipment or materials are likely to be destined, particularly if they are ones in which drugs of abuse or the raw materials for making them are believed to be illicitly produced;
  - (c) the commercial experience and integrity of operators and their staff, including their experience in dealing with the chemicals, equipment or materials concerned; and
  - (d) any other relevant matter.
- (4) No operator shall manufacture, import, export, acquire, supply or possess any controlled chemical or item of controlled equipment or materials except pursuant to and in accordance with the relevant control measure determined by the **[Minister of Health]** under **subsection (2)**.
- Penalty:** in the case of a natural person, imprisonment not exceeding **[P...] standard imprisonment units**, fine not exceeding **[F...] standard fine units**, or both, and in the case of a corporation, fine not exceeding **[five]** times that maximum:
- (5) The **[Minister of Health]** may attach such terms and conditions to any control measure as he or she thinks fit, including ones which limit or prohibit imports or exports of specified chemicals or specified quantities thereof, whether to or from specified countries, persons or classes of persons, or during specified periods, or not.
- (6) The **[Minister of Health]**, by **[notice published in the Gazette]**, may exempt any operator or class of operator other than one whose business includes the **[manufacture,]** import or export of any controlled chemical, controlled equipment or controlled material from the operation of **this section**, if satisfied that to do so would not give rise to any significant risk of unlawful diversion.
- (7) This section does not apply to the following classes of persons in relation to the following activities, except to the extent if any to which their activities include the import or export of any controlled chemical, controlled equipment or controlled material:
- (a) a pharmacist, acting in accordance with the norms and standards of the pharmacy profession, in the ordinary course of compounding and dispensing preparation containing a drug of abuse for medical, scientific or related purposes;
  - (b) any person who holds a licence issued under this Act to manufacture a preparation containing a drug of abuse of which a controlled substance is an essential ingredient, in the ordinary course of such manufacture; or
  - (c) any person engaged in the conduct of scientific education or research in a laboratory which is attached to a university or hospital, and the activities of whom are recognized by the **[Minister of Health]**, in the ordinary course of such education or research.

## 8. **Registration of controlled chemical, equipment and material operators**

- (1) An operator who is required to be registered for the purposes of this Act in respect of the manufacture, import, export, acquisition supply or possession of any controlled chemical or item of controlled equipment or controlled material shall, **[before undertaking any such activity] [within [x] working days from the day on which this Act enters into force]**, notify the **[Minister of Health]** in writing of:
- (a) the full name, private and business address of the operator;
  - (b) the activity for which registration is sought;
  - (c) if the operator is a company, the full name and residential address of each director and of the company secretary;
  - (d) if the operator will engage in the activity under a business name, that name;
  - (e) each controlled chemical or item of controlled equipment or material for which registration is sought.
  - (f) the address of each place where the controlled chemical or item of controlled equipment or material is to be stored;
  - (g) whether the person (and, if a company, any director or the company secretary) has ever been convicted in **[name of State]** or elsewhere for a serious offence or any offence however described relating to trafficking in drugs, controlled chemicals, controlled equipment or controlled material; and
  - (h) such other particulars as may be **prescribed**.
- (2) Subject to **subsection (3)**, on receipt of a notification made in accordance with subsection (1), the **[Minister of Health]** shall register the operator, include particulars of the notification in the register, and give notice of registration to the operator.
- (3) The **[Minister of Health]** may refuse to register any operator if the operator (and, if a company, any director or the company secretary) has ever been convicted for any offence referred to in **subsection (1)(g)**.

## 9. Requirements of licences and permits for drugs of abuse operators

- (1) Subject to **subsection (2)**, no operator shall:
- (a) cultivate any cannabis plant **[coca bush] [or opium poppy]**; or
  - (b) manufacture, acquire or supply any drug of abuse,

except pursuant to and in accordance with the terms and conditions of a licence granted by the **[Minister of Health]** under **section 11**.

**Penalty:** in the case of a natural person, imprisonment not exceeding **[P...] standard imprisonment units**, fine not exceeding **[F...] standard fine units**, or both, and in the case of a corporation, fine not exceeding **[five]** times that maximum:

- (2) **Subsection (1)** does not apply to professional supply by authorized persons pursuant to **section 28 (1)**.
- (3) No operator shall import, export, bring into **[name of State]** in transit, or redirect from **[name of State]** while in transit, any drug of abuse, except pursuant to and in accordance with any terms or conditions of:
- (a) a licence issued by the **[Minister of Health]** under **section 11** authorizing the applicant to carry out such

activities in general; and

- (b) a separate import permit, export permit, transit permit or redirection permit, as the case may be, authorizing the applicant to carry out the specific transaction the subject of the permit application.

**Penalty:** in the case of a natural person, imprisonment not exceeding **[P...]** **standard imprisonment units**, fine not exceeding **[F...]** **standard fine units**, or both, and in the case of a corporation, fine not exceeding **[five]** times that maximum:

- (4) **Subsection (2)** shall not apply in relation to any drug of abuse in transit by post or forming part of the medical stores of any ship or aircraft.

## 10. Application for operators licence

- (1) An operator who is required by this Act to be licenced shall apply in writing to the **[Minister of Health]** for the grant of a licence and specify:
- (a) the full name, private and business address of the applicant;
  - (b) each activity to which the application relates;
  - (c) if the applicant is a company, the full name and residential address of each director and the company secretary;
  - (d) if the applicant proposes to engage in the activity under a business name, that name;
  - (e) the drug of abuse, controlled chemical or item of controlled equipment or controlled material to which the application relates;
  - (f) the address of each:
    - (i) place where the proposed activity would be carried out;
    - (ii) premises where the drug of abuse, controlled chemical or item of controlled equipment or controlled material would be stored;
  - (g) the security arrangements that would be implemented at each address;
  - (h) the name, residential address and qualifications of each person under whose supervision the activity would be carried out; and
  - (i) such other **particulars as may be prescribed** (*eg volume estimates in the forthcoming year, plus volume statistics for the past year; in the case of cultivation, eg the geographical location, land surface area, as well as the storage location and ultimate destination of the harvest; in the case of manufacture, the extraction, manufacturing and denaturing procedure to be used, name and quantities of the substances and raw materials to be used, estimates relating to each drug of abuse and preparation produced; etc*).
- (2) An application for licence shall be accompanied by:
- (a) a plan of each of the relevant premises, indicating where the drug of abuse, controlled chemical or item of controlled equipment or controlled material would be stored, and the location and nature of any security devices; and
  - (b) the **prescribed fee**.

## 11. Grant of licence

Where an application has been made in accordance with **section 10**, the **[Minister of Health]** may grant a licence if satisfied that:

- (a) the applicant and, if a company, each director and the company secretary:
  - (i) has never been convicted in **[name of State]** or elsewhere for any serious offence, or any offence however described relating to a drug of abuse, controlled chemical or item of controlled equipment or controlled material; and
  - (ii) is otherwise a fit and proper person to hold a licence;
- (b) the applicant proposes to engage in the activity;
- (c) all places and premises at or in which the activity is to be undertaken are in fit condition and appropriate;
- (d) the security arrangements and devices proposed at each relevant place and premises are appropriate and sufficient;
- (e) the activity will at all times be carried out under the supervision of a person who is a fit and proper person to carry out that supervision; and
- (f) where the activity relates to a drug of abuse, the activity will be carried out exclusively for medical or scientific purposes.

## 12. Contents and conditions of licences

- (1) A licence issued by the **[Minister of Health]** under **section 11** shall specify:
  - (a) the full name and address of the licensee;
  - (b) each activity to which the licence relates;
  - (c) the drug of abuse, controlled chemical or item of controlled equipment or controlled material to which the licence relates;
  - (d) the address of each place and premises at which:
    - (i) the licensed activity is to be carried out; and
    - (ii) the drug of abuse, controlled chemical or item of controlled equipment, controlled materials is to be stored;
  - (e) such terms and conditions as are necessary and reasonable for ensuring the proper:
    - (i) carrying out and supervision of the licensed activity;
    - (ii) establishment, maintenance and preservation of records relating to that activity;
    - (iii) reporting to the **[Minister of Health]** in relation to the carrying out of that activity;

- (iv) maintenance and security of all places and premises at or in which the licensed activity will be carried out;
- (f) in the case of any licence to import, export or bring to **[name of State]** in transit a drug of abuse, controlled chemical **[or item of controlled equipment or controlled material]**, the condition that a separate import, export or transit permit be first obtained in relation to any such transaction before it takes place; and
- (g) such other **particulars as may be prescribed**.

### 13. Applications for import, export or transit permits

- (1) An application for an import, export or transit permit shall be made in writing to the Minister for Health and specify:
  - (a) the full name and address of the importer, exporter, carrier, consignee and, if known, of any ultimate consignee;
  - (b) in the case of a proposed import, export or transit of a drug of abuse:
    - (i) its international non-proprietary name or failing this, its name as listed in **Schedule II or III** of this Act, together with its trade name, if it has one; and
    - (ii) its pharmaceutical form;
  - (c) in the case of a proposed import, export or transit of a controlled chemical, the name as specified in **Schedule V** and trade name;
  - (d) in the case of a proposed export of a drug of abuse, the intended point of entry in the foreign State of intended import;
  - (e) the quantity, mass, and volume or percent in mixture of any drug of abuse, controlled chemical or controlled material that is the subject of the proposed operation;
  - (f) a description of the quantity and type of any controlled equipment that is the subject of operation;
  - (g) the date, or period within which, the planned import, export or transit is to take place; and
  - (h) the planned transport route, if known, including the planned point of entry or exit from **[name of State]**; and
  - (i) in the case of a proposed import of a drug of abuse to a bonded warehouse, the identity and address of the warehouse.
- (2) In the case of a proposed export of a drug of abuse, the import permit (by whatever name described) issued by the Government of the foreign State of intended import shall be attached to the application for export permit.

### 14. Grant of import, export or transit permits

- (1) The **[Minister of Health]** may, on written application made in accordance with **section 13** by a registered or licenced importer or licensed exporter, grant an import permit, export permit, or transit permit in relation to a specified import or export transaction involving a drug of abuse, controlled chemical or item of controlled equipment or controlled material.
- (2) An import permit, export permit or transit permit granted pursuant to **subsection (1)** may allow import, export or transit in more than one consignment.

- (3) The **[Minister of Health]** shall not grant an export permit in relation to any consignment of a drug of abuse to a bonded warehouse in a foreign State, unless the competent authority of that State has certified on the import permit referred to in **subsection 13(2)** that it has approved the import to a bonded warehouse.
- (4) An import permit, export permit or transit permit shall specify:
- (a) the full name and address of the registered or licensed operator granted it;
  - (b) the name (including any international non-proprietary name and trade name), quantity and form of any drug of abuse, controlled chemical or item of controlled equipment or controlled material for which it is granted;
  - (c) in the case of an import permit:
    - (i) the name and address of the exporter; and
    - (ii) whether the import is to be effected in a single consignment or more than one consignment.
  - (d) in the case of an export permit:
    - (i) the name and address of the immediate consignee, and if known, of the ultimate consignee;
    - (ii) the number and date of any required import permit, affirming that the import of the drug of abuse or preparation has been authorized;
    - (iii) the intended point of entry in the foreign State of import;
    - (iv) if the export consignment is intended for a bonded warehouse and is not prohibited under **subsection (3)**, that the consignment is to be so exported; and
  - (e) the period during which import or export is to be effected;
  - (f) in the case of an intended import to a bonded warehouse, a term that:
    - (i) any subsequent withdrawal from the bonded warehouse shall require a permit from **[Minister of Health] [the Commissioner for Customs]**; and
    - (ii) if the withdrawal is intended for a foreign destination, a separate export permit shall be first obtained prior to export;
  - (g) such terms and conditions as the **[Minister of Health]** may consider necessary and reasonable; and
  - (h) such other **particulars as may be prescribed**.

## 15. Redirection permits

- (1) The **[Minister of Health]** may, on production by a licensed operator of a valid import authorization issued by an authority in the foreign State to which it is proposed to redirect a drug of abuse or controlled chemical, issue a redirection permit in respect of the drug or chemical in transit.
- (2) A redirection permit shall specify:
- (a) the full name and address of the registered or licensed operator granted it;

- (b) the name (including any international non-proprietary name and trade name), quantity and form of any drug of abuse, controlled chemical or item of controlled equipment or controlled material for which it is granted;
  - (c) the name and address of the immediate consignee, and if known, of the ultimate consignee;
  - (d) the number and date of any required import permit affirming that the import of the drug of abuse or controlled chemical or item of controlled equipment or controlled material has been authorized;
  - (e) the intended point of entry in the foreign State of import;
  - (f) if the export consignment is intended for a bonded warehouse and is not prohibited under **subsection (3)**, that the consignment is to be so exported; and
  - (g) the period during which import or export is to be effected;
  - (h) in the case of an intended import to a bonded warehouse, a term that:
    - (i) any subsequent withdrawal from the bonded warehouse shall require a permit from **[Minister of Health] [the Commissioner for Customs]**; and
    - (ii) if the withdrawal is intended for a foreign destination, a separate export permit shall be first obtained prior to export;
  - (i) such terms and conditions as the **[Minister of Health]** may consider necessary and reasonable;
  - (j) such other **particulars as may be prescribed**.
- (3) The Minister shall not issue a redirection permit under **subsection (1)** unless he or she is satisfied that the drug of abuse or controlled chemical is to be sent to the new country of destination in a lawful manner and for a proper purpose.

#### **16. Permits in relation to first-aid kits**

- (1) The **[Minister of Health]** may, on written application made **in the prescribed form**, grant a permit to include a drug of abuse in a first-aid kit for medical use during international flights or voyages.
- (2) A permit to include a drug of abuse in a first-aid kit shall specify:
  - (a) the full name and address of the authorized person;
  - (b) the name and maximum quantity of the drug of abuse that may be kept in the first aid kit at any one time;
  - (c) such terms and conditions as are necessary and reasonable to ensure the proper use and safe keeping of the drug of abuse; and
  - (d) such other **particulars as may be prescribed**.

#### **17. Permits in relation to programmes for medical and scientific purposes**

- (1) The **[Minister of Health]** may, on written application made **in the prescribed form** by a person, grant a permit to conduct a programme for scientific or strictly limited medical purposes that would require the import, possession or use of:

- (a) a drug of abuse; or
  - (b) an analogue.
- (2) An application to conduct such a programme shall specify:
- (a) the full name, address, academic, professional or other relevant qualifications of the applicant;
  - (b) the drug of abuse or analogue in relation to which the permit is sought;
  - (c) the strength and form in which the drug of abuse or analogue is to be used;
  - (d) the maximum quantity of the drug of abuse or analogue to be possessed at any one time, and the total quantity to be possessed during the period of the programme;
  - (e) details of the manner in which the drug of abuse or analogue would be used;
  - (f) the name and address of the place where the programme is to be conducted;
  - (g) the name and academic, professional or other relevant qualifications of any person other than the applicant, under whose supervision the programme would be conducted; and
  - (h) the security arrangements that would be undertaken while the drug of abuse or analogue is possessed, used or disposed of.
- (3) An application to conduct such a programme shall be accompanied by:
- (a) a written description of the programme, including its estimated duration;
  - (b) in the case of a programme of research, a research protocol;
  - (c) in the case of a clinical trial, a clinical trial protocol; and
  - (d) a written statement approving the programme, signed by the person in charge of the institution.
- (4) The **[Minister of Health]** may authorize such a programme if satisfied that:
- (a) the programme cannot be carried out satisfactorily without the use of the specified drug of abuse or analogue;
  - (b) the programme is scientifically viable having regard to any relevant protocol;
  - (c) the applicant is a fit and proper person to conduct the programme;
  - (d) the programme will be adequately supervised; and
  - (e) the programme is to be conducted at, or under the auspices of, a recognized institution.
- (5) A permit shall specify:
- (a) the full name and address of the authorized person;
  - (b) the drug of abuse or analogue to which the permit relates;
  - (c) the strength and form in which the drug of abuse or analogue may be used;



- (d) the maximum quantity of the drug of abuse or analogue that may be possessed at any one time, and the total quantity that may be possessed during the period of the programme;
- (e) the purpose for which the permit is granted;
- (f) the institution in relation to which the permit is granted;
- (g) such conditions as are necessary and reasonable for ensuring:
  - (i) the proper use and safe-keeping of the drug of abuse or analogue; and
  - (ii) that proper records are kept concerning its receipt, use and disposal;
- (h) the condition that such reports as the **[Minister of Health]** may specify are sent to him or her on the use of the drug of abuse or analogue in the programme, including particulars of the quantities acquired, used, disposed of and still held; and
- (i) such other **particulars as may be prescribed**.

#### **18. Open individual authorization for certain exports of controlled chemicals, etc**

- (1) Where an operator is required under **section 7 (1)** to hold an open individual authorization issued by the **[Minister of Health]**, the operator shall, **[before undertaking any activity for which the authorization is required / within x days from the day on which this Act enters into force]**, notify the **[Minister of Health]** in writing of:
  - (a) the full name, private and business address of the operator;
  - (b) the activity for which authorization is sought;
  - (c) if the operator is a company, the full name and residential address of each director and of the company secretary;
  - (d) if the operator will engage in the activity under a business name, that name;
  - (e) each controlled chemical or item of controlled equipment or material for which authorization is sought;
  - (f) details of the operator's commercial experience relevant to the controlled chemicals, equipment or materials concerned, and of each person under whose supervision the activity will be carried out;
  - (g) details in summary form of export transactions in the relevant chemicals, equipment or materials during the preceding **[12 months]**, specifying by country of export in relation to each chemical or item of equipment or material exported, the total quantities and total number of transactions involved; and
  - (h) such other **particulars as may be prescribed**.
- (2) Subject to **subsection (3)**, on receipt of an application made in accordance with **subsection (1)**, the **[Minister of Health]** may:
  - (a) grant an open individual authorization; and
  - (b) subject the authorization to such terms and conditions as he or she thinks fit.
- (3) The **[Minister of Health]** may refuse to grant the open individual authorization, if the operator (and, if a company, any director or the company secretary) has ever:

- (a) failed to comply with a provision of this Act or any other law in **[name of State]** relating to any drug of abuse, controlled chemical or item of controlled equipment or material; or
- (b) been convicted in **[name of State]** or elsewhere for any serious offence or any offence however described relating to trafficking in drugs, or controlled chemicals, equipment or material.

**19. Extended authorization for related activities**

Where a person is registered or licenced, or holds a permit or authorization under this Part in relation to any activity, the person shall, subject to this Act and to any terms or conditions of the licence, permit or authorization, be deemed to be entitled to possess the relevant drug of abuse, analogue, controlled chemical or item of controlled equipment or material for the purpose of that activity.

**20. Duration of registration, licences, permits and open individual authorizations**

- (1) A registration or licence shall remain in force for **[1 year]**, unless earlier surrendered, suspended or revoked, and may be successively renewed for a period of **[12 months]** by application in writing, signed by the applicant and accompanied by the **prescribed fee**.
- (2) A permit or open individual authorization shall only remain in force for such period as may be specified in it, which in the case of an import permit, export permit or transit permit shall not exceed **[6 months]**.

**21. Duty of authorized persons to notify material changes, etc**

- (1) Where, in relation to any licence or permit granted to any person under **this Part**, a material change occurs in the:
  - (a) name or address of the person, or in the case of a company, of any director or the company secretary;
  - (b) address of the place or premises where:
    - (i) the licensed or permitted activity is carried out; or
    - (ii) any drug of abuse, controlled chemical or item of controlled equipment or material is stored;
  - (c) raw materials, or manufacturing or denaturing processes used in the licenced manufacture of any drug of abuse;
  - (d) security arrangements implemented at any relevant address;
  - (e) identity of persons under whose supervision the licensed activity is carried out; or
  - (f) planned transport route, including the planned point of entry or exit from **[name of State]** of any import, export or transit consignment for which a permit has been granted under **subsection 14(1)**.

the person shall, within **[14 days]** of its occurrence, furnish the **[Minister of Health]** with a written notice containing full particulars of the change, and shall return to the Minister any licence or permit issued under **this Part**.

- (2) Where, in relation to any registration or open individual authorization granted to any person under **this Part**, a material change occurs in the:
  - (a) name or address of the person, or in the case of a company, of any director or the company secretary; or

- (b) address of the place or premises where:
  - (i) the registered or authorized activity is carried out; or
  - (ii) the controlled chemical, or item of controlled material or equipment is stored,

the person shall, within **[14 days]** of its occurrence, furnish the **[Minister of Health]** with a written notice containing full particulars of the change.

## **22. Variation, suspension or revocation of registration, licences, permits or authorizations**

- (1) If, at any time after the grant of a licence, permit, registration or open individual authorization, it appears to the **[Minister of Health]** that:
  - (a) it was granted on the basis of information that was false or misleading in a material particular;
  - (b) a material change of circumstances referred to in **section 21** has occurred since it was granted, whether notified under that section or not;
  - (c) a condition to which it was subject has not been complied with; or
  - (d) the person has been charged or convicted of an offence against **this Part**, or of a serious offence,

the Minister may, as he or she deems necessary and reasonable in all the circumstances to prevent the risk of unlawful diversion:

- (i) impose conditions, or vary any existing conditions specified in the licence, permit or authorization, with effect **[from 28 days following the date of issue of a notice of variation]**;
  - (ii) suspend the registration, licence, permit or authorization for such period as **[the Minister]** thinks fit; or
  - (iii) revoke the registration, licence, permit or authorization.
- (2) Any person whose licence, permit or authorization is suspended or revoked under **subsection (1)** shall return it to the **[Minister of Health]** no later than **[21 days]** after the **[Minister of Health]** notifies the person in writing of the revocation or suspension.

## **23. Duty of operators to check and notify suspicious orders and transactions**

- (1) Whenever an operator:
  - (a) is registered, licenced, permitted or authorized under this Part;
  - (b) receives an order or becomes party to a transaction involving a drug of abuse, controlled chemical or item of controlled equipment or materials; and
  - (c) has reasonable grounds to suspect that information that it has concerning the order or transaction may be relevant to an offence or a possible offence against **Part III** of this Act,

the operator shall, immediately after forming that suspicion, communicate to the **[Minister of Health]** particulars of the suspicion, the basis for it, and such other information, if requested, as the person has in relation to the order or transaction.

(2) An operator who fails to comply with **subsection (1)** commits an offence.

**Penalty:** in the case of a natural person, imprisonment not exceeding **[P...] standard imprisonment units**, fine not exceeding **[F...] standard fine units**, or both, and in the case of a corporation, fine not exceeding **[five]** times that maximum:

**24. Offence for licensed operators to deal with unlicensed operator**

No operator licenced under this Part in relation to any drug of abuse shall supply to or acquire from another operator in **[name of State]** any drug of abuse, unless the second operator is also licensed under **this Part**:

**Penalty:** in the case of a natural person, imprisonment not exceeding **[P...] standard imprisonment units**, fine not exceeding **[F...] standard fine units**, or both, and in the case of a corporation, fine not exceeding **[five]** times that maximum:

**25. Offences in relation to drugs of abuse in lawful transit**

(1) No person shall:

- (a) cause a drug of abuse lawfully in transit to be subjected to any process which could alter its nature; or
- (b) otherwise than in accordance with **[instructions]** issued by the **[Minister of Health/Comptroller of Customs]**, wilfully open or break any package or container containing any drug of abuse in transit.

(2) No licenced operator shall, except under the authority of a redirection permit issued under **this Part**, cause or procure any drug of abuse or controlled chemical, equipment or material in transit to be redirected to any destination other than that shown on the export permit or redirection permit accompanying the drug or chemical.

**Penalty:** in the case of a natural person, imprisonment not exceeding **[P...] standard imprisonment units**, fine not exceeding **[F...] standard fine units**, or both, and in the case of a corporation, fine not exceeding **[five]** times that maximum:

**26. Power to limit licensee's stocks**

(1) On or before **[31 December] each year**, the **[Minister of Health]** shall, in the light of the prevailing market conditions, determine the maximum quantities (if any), of each drug of abuse **[controlled chemical]** that each operator licenced under **Division 1** of **this Part** may manufacture or stock for the normal conduct of its business during the following year.

(2) The **[Minister of Health]** may, at any time amend any quota determined pursuant to subsection (1), and shall promptly notify each licensee in writing of the amended quota.

(3) When the **[Minister of Health]** is satisfied that a person authorized to stock a drug of abuse holds a quantity in excess of the person's annual quota as revised in accordance with **subsection (2)**, he or she may requisition the surplus quantity upon payment of an amount not less than the amount paid by the person to acquire it.

*Division 3 - Professional Supply of Drugs of Abuse*

**27. Meaning of "authorized person" and "professional supply"**

For the purposes of **this Division**, unless the context indicates otherwise:

- (a) "authorized person" means a person referred to in **section 28 (1) or (2)**; and
- (b) "professional supply" means supply by an authorized person in the circumstances referred to in **section 28**, and in that context, includes supply by such person by way of retail sale, offering for such sale, and acquisition and possession for the purpose of such sale.

**28. Persons authorized to engage in professional supply of drugs of abuse**

- (1) No person shall engage in conduct that constitutes professional supply of any drug of abuse except:
  - (a) a pharmacist, acting in accordance with the norms and standards of the pharmacy profession, who supplies to another person on prescription or on requisition, in the ordinary course of a pharmacy business;
  - (b) a person licenced under **subsection 9 (1) (b)**, provided that such supply at all times takes place under the immediate supervision of a pharmacist;
  - (c) a practitioner who, in accordance with the norms and standards of his or her profession:
    - (i) administers the drug directly to a patient or animal in the ordinary course of treatment; or
    - (ii) supplies the drug to a patient or for an animal in the ordinary course of treatment from a place more than **[10 kilometres]** from the place of business of a pharmacist.

**Penalty:** in the case of a natural person, imprisonment not exceeding **[P...] standard imprisonment units**, fine not exceeding **[F...] standard fine units**, or both, and in the case of a corporation, fine not exceeding **[five]** times that maximum:

- (2) Notwithstanding **subsection (1)**, where access to a practitioner is not reasonably possible by virtue of distance, the **[Minister of Health]** may authorize a licensed retail distributor to supply a drug of abuse without prescription, in exceptional cases for use by individuals in small quantities for exclusively medical purposes.

**29. Prescriptions**

- (1) No person shall prescribe a drug of abuse, unless that person is:
  - (a) a medical practitioner, who prescribes the drug of abuse in the ordinary course of treatment of another person's physical or mental condition;
  - (b) a dentist, who prescribes the drug of abuse in the ordinary course of treatment of another person's dental condition;
  - (c) a veterinary surgeon, who prescribes the drug of abuse in the ordinary course of treatment of an animal; or
  - (d) a person or class of persons which the **[Minister of Health]** may authorize from time to time for the purposes of this **section** to prescribe certain drugs of abuse in places where access to a practitioner is not reasonably possible.

**Penalty:** in the case of a natural person, imprisonment not exceeding [P...] **standard imprisonment units**, fine not exceeding [F...] **standard fine units**, or both, and in the case of a corporation, fine not exceeding [five] times that maximum:

(2) A person referred to in **subsection (1)** shall not, except in;

(a) a medical emergency; or

(b) in the ordinary course of treatment under **Division 2 of Part IV**,

prescribe a drug of abuse to a person who he or she has reason to believe may be a drug dependent person, without the prior written approval of the [Minister of Health].

**Penalty:** in the case of a natural person, imprisonment not exceeding [P...] **standard imprisonment units**, fine not exceeding [F...] **standard fine units**, or both, and in the case of a corporation, fine not exceeding [five] times that maximum:

(3) Subject to **subsection (4)**, a prescription for a drug of abuse shall:

(a) be on a form **prescribed** by the [Minister of Health]

(b) be legible;

(c) be written in terms and symbols used in ordinary professional practice;

(d) specify the name, address, qualifications and registration number of the prescribing practitioner;

(e) specify the date on which it is issued if different from the date on which it was signed, and the period during which it may be filled;

(f) specify the name and address of the patient, or the owner of the animal being treated, as the case may be;

(g) specify the name, quantity, form and strength of the drug of abuse;

(h) specify the number of times up to a maximum of [3], the drug of abuse may be refilled and, if more than once, the interval to elapse between dispensing;

(i) if the prescription is for an unusual or dangerous dose, bear the initials of the prescribing practitioner beside an underlined reference to the dose;

(j) if the prescription is issued by a veterinary surgeon

(i) be endorsed as being for the treatment of an animal;

(ii) specify the name and address of the owner or caretaker of the animal;

(iii) specify the species of animal;

(iv) if possible, specify a means of identifying the animal; and

(k) be signed and dated by the prescribing practitioner.

(4) Where the need for treatment is urgent, a prescription may be given orally and acted upon, provided it is confirmed by a written prescription within [24 hours].

### 30. Requisitions in an institution for purpose of treatment

(1) No person shall issue a requisition for a drug of abuse unless the person is:

- (a) a pharmacist in a dispensary in an institution;
- (b) any practitioner practicing in an institution; or
- (c) a person in charge of a ward in an institution.

**Penalty:** in the case of a natural person, imprisonment not exceeding [P...] **standard imprisonment units**, fine not exceeding [F...] **standard fine units**, or both, and in the case of a corporation, fine not exceeding [five] times that maximum:

(2) A person shall not supply a drug of abuse against a requisition except to a person referred to in **subsections (1) (a), (b) or (c)** at an institution for the treatment of a person therein.

(3) Subject to **subsection (4)**, a requisition for a drug of abuse shall:

- (a) be legible;
- (b) specify the name of the person issuing it and the capacity in which he or she issues it;
- (c) specify the name, quantity, form and strength of the drug of abuse;
- (d) specify the ward or dispensary where the drug is required;
- (e) be signed and dated by the person issuing it; and
- (f) be countersigned by either the pharmacist who is to supply the drug of abuse, or a medical practitioner.

(4) Where the need for the drug of abuse is urgent, a requisition may be given orally and acted upon, provided it is confirmed by a written requisition within **[24 hours]**.

#### *Division 4 - Commercial Documentation and Labelling, Records and Security*

### 31. Commercial documents

Any commercial document, such as an invoice, cargo manifest or a customs, transport and other shipping document, relating to any transaction by an operator involving a drug of abuse, controlled chemical or item of controlled equipment, shall include:

- (a) the name and quantity of the drug of abuse, controlled chemical or item of controlled equipment as listed in the **relevant Schedule** of this Act;
- (b) in the case of any import or export, the name and address of the exporter, the importer and, where known, the consignee.

**32. Forwarding of import permit in advance to proposed foreign exporter**

Where the [Minister of Health] issues an import permit under **this Part** to an operator, the operator shall as soon as possible but no later than [ 5 working days] after its receipt forward the permit to the exporter named in the permit.

**33. Export permits to be attached to consignments**

Where the [Minister of Health] issues an export permit under **this Part** to an operator, the operator shall attach an authenticated copy of the permit to each consignment on export.

**34. Endorsement and return of export permits following import**

After an imported consignment has entered [name of State] or when the period stipulated in the import permit expires, the [Minister of Health] shall cause the export permit issued by the **competent authority** of the exporting country or territory to be returned to that **authority**, with an endorsement specifying the quantity of each drug of abuse or controlled chemical, equipment or material actually imported.

**35. Forwarding of redirection permits, etc**

(1) Where a redirection permit is issued under **subsection 15 (1)**:

- (a) one copy shall accompany the drug of abuse or controlled chemical when it is exported from [name of State]; and
- (b) the [Minister of Health] shall cause another copy of the redirection permit to be sent forthwith, upon issue to the authority in the foreign country to which the consignment has been redirected; and

(2) Upon the issue of a redirection permit, any person holding the export permit or redirection permit accompanying the drug or chemical or its arrival in [name of State] shall remit it to the [Minister of Health] who shall return it to the **competent authority** issuing it, together with:

- (a) notice of the name of the foreign country to which the consignment has been redirected; and
- (b) an endorsement specifying the quantity of each drug of abuse or controlled chemical, equipment or material actually imported.

**[36. Liability to forfeiture of improperly or undocumented consignments**

(1) A consignment of a drug of abuse or controlled chemical, equipment or material is liable to forfeiture if:

- (a) it is accompanied by an export permit or redirection permit, and there are reasonable grounds to believe that the permit is false, or has been obtained by fraud or wilful misrepresentation of a material particular;
- (b) there are reasonable grounds to believe that any import permit relating to it is false; or
- (c) in the case of a consignment of a drug of abuse, it is not accompanied by any export or redirection permit.

(2) Where the [Minister of Health/Customs Authority] is satisfied that any consignment referred to in subsection (1) is legitimate, the consignment shall be released forthwith to the person lawfully entitled to it.]



### 37. Drugs of abuse registers

- (1) The following persons shall keep, or cause to be kept at a place where any drug of abuse is kept, a register in accordance with the **form prescribed from time to time** by the [Minister of Health]:
- (a) any person granted registration, or a licence or a permit under **Division 2 of this Part** in relation to any drug of abuse;
  - (b) any person authorized under **Division 3 of this Part** to issue a prescription or requisition for a drug of abuse, or to supply such a drug by retail;
  - (c) any pharmacist, including a pharmacist responsible for the supervision of all other pharmacists employed in a hospital or other institution for medical treatment or care; or
  - (d) any duly qualified person for the time being in charge of a ward or other area of an institution in which any drug of abuse is administered.
- (2) A person required by **subsection (1)** to keep or cause to be kept a register in relation to any drug of abuse, shall within **[24 hours]** of any import, export, manufacture, administration, supply, acquisition, disposal or return of such drug, enter or cause to be entered in the register:
- (a) the date of the import, export, manufacture, administration, supply, acquisition, disposal or return;
  - (b) the name, quantity, dosage, form and strength of the drug, imported, exported, manufactured, administered, supplied, acquired, disposed of or returned;
  - (c) the name and occupational or business address of the person to or from whom the drug was imported, exported, supplied or acquired;
  - (d) in the case of export or supply, the quantity of the drug, if any, still kept;
  - (e) in the case of supply on prescription for the purpose of treatment, or of administration of a drug of abuse for that purpose:
    - (i) the name and address of the person who prescribed the drug or ordered its administration;
    - (ii) the name and residential address of the person for whom or to whom the drug was supplied or administered, or where prescribed for or administered to an animal, of the person having custody of the animal at the time;
    - (iii) the name and residential address of the patient to whom the drug was prescribed, if different from the person referred to in **subparagraph (ii)**; and
    - (iv) where applicable, the name and address of any person other than the treating practitioner who administered the drug, the time of administration, and particulars sufficient to identify any animal for whose treatment the drug was administered, prescribed or supplied on prescription;
  - (f) in the case of supply on requisition in an institution, details of the dispensary, ward or other place to which the drug was supplied;
  - (g) in the case of return, the name of the person to whom the drug was returned; and
  - (h) in the case of disposal:

- (i) the method of disposal; and
  - (ii) the signature, name and designation of the person responsible for the disposal, and of at least one witness to the disposal.
- (3) A person who makes an entry in a drugs register shall date and sign the entry.
- (4) A person may, in the presence of a witness, correct, by notation, a mistake in an entry in a drugs register, providing the person making the correction makes, signs and dates the notation, and the witness countersigns the notation.
- (5) Any person who:
- (a) delivers a drug of abuse to a ward or other area of an institution; or
  - (b) in the ordinary course of duties in a medical, dental or veterinary practice, or in a ward or other area of an institution, witnesses the administration of that drug,
- shall countersign the relevant entry in the drugs register.
- (6) Any person required by **this section** to keep a drugs of abuse register shall, subject to any written direction to the person by the **[Minister of Health]**, retain possession of the register and all prescriptions, requisitions and commercial documents relating to entries therein for **[3 years]** after the date of the last entry in the register.

### **38. Controlled chemicals, equipment and materials registers**

- (1) Any person granted registration, licence, permit or open individual authorization under **Division 2 of this Part** in relation to any controlled chemical or item of controlled equipment or material shall keep, or cause to be kept, at a place where any such chemical or item is kept by that person, a register in accordance with the **form prescribed from time to time** by the **[Minister of Health]**.
- (2) Any person required under **subsection (1)** to keep and maintain a register in relation to any controlled chemical or item of controlled equipment or material shall, **within 24 hours** of any import, export, manufacture, supply, acquisition or disposal by that person of any such chemical or item, enter or cause to be entered in such register:
- (a) the date of the import, export, manufacture, supply, acquisition or disposal;
  - (b) the name of the chemical equipment or material, and the quantity involved;
  - (c) in the case of a controlled chemical, its form and strength;
  - (d) in the case of disposal, the method of disposal; and
  - (e) in the case of import, export, acquisition or supply, the name and occupational or business address of the person to or from whom the chemical or item was imported, exported, acquired or supplied, and where known, the name of any ultimate consignee;
- (3) Any register required to be kept under **subsection (1)**, and all commercial documents relating to entries therein such as orders, invoices, despatch notes, cargo manifests or customs or other shipping documents shall be kept for **at least [3 years]** after the end of the calendar year of the last entry in the register.

**39. False or misleading entries in registers and records**

Any person required to keep a register or other record under this Act shall not:

- (a) make, or cause or permit to be made, an entry in or on it that is, to the knowledge of that person, false or misleading in any material particular; or
- (b) cancel, obliterate or alter any entry, except to correct an error in accordance with **section 37 (4)**.

**Penalty:** imprisonment not exceeding [**P...**] **standard imprisonment units**, fine not exceeding [**F...**] **standard fine units**, or both.

**40. Duty to notify loss, destruction or discrepancies in registers**

Any person required to keep a register under **this Division** shall, immediately on discovering:

- (a) the loss or destruction of the register, or of the whole or any part of the contents of the register; or
- (b) any discrepancy in the register, other than a mistaken entry,

advise the [**Minister of Health**] in writing accordingly.

**Penalty:** in the case of a natural person, imprisonment not exceeding [**P...**] **standard imprisonment units**, fine not exceeding [**F...**] **standard fine units**, or both, and in the case of a corporation, fine not exceeding [**five**] times that maximum:

**41. Safe keeping of drugs of abuse**

(1) Any person authorized:

- (a) to import, export, manufacture, administer, supply or acquire a drug of abuse or controlled chemical in accordance with **this Part**; or
- (b) to engage in professional supply in accordance with **section 28**,

shall, while the drug or chemical is in the person's custody or control, keep it or cause it to be kept in a vault, safe or other **prescribed secure storage**;

**Penalty:** in the case of a natural person, imprisonment not exceeding [**P...**] **standard imprisonment units**, fine not exceeding [**F...**] **standard fine units**, or both, and in the case of a corporation, fine not exceeding [**five**] times that maximum:

(2) A person referred to in **subsection (1)** shall take such measures as the [**Minister of Health**] may direct in writing to ensure that no unauthorized person has:

- (a) access to the combination, key or other means of access to any secure receptacle containing a drug of abuse or controlled chemical; or
- (b) the drug or chemical contained therein.

**Penalty:** in the case of a natural person, imprisonment not exceeding [**P...**] **standard imprisonment units**, fine not exceeding [**F...**] **standard fine units**, or both, and in the case of a corporation, fine not exceeding [**five**] times that maximum:

**42. Duties where there is loss or theft of a drug of abuse or controlled chemical**

Any person authorized:

- (a) to import, export, manufacture, administer, supply or acquire a drug of abuse or controlled chemical in accordance with **this Part**; or
- (b) to engage in professional supply in accordance with **section 28**,

shall immediately upon becoming aware of the loss or theft of any quantity of the drug or chemical in the person's custody or control:

- (i) if the person believes on reasonable grounds that the drug or chemical has been stolen, notify an inspector and an **[authorized officer]** orally, and in writing **within [24 hours]**;
- (ii) in the case of loss, give a written report of the circumstances of the loss to an inspector; and
- (iii) record relevant particulars of the loss or theft in the appropriate register.

### PART III - TRAFFICKING AND RELATED SERIOUS OFFENCES

#### *Division 1 - Trafficking in Drugs of Abuse, Analogues, or Controlled Chemicals, Equipment or Materials*

**43. Unlawful cultivation**

- (1) Except as permitted by or authorized under this Act, no person shall knowingly cultivate a cannabis plant, coca bush or opium poppy.

**Penalty:** subject to **subsection (2)**, in the case of a natural person, imprisonment, fine or both, not exceeding the applicable maximum number of units shown in Table 1, or in the case of a corporation, fine not exceeding **[five]** times that maximum:

*Table 1 - Maximum Period of Imprisonment / Fine  
Unlawful Cultivation*

Plant cultivated	Number of plants cultivated			
	Over 1,000	21 to 1,000	6 to 20	1 to 5
Opium poppy	P7 / F7	P6 / F6	P4 / F4	P3 / F3
Coca bush	P7 / F7	P5 / F5	P4 / F4	P3 / F3
Cannabis plant	P5 / F5	P4 / F4	P3 / F3	P2 / F2

Key: P = imprisonment term, with 1 standard imprisonment unit = [..] years

F = fine amount, with 1 standard fine unit = [...] [currency name]

- [(2) Where a person is convicted of an offence against **subsection (1)** by virtue of the person having separated cannabis or cannabis resin from the cannabis plant, the maximum penalty in all cases of natural persons, shall not exceed [**half**] the relevant maximum.

**44. Unlawful import, export, possession for, etc**

- (1) Except as permitted by or authorized under this Act, no person shall, in relation to any drug of abuse or analogue, knowingly:

- (a) import it;
- (b) export it;
- (c) bring it into [**name of State**] in transit; or
- (d) acquire or possess it for the purpose of so importing, exporting or bringing it.

**Penalty:** in the case of a natural person, imprisonment, fine or both, not exceeding the applicable maximum number of units shown in Table 2, or in the case of a corporation, fine not exceeding [**five**] times that maximum:

*Table 2 - Maximum Period of Imprisonment/Fine  
Import, Export, etc., of Drug of Dependence or Analogue*

Import / export purpose	Substance involved			
	Prohibited drug	High risk drug	Analogue	Risk drug
for the purpose of supply	P7 / F7	P6 / F6	P6 / F6	P4 / F4
in any other case	P6 / F6	P4 / F4	P4 / F4	P3 / F3

Key: P = imprisonment term, with 1 standard imprisonment unit = [..] years  
F = fine amount, with 1 standard fine unit = [...] [currency name]

- (2) Except as permitted by or authorized under this Act, no person shall, in relation to any controlled chemical, controlled equipment or controlled material, knowingly:

- (a) import it;
- (b) export it;
- (c) bring it into [**name of State**] in transit; or
- (d) acquire or possess it for the purpose of so importing, exporting or bringing it.

**Penalty:** in the case of a natural person, imprisonment, fine or both, not exceeding the applicable maximum number of units shown in Table 3, or in the case of a corporation, fine not exceeding [**five**] times that maximum:

*Table 3 - Maximum Period of Imprisonment/Fine for Import, Export, etc., of Controlled Chemicals, Equipment or Material*

Subject of the offence	If to be used in the manufacture of			
	Prohibited drug	High risk drug	Analogue	Risk drug
Controlled chemical (Division 1 of Schedule V)	P5 / F5	P4 / F4	P4 / F4	P3/ F3
Controlled chemical (Division 2 of Schedule V)	P4 / F4	P3 / F3	P3/ F3	P2/ F2
Controlled equipment/material	P4 / F4	P3 / F3	P3 / F3	P1 / F1

Key: P = imprisonment term, with 1 standard imprisonment unit = [..] years  
 F = fine amount, with 1 standard fine unit = [...] **[currency name]**

#### 45. Unlawful manufacture, possession for, etc

- (1) Except as permitted by or authorized under this Act, no person shall, in relation to any drug of abuse or analogue, knowingly:
- (a) manufacture it; or
  - (b) acquire or possess it:
    - (i) for the purpose of such manufacture; or
    - (ii) for the purpose of manufacturing another drug of abuse or analogue.
- (2) Except as permitted by or authorized under this Act, no person shall in relation to any controlled chemical, controlled equipment or controlled material, knowingly:
- (a) manufacture it; or
  - (b) acquire or possess it, for the purpose of such manufacture,
- if the person knows or has reasonable grounds for believing that it is to be used, in **[name of State]** or elsewhere:
- (i) for the unlawful manufacture of a drug of abuse or analogue; or
  - (ii) in the unlawful cultivation of a cannabis plant, coca bush, opium poppy, or of other plant which is a drug of abuse.

**Penalty:** in the case of an offence against **subsection (1) or (2)** by a natural person, imprisonment, fine or both, not exceeding the applicable maximum number of units shown in Table 4, or in the case of a corporation, fine not exceeding **[five]** times that maximum:

*Table 4 - Maximum Period of Imprisonment / Fine*

*Unlawful Manufacture etc., of Drugs of Dependence, Analogues, Controlled Chemicals,  
Equipment or Material*

Prohibited drug	High risk drug	Analogue	Risk drug	Controlled chemical		Controlled equipment or material
				Division 1 of Schedule V	Division 2 of Schedule V	
P7 / F7	P6 / F6	P6 / F6	P4 / F4	P3 / F3	P2 / F2	P2 / F2

Key: P = imprisonment term, with 1 standard imprisonment unit = [..] years  
F = fine amount, with 1 standard fine unit = [...] [currency name]

**46. Unlawful sale, supply, administration, possession for, etc**

- (1) Except as permitted by or authorized under this Act, no person shall, in relation to any drug of abuse or analogue, knowingly:
- (a) supply it;
  - (b) administer it to another person; or
  - (c) acquire or possess it for the purpose of such supply or administration.

**Penalty:** in the case of a natural person, imprisonment, fine or both, not exceeding the applicable maximum number of units shown in Table 5, or in the case of a corporation, fine not exceeding [**five**] times that maximum:

*Table 5 - Maximum Period of Imprisonment / Fine  
Supply, Administration etc., of Drug of Dependence or Analogue*

Quantity	Maximum period of imprisonment			
	Prohibited drug	High risk drug	Analogue	Risk drug
Commercial quantity	P7 / F7	P7 / F7	P7 / F7	P6 / F6
Trafficable quantity	P6 / F6	P5 / F5	P5 / F5	P4 / F4
Less than a trafficable quantity	P3 / F3	P2 / F2	P2 / F.	P / F.

Key: P = imprisonment term, with 1 standard imprisonment unit = [..] years  
F = fine amount, with 1 standard fine unit = [...] [currency name]

**[NB:** *If you adopt the "quantity" approach to help legislatively differentiate between maximum penalties, you will need to use the quantity-based schedules for the Act, and to define the relevant quantities for analogues as the same as for the drugs of abuse they imitate. If you do not adopt this approach in the legislation itself, then simply delete the left hand quantity box from the table and use the Schedules to the Act which do not contain references to the relevant quantities. The quantity schedules can still informally provide guidance for post-conviction address on*

*penalty.]*

(2) Except as permitted by or authorized under this Act, no person shall, in relation to any controlled chemical, controlled equipment or controlled material, knowingly:

- (a) supply it; or
- (b) acquire it or possess it for the purpose of such supply,

if the person knows or has reasonable grounds for believing that the controlled chemical or item of controlled equipment or material is to be used, in **[name of State]** or elsewhere:

- (i) for the unlawful manufacture of a drug of abuse or analogue; or
- (ii) in the unlawful cultivation of a cannabis plant, coca bush, opium poppy, or of another plant which is a drug of abuse.

**Penalty:** in the case of an offence against **subsection (1) or (2)** by a natural person, imprisonment, fine or both, not exceeding the applicable maximum number of units shown in Table 6, or in the case of a corporation, fine not exceeding **[five]** times that maximum:

*Table 6 - Maximum Period of Imprisonment / Fine  
Sale or Supply etc., of Controlled Chemical or Item of Controlled Equipment or Material*

Subject of the offence	If to be used in the manufacture of a			
	Prohibited drug	High risk drug	Analogue	Risk drug
Controlled chemical (Division 1 of Schedule V)	P5 / F5	P4 / F4	P 4/ F4	P3 / F3
Controlled chemical (Division 2 of Schedule V)	P4 / F4	P3 / F3	P3 / F3	P2 / F2
Controlled equipment/material	P3 / F3	P2 / F2	P2 / F2	P1 / F1

Key: P = imprisonment term, with 1 standard imprisonment unit = [..] years  
F = fine amount, with 1 standard fine unit = [...] **[currency name]**

#### **47. Facilitating personal use by others**

(1) Except as permitted by or authorized under this Act, no person shall:

- (a) publish or display; or
- (b) cause or permit to be published or displayed,

any thing promoting or encouraging the use of any:

- (i) drug of abuse; or



- (ii) analogue,

for any purpose other than a medical or scientific purpose.

- (2) No owner, occupier or person in charge of any place used by or accessible to the public shall cause or permit there the unlawful use of any:
  - (a) drug of abuse; or
  - (b) analogue.
- (3) No person shall knowingly and unlawfully add to the food or drink of another person any:
  - (a) drug of abuse; or
  - (b) analogue,

without the knowledge of the consumer.
- (4) No person shall knowingly issue a prescription for a drug of abuse to a drug abuser or drug-dependent person, except for the purposes of treatment of that person:
  - (a) in accordance with the provisions of **Division 2 of Part IV** of this Act; or
  - (b) for a condition unrelated to drug abuse or dependency.
- (5) No person shall supply any drug of abuse on presentation of a prescription, if the person knows or has reason to believe that the prescription is:
  - (a) forged, unlawfully altered, or cancelled; or
  - (b) issued more than **[6]** months before presentation.

**Penalty:** in the case of an offence against **subsection (1), (2), (3), (4) or (5)**, imprisonment not exceeding **[P...]** **standard imprisonment units**, fine not exceeding **[F...]** **standard fine units**, or both, and in the case of a corporation, fine not exceeding **[five]** times that maximum:

#### **48. Supply of toxic chemical inhalants [to young persons]**

No person shall supply any toxic chemical inhalant to any person **[under 18 years]**, if the person supplying it knows or has reasonable grounds for suspecting that the person acquiring it is acquiring it for the purposes of abuse.

**Penalty:** in the case of a natural person, imprisonment not exceeding **[P...]** **standard imprisonment units**, fine not exceeding **[F...]** **standard fine units**, or both, and in the case of a corporation, fine not exceeding **[five]** times that maximum:

#### **49. Facilitation via computerized data networks**

- (1) For the purposes of **subsection (2)**, “server supplier” means any person who, in the normal course of business, supplies any online server facility.
- (2) No server supplier shall supply any online server facility to enable access to any computerized data exchange network, including a network such as “Internet,” so as to permit any other person to offer via such network accessible

in **[name of State]**, any data whose purpose or effect is to permit, incite, facilitate or promote the unlawful cultivation, manufacture, supply or use of any drug of abuse, analogue or controlled chemical.

**Penalty:** In the case of a natural person, fine of [...] penalty units, or imprisonment for a period not exceeding **[10]** years, or both; in the case of a corporation, fine of **[5]** times that amount.

- (3) It shall be a defence to any prosecution for an offence against **subsections (2)** to establish that he, she or it had taken reasonable steps to prevent persons from offering such data.
- (4) No person shall, without lawful authority input, or cause to be input into a computerized data exchange network accessible in **[name of State]** any data knowing or having reasonable grounds to believe that its effect will be to permit, incite, facilitate or promote the unlawful cultivation, manufacture, supply or use of any drug of abuse, analogue or controlled chemical.

**Penalty:** In the case of a natural person, fine of [...] penalty units, or imprisonment for a period not exceeding **[10]** years, or both; in the case of a corporation, fine of **[5]** times that amount.

## **50. Conspiracy, attempt, aiding and abetting, etc.,**

(1) Any person who:

- (a) conspires to commit, or attempts to engage in conduct that constitutes an offence against **this Act**;
- (b) aids, abets, counsels or procures, or is by act or omission in any way directly or indirectly knowingly concerned in, or party to, any conduct that constitutes an offence against **this Act**; or
- (c) incites to commit, or urges or encourages, any conduct that constitutes an offence against **this Act**,

commits an offence against this **section**, and is punishable on conviction by the same penalty as would be applicable if the person were convicted of the first-mentioned offence.

(2) For the purposes of **subsection (1)**:

- (a) a person is guilty of conspiracy if:
- (i) the person entered into an agreement with any other person or persons that one or more of them would commit the agreed offence;
- (ii) the person and at least one other party to the agreement intended that the offence would be committed; and
- (iii) the person or at least one other party to the agreement committed an overt act pursuant to the agreement;
- (b) a person cannot be found guilty of conspiracy if the person:
- (i) withdrew from the agreement; and
- (ii) made a reasonable effort to prevent the commission of the agreed offence **[as soon as possible after withdrawing, reported the matter to the [Police]]**;
- (c) a person may be found guilty of conspiracy, even though commission of the principal offence was impossible.

**[51. Assisting etc., in the commission of an offence abroad**

**A person commits an offence if in [name of State] the person assists in or induces the commission in any place outside [name of State] of an offence punishable under the law of a foreign State relating in whole or in part to the control of any drug of abuse, analogue, controlled chemical, controlled equipment or controlled material.]**

*Division 2 - Further Provisions on Penalties and Sanctions*

**52. Grounds for aggravation**

In determining the nature and extent of any penalty to be ordered in relation to any person convicted of an offence against this Part, the **[name of Court]** shall take into account whether:

- (a) the convicted offender:
  - (i) belonged to an organized criminal syndicate;
  - (ii) participated in other illegal activities facilitated by the offence;
  - (iii) used violence or arms;
  - (iv) committed the offence in the exercise of a public office or public duty;
  - (v) added any substance to the drugs which aggravated their danger to a user;
  - (vi) made use or took advantage of a minor or mentally handicapped person in committing the offence;  
or
  - (vii) is in a state of recidivism (*convictions pronounced abroad shall be taken into account in establishing recidivism*).
- (b) the offence was committed:
  - (i) by a health professional or person responsible for combatting drug abuse or traffic;
  - (ii) in a teaching or educational institution, a hospital or care institution, a social service facility or in other places to which school children or students resort for educational, sports or social activities, or in the immediate vicinity of such establishments and premises: or
  - (iii) in a penal institution or a military establishment;
- (c) the drug was supplied or offered to a minor, a mentally handicapped person or a person undergoing treatment, or when use by such a person was facilitated; and
- (d) the drugs supplied caused death or seriously impaired the health of a person.

**53. Alternate sanctions**

- (1) Where a person has been convicted of an offence against **this Part**, the **[name of Court]** may order **[house arrest, or other]** deprivation or restriction of liberty for the **term prescribed**, instead of imprisonment.
- (2) Where a person has been convicted of an offence against **this Part**, the case is one of a minor nature, and it appears to **the [name of Court]** that it would be appropriate, in the interests of justice and not contrary to the broader public interest to do so, **the [name of Court]** may, instead of ordering any penalty provided for the offence:
- (a) order that the person undergo community service or periodic detention;
  - [(b) order surrender and cancellation of the person's passport, if a national;]**
  - [(c) order:**
    - (i) disqualification, cancellation or suspension of any right or authority in [name of State] to operate a vehicle, vessel or aircraft used by the person in connection with the commission of the offence;**
    - (ii) suspension of the right to hold or exercise public office in [name of State] by the person in connection with the commission of the offence;]**
  - (d) order the suspension of any licence or registration entitling the person to carry on any trade or business carried on by the person in connection with the commission of the offence;**
  - (e) recommend to the appropriate professional body, the suspension or disqualification of the person's right to practice any profession practiced by the person in connection with the commission of the offence,**

for such period as the **[name of Court]** considers appropriate.

#### **54. Optional additional sanctions**

- (1) Where a drug abuser or drug dependent person has been convicted of an offence against **[this Part]**, the **[name of Court]** may, in addition to ordering any penalty specified in relation to that offence, or any alternate sanction specified in **section 53**, make a treatment order pursuant to **section 61**.
- [(2) Where a foreigner has been convicted of an offence against [this Part], the [name of Court] may, in addition to ordering the penalty provided for the offence or alternate measures in section 53, order withdrawal of the person's visa, deportation, or prohibition on reentry to [name of State].]**

#### **55. Suspension and revocation of suspension of sentences**

- (1) Where a person has been convicted of an offence against **this Part** and is also:
- (a) between the ages of **[16 and 18]**; or
  - (b) a first offender,

the **[name of Court]** may order suspension of the whole or any part of the penalties and sanctions imposed on the person, on such terms and conditions as appear to be necessary to ensure that the person does not reoffend, provided that it is in the interests of justice and not contrary to the broader public interest to make such an order.

- (2) Where a person fails without reasonable excuse to abide by the terms and conditions of a suspension order under **subsection (1)**, **the [name of Court]** may revoke the order.

**PART IV - DRUG ABUSE**

*Division 1 - Personal Use-related Offences*

**56. Cultivation or possession for personal use**

- (1) No person shall cultivate or possess for the purpose of personal use:
- (i) a cannabis plant, coca bush or opium poppy; or
  - (ii) any other plant that is, for the purposes of this Act, a drug of abuse (*eg the Khat plant, which is not yet under international control, and which [name of State] may wish to list to protect against its introduction*).

**[(2) Any person who cultivates or possesses more than:**

- (a) the prescribed quantity of cannabis plants; or**
- (b) the prescribed weight of cannabis,**

**shall be presumed to have not cultivated it or possessed it for personal use, unless he or she satisfies the [name of Court] to the contrary (NB: need to carefully link but differentiate between offence and penalties here and for the cannabis offence in Part III, (ff the 1-5 plants penalties).]**

- (3) No person shall possess any:
- (a) other drug of abuse for the purpose of personal use, except:
    - (i) a person to whom it has been lawfully supplied for medical treatment; or
    - (ii) a person having custody of an animal under lawful veterinary treatment;
  - (b) analogue for the purpose of personal use.

**Penalty for an offence against subsection (1) or (3):**

in the case of the coca bush, opium poppy, other plant which is a drug of abuse, or in the case of a prohibited drug, imprisonment for a maximum of [P...] **standard imprisonment units**, maximum fine of [F...], or both;

in the case of a high-risk drug or analogue, imprisonment for a maximum of [P...] **standard imprisonment units**, maximum fine of [F...] **standard fine units**, or both;

in the case of a risk drug, imprisonment for a maximum of [P...] **standard imprisonment units**, maximum fine of [F...], or both.

in the case of the cannabis plant or cannabis, for cultivation or possession of less than the prescribed quantity or prescribed weight, maximum fine of [F...] **standard fine units**;

- (4) **Sections 52 and 54** shall be deemed to apply to offences against **subsection (1)**.

### 57. Carrying of drugs of abuse by international travellers

Notwithstanding anything contained in this Act, any person undergoing treatment of a medical condition, who is entering, leaving or passing through [name of State], may possess such quantities of a drug of abuse (wherever prescribed) as are reasonable for the purposes of such treatment.

## *Division 2 - Treatment and Rehabilitation*

### 58. Meaning of "treatment" and "approved treatment centre"

In this Act, unless the context indicates otherwise:

- (1) "treatment" includes medical treatment, therapy, or admission to an education or rehabilitation programme, which is aimed at:
  - (a) preventing drug abusers from further abusing drugs; and
  - (b) assisting drug-dependent persons to overcome their dependence.
- (2) "approved treatment centre" means a hospital, nursing home, hostel, health facility or other institution that the [Minister of Health] may designate from time to time as an approved treatment centre to provide treatment for persons who are drug abusers or drug dependent.

### 59. Treatment panels

- (1) The [Minister of Health] shall establish treatment assessment panels for the purposes of this Division.
- (2) A panel shall consist of [3] people appointed by the Minister for Health, who are fit and proper for the purpose. One shall have legal qualifications and experience, and the others knowledge of the psychological, physical and social problems connected with abuse of drugs and analogues.

### 60. Persons who voluntarily submit for treatment

Any person who has committed an offence only against section 56 of this Act, and who before being arrested or charged for that offence:

- (a) voluntarily presents to an approved treatment centre for treatment;
- (b) undertakes and successfully completes the treatment without committing any further offence,

[shall] [may] not be prosecuted for that offence, or be identified to the public.

### 61. Treatment orders

- (1) Where the [name of Court]:
  - (a) finds an offence under this [or any other Act] proved against any person; and
  - (b) considers that the person may have been:

- (i) under the influence of a drug of abuse or analogue at the time of the offence, or
- (ii) motivated to commit the offence by a desire either to use the substance or obtain resources to enable its use,

the **[name of Court]** may order that the person submit for assessment by a treatment assessment panel.

- (2) Where the panel recommends that the person undergo treatment at an approved treatment centre, the **[name of Court]** may:
  - (a) order that the person, during a period of **[2 years or such shorter period as the [name of Court] may specify]**, submit himself or herself to the treatment specified in the order, or for other treatment as directed from time to time by a panel; and
  - (b) specify conditions relating to the supervision of the person, including attendance at a treatment centre, and periodic attendance before a panel for review and evaluation of treatment and progress.

## **62. Suspension of penal sanctions**

Where an order has been made under **subsection 61 (2)(a)**, and the person promises to undertake and complete the treatment, the **[name of Court]** may at the same time also order that any or all the penalties and sanctions imposed under **Part III** or **section 56 [or any other Act]** be suspended.

## **63. Discharge of penal sanctions**

Where a person completes treatment ordered under **subsection 61 (2) (a)** to the satisfaction of a panel, and commits no further offence of any description within **[2 years]** from the date of his or her conviction, any orders made under **Part III** or **section 56**:

- (a) shall be deemed to be fully served and discharged in relation to the offence in respect of which they were made; and
- (b) in relation to any other offence, may be discharged by order if the **[name of Court]** is satisfied that it is in the public interest for the **[name of Court]** to make such an order, following consideration of a report of a panel to the effect that the person is fit to return to everyday responsibilities and functions.

## **64. Revocation of suspension orders**

- (1) Where the person does not complete the course of treatment as ordered to the satisfaction of a panel, the **[name of Court]** may, on the recommendation of a panel, revoke the order of suspension made under **section 62**.
- (2) In that event, time spent in treatment shall count as time towards the discharge of any relevant orders made under **Part III** or **section 56 [or any other Act]**.

## **65. Offences in relation to treatment orders**

Any person who, without reasonable excuse, refuses or fails:

- (a) to comply with a treatment order;
- (b) to inform the person in charge of a treatment centre attended by the person pursuant to such an order of any

change in the person's address;

- (c) to appear before a panel as ordered; or
- (d) to attend a treatment centre for assessment or treatment as ordered,

commits an offence.

**Penalty:** imprisonment not exceeding [P...] **standard imprisonment units**, fine not exceeding [F...] **standard fine units**, or both. :

## PART V - ADMINISTRATION, COMPLIANCE AND ENFORCEMENT

### *Division 1 - Inspection for Compliance*

#### **66. Appointment of inspectors**

- (1) The [Minister of Health] may designate any person to be an inspector for the purposes of this Act and the regulations.
- (2) An inspector shall perform such duties for the purposes of this Act and the regulations as the Minister may direct.
- (3) The Minister shall cause to be issued to an inspector an identity card which states the name and appointment of the inspector and on which appears a recent photograph of the inspector.

#### **67. Inspection of authorized premises and operations**

- (1) A person who is registered, or holds a licence or permit issued under **Part II** of this Act shall, when required to do so in writing by an inspector, provide the inspector with a statement in writing, signed and dated by the person, accounting for each drug of abuse, controlled chemical or item of controlled equipment or material in possession of the authorized person at any time since the grant of the registration, licence, or permit, as the case may be.
- (2) Any person who fails or neglects to comply with a requirement under **subsection (1)** commits an offence.

**Penalty:** in the case of a natural person, a fine not exceeding [...] standard penalty units, or in the case of a corporation, fine not exceeding [**five**] times that maximum:

#### **68. Powers of inspectors**

- (1) A person appointed as an inspector by the [Minister of Health] pursuant to **section 66** may, at any time during ordinary business or professional hours, with such assistance and by such force as is necessary and reasonable, enter any premises or place at which any activity is carried out by any person:
  - (a) granted a registration, licence or permit under **Division II of Part II**; or
  - (b) authorized in accordance with **section 28** to engage in professional supply.
- (2) Subject to **section 70**, an inspector who enters any premises or place pursuant to **subsection (1)** may:



- (a) require the occupier of the premises to supply his or her name and address;
  - (b) inspect the premises or place in order to ascertain whether or not this Act, or a term or condition of any licence or permit granted pursuant to this Act, has been or is being complied with;
  - (c) examine any label, advertising material, register, record, book, electronic data or other document therein relating to any drug of abuse, controlled chemical or item of controlled equipment or material;
  - (d) make an extract therefrom or take a copy thereof, and require from any person an explanation of an entry in any such register, record or document;
  - (e) open and examine any receptacle or package found in that place in which a drug of abuse, analogue, controlled chemical or item of controlled equipment may be found;
  - (f) examine any thing found in that place that is used or may be capable of being used for the manufacture, packaging or storage of a drug of abuse, analogue, controlled chemical or item of controlled equipment or material;
  - (g) use or cause to be used any computer system at that place to examine any electronic data referred to in **subparagraph (c) or (f)**, and reproduce any document from any such data or cause it to be reproduced in the form of a print-out or other output;
  - (h) take any thing referred to in **subparagraphs (c) or (f)** for examination or copying;
  - (i) use or cause to be used any copying equipment at that place to make copies of any document;
  - (j) examine any substance found in that place and take, for the purpose of analysis, such samples thereof as are reasonably required;
  - (k) seize and detain anything, which in the opinion of the inspector, is connected with, or may provide proof of a contravention of **Part II** of this Act, or a term or condition of any licence or permit granted under this Act, or which the inspector believes on reasonable grounds is necessary for the purpose of ensuring compliance with this Act or the regulations.
- (3) Where an inspector seizes and detains any substance suspected to be a drug of abuse, analogue, controlled chemical or item of controlled equipment or material, it may, at the discretion of the inspector be kept or stored at the place where it was seized or, at the direction of the inspector, be removed to any other proper place.
- (4) Where an inspector determines that for the purpose of ensuring compliance with **this Act or the regulations** it is no longer necessary to detain a substance suspected to be a drug of abuse, controlled chemical or item of controlled equipment or material under **subparagraph (1)(k)**, the inspector shall notify in writing the owner or other person in charge of the place where it was detained of that determination and, on being issued a receipt therefor shall return the substance to that person.
- (5) Where in the ordinary course of duty, an inspector becomes aware of a possible offence against **Part III** of this Act, he or she shall immediately report that fact to **[the Commissioner of Police]** and provide such further lawful assistance as may be reasonable or necessary for the purpose of any investigation or proceeding relating to that possible offence.

#### **69. Inspection of approved treatment centres**

- (1) An inspector may, at any reasonable hour of the day or night, with such assistance and by such force which is necessary and reasonable enter the premises of an approved treatment centre.

- (2) Subject to **section 70**, an inspector who enters an approved treatment centre pursuant to **subsection (1)** may:
- (a) inspect the premises and any facilities provided at, or equipment used at the premises for, or in connection with, the provision of treatment or accommodation at the centre;
  - (b) inspect any **drug register, prescribed book, record or document** kept on the premises relating to such treatment or accommodation, or otherwise relating to the conduct of the centre in relation to patients referred to the centre pursuant to **Part IV, Division 2** of this Act;
  - (c) require the occupier of the premises to produce any **drug register, prescribed book, record or document** or to give to the inspector **any prescribed information** in his or her possession relating to such treatment or accommodation or otherwise relating to the conduct of the centre in relation to such patients;
  - (d) exercise any of the powers referred to **subparagraphs 67 (c) to (k)** inclusive, which for the purposes of this section shall apply *mutatis mutandis* to the centre and its patients.

**70. Inspectors to produce authority**

- (1) An inspector exercising any powers conferred under **sections 68 or 69** shall produce his or her identity card issued under **subsection 66(3)** to the person in charge of any place entered pursuant to this Act for the purposes of inspection.
- (2) An inspector who enters premises in accordance with this Act is not authorized to remain on the premises if, on request by or on behalf of the occupier of the premises, the inspector does not produce the identity card issued under **subsection 66(3)**, and any person in or on the premises of whom the inspector made a requirement in the exercise of a power under **sections 68 or 69** is not obliged to comply with that requirement.

**71. Obstruction of inspectors, etc.**

No person shall, without reasonable excuse, by act or omission:

- (a) obstruct or hinder an inspector in the exercise of the powers or performance of the duties of the inspector under this Act or regulations; or
- (b) refuse or fail to comply with a reasonable request of an inspector who has entered any premises in accordance with this Act.

*Division 2 - Investigation of Offences Against Part III*

**72. Use of covert monitoring devices**

- (1) Where any person is suspected on reasonable grounds of having either committed an offence against **Part III** of this Act, or of being about to commit such an offence, the [name of Court] may, on the application of [the Attorney-General] [the Director of Public Prosecutions] [a police officer not below the rank of [Assistant Commissioner] [a customs officer not below the rank of [Assistant Commissioner] permit an [authorized officer] to covertly monitor and record by [any means] [such means as are specified in the order] the [conduct, movements and] communications (including telecommunications) of the person.
- (2) In making such an order, the [name of Court] shall specify [an appropriate time limit], which shall not be extended unless it considers it in the interests of justice and not contrary to the broader public interest to grant the extension.

- (3) Notwithstanding any law to the contrary, evidence obtained pursuant to and in accordance with an order made under **subsection (1)**:
- (a) shall be admissible in any proceedings relating to an offence against **Part III of this Act**;
  - (b) may be communicated to any competent authority;
    - (i) in **[name of State]**, for the purpose of an investigation or proceeding relating to a serious offence; or
    - (ii) elsewhere, for the purpose of a mutual assistance request made or received under the **[Mutual Assistance in Criminal Matters Act, 2000]**.

**73. Undercover and controlled delivery operations**

- (1) Where **[the Director of Public Prosecutions] [a police officer not below the rank of [Superintendent]] [a customs officer not below the rank of [Assistant Commissioner]]** suspects on reasonable grounds that any person has committed, or is about to commit, an offence against this Act, he or she may give approval in writing for:
- (a) a controlled delivery to be carried out; and
  - (b) specified persons or classes of persons to carry out or participate in the controlled delivery.
- (2) Notwithstanding any law to the contrary, the activities which may be undertaken in the course of and for the purposes of a controlled delivery include:
- (a) allowing any vehicle, vessel, aircraft or other means of transport to enter or leave **[name of State]**;
  - (b) allowing any:
    - (i) drug of abuse, analogue, controlled chemical, or controlled equipment or material or other thing in or on the vehicle, vessel, aircraft or other means of transport; or
    - (ii) property believed to be derived directly or indirectly from **[any offence]**,  
to enter or leave the **[name of State]**, or be delivered or collected in **[name of State]**;
  - (c) using such force as may be reasonable in the circumstances to enter and search the vehicle, vessel, aircraft or other means of transport;
  - (d) placing a tracking device on board the vehicle, vessel, aircraft or other means of transport;
  - (e) allowing any person who has possession or custody of the drug of abuse, analogue, controlled chemical, item of controlled equipment or material or other thing to enter or leave **[name of State]**.
- (3) Where **[the Director of Public Prosecutions] [a police officer not below the rank of [Assistant Commissioner]] [a customs officer not below the rank of [Assistant Commissioner]]** suspects on reasonable grounds that any person has committed, or is about to commit, an offence against this Act, he or she may give approval in writing for:
- (a) undercover operations to be carried out for a specified period; and
  - (b) specified persons or classes of persons to carry out or participate in the undercover operations,
- for the purpose of gathering evidence in **[name of State]** or elsewhere, relating to the commission of any such offence.

- (4) An approval may not be given, unless **[the Director of Public Prosecutions]** **[a police officer not below the rank of [Superintendent]]** **[a customs officer not below the rank of [Assistant Commissioner]]**:
- (a) suspects on reasonable grounds that any person, whose identity may or may not be known, has committed, is committing or is about to commit an offence against this Act;
  - (b) is satisfied on reasonable grounds that the proposed undercover operations:
    - (i) are properly designed to provide the suspect with an opportunity to manifest or provide evidence of that offence; and
    - (ii) will not give rise to an undue risk that any person not involved in criminal activities would be encouraged to commit a criminal offence they would otherwise not have contemplated.
- (5) **[The Director of Public Prosecutions]** **[a police officer not below the rank of [Superintendent]]** **[a customs officer not below the rank of [Assistant Commissioner]]** may renew an approval given under **subsection (3)** from time to time for periods each of which shall not exceed **[3 months]**.
- (6) **[The Director of Public Prosecutions]** **[a police officer not below the rank of [Superintendent]]** **[a customs officer not below the rank of [Assistant Commissioner]]** shall within **[14 days]** of giving or renewing an approval, give a copy of the instrument of approval or renewal to the **[Attorney-General]**.
- (7) Any drug of abuse, analogue, controlled chemical, controlled equipment, controlled material or other thing imported into **[name of State]** in the course of an approved undercover operation or controlled delivery shall, when no longer required for the purposes of the due enforcement of this Act, be liable to be dealt with as if it were a **[prohibited import]** for the purposes of the **[Customs Act]**.
- (8) Despite any other law, an authorized participant in an undercover operation or a controlled delivery incurs no criminal liability by taking part in it in accordance with the terms of approval, notwithstanding that in doing so, the person may, but for this subsection, commit an offence.
- (9) **Subsection (8)** operates retrospectively in respect of a participant in any undercover operation or controlled delivery undertaken prior to the commencement of this Act, provided the requirements of **paragraphs (a) and (b) of subsection (4)** could have been met in the case had they been in force at the time.

#### **74. Monitoring of the mails**

- (1) Notwithstanding any other law to the contrary, where the **[Commissioner of Police]** **[Collector of Customs]** suspects on reasonable grounds that any consignment by mail may contain evidence of the commission of a serious offence, the **[Commissioner of Police]** **[Collector of Customs]** may give approval in writing to any **[authorized officer]** to carry out at any time inspections in the postal services in order to detect that consignment, and if found, to detain it for further investigation.
- (2) Where **the [name of Court]** is satisfied by information on oath that there are reasonable grounds to believe that any consignment detected and detained pursuant to **subsection (1)** may contain evidence of the commission of a serious offence, the **[name of Court]** may order any **[authorized officer]** to:
- (a) open the consignment; and
  - (b) if such evidence is found on opening, to seize and detain it until further order of the **[name of Court]**.

#### **75. Access to computer systems**

- (1) Where it appears to the **[name of Court]**, by information on oath, that a computer system in the custody of any person contains data which may be relevant to proving an offence against **Part III** of this Act, the **[name of Court]** may order the person having custody or control of that system to give to **[a police officer]** access to that data.
- (2) Any person who, without reasonable excuse, fails to:
- (a) give access as ordered; or
  - (b) provide reasonable assistance to enable the data to be retrieved and recorded,
- commits an offence.

**Penalty:** in the case of a natural person, imprisonment not exceeding **[P...]** **standard imprisonment units**, fine not exceeding **[F...]** **standard fine units**, or both, and in the case of a corporation, fine not exceeding **[five]** times that maximum:

## **76. Search warrants**

- (1) Where the **[name of Court]** is satisfied, by information on oath, that there are reasonable grounds to believe that there is in any place:
- (a) a drug of abuse, analogue, controlled chemical or item of controlled equipment or material in respect of which this Act has been contravened;
  - (b) any thing in which such a drug, analogue, chemical or item is contained or concealed;
  - (c) any property derived from an offence; or
  - (d) any other thing that will afford evidence in respect of an offence against this Act,

the **[name of Court]** may issue a warrant empowering **[a police officer]** at any time, or at such time as the **[name of Court]** may specify in the warrant, to enter the place, search for any such drug, analogue, chemical, item or thing and if found, seize it.

- (2) A **[police officer]** who executes a warrant under **subsection (1)** may:
- (a) enter any place named or described in the warrant and search the place for things of the kind described;
  - (b) search any person found at or in the place, or any person whom he or she reasonably believes to be about to enter or to have recently left the place, and any clothing that the person is wearing, or property in the apparent control of the person that the officer believes on reasonable grounds to be connected with the offence;
  - (c) to seize any thing of that kind found as a result.
- (3) A **[police officer]** who executes a warrant issued under **subsection (1)** may seize, in addition to the things mentioned in the warrant:
- (a) any drug of abuse, analogue, controlled chemical or item of controlled equipment or material in respect of which the officer believes on reasonable grounds that this Act has been contravened;
  - (b) any thing that the officer believes on reasonable grounds to contain or conceal such a drug, analogue, chemical or item;

- (c) any thing that the officer believes, on reasonable grounds, to be property derived from an offence: or
- (d) any thing that the officer believes on reasonable grounds will afford evidence in respect of an offence under this Act.

#### **77. Search and seizure without warrant in emergencies**

- (1) A **[police officer]** may exercise any of the powers in **section 76** without a warrant, if the conditions for obtaining a warrant under **subsection 76 (1)** exist and the officer believes, on reasonable grounds, that:
  - (a) it is necessary to do so in order to prevent the concealment, loss or destruction of any thing connected with an offence; and
  - (b) the circumstances are of such seriousness and urgency as to require the immediate exercise of the power without the authority of a warrant issued under **subsection 76 (1)** or of an order of the **[name of Court]**.
- (2) A **[police officer]** acting pursuant to **subsection (1)** may:
  - (a) search any person or the clothing that is being worn by, and property in the apparent control of a person suspected by the officer to be carrying any thing connected with an offence; or
  - (b) enter and search any place at or in which the police officer believes on reasonable grounds that any thing connected with an offence is situated; and
  - (c) seize any such thing that he or she finds in the course of that search or at or in the place.
- (3) A **[police officer]** may, for the purpose of this section, detain any person the officer believes on reasonable grounds is carrying without lawful authority or reasonable excuse any thing connected with an offence against this Act.
- (4) A **[police officer]** may, for the purposes of this section, stop any vehicle, vessel or aircraft where the officer believes on reasonable grounds that any thing connected with an offence is upon or in the vehicle, vessel or aircraft.
- (5) Any person aggrieved by the seizure of any thing under this section by a **[police officer]**, may apply to the **[name of Court]** for judicial review of the seizure action.
- (6) Upon hearing any application under **subsection (5)**, the **[name of Court]** may:
  - (a) confirm the seizure; or
  - (b) order the release of the thing seized to the applicant, subject to such conditions as to the security and continued preservation of the thing as the **[name of Court]** thinks fit.

#### **78. Searching a person and clothing**

- (1) Where a **[police officer]** is authorized under this Part to search the clothing that a person is wearing, the officer may remove or require the person to remove any clothing that the person is wearing.
- (2) A person shall not be searched under this Part except by a **[police officer]** of the same sex.

#### **79. Internal body cavity searches**

- (1) Where a **[police officer]** has reason to believe that a person is transporting any drug of abuse or analogue, by

concealing it inside the body and the person refuses to submit to a medical examination, the officer may detain the person for a period not exceeding **[24 hours]**, pending the obtaining of an order from **[name of Court]** under **subsection (2)**.

- (2) Where the **[name of Court]** is satisfied, by information on oath, that there are reasonable grounds to believe that a person is transporting any drug of abuse or analogue by concealing it inside the body and the person has refused without reasonable cause to submit to a medical examination, the **[name of Court]** may issue an order:
- (a) directing the person to submit forthwith to such medical examination including X-ray or other tests as may be reasonably necessary to establish whether the person is transporting a drug of abuse or analogue inside the body;
  - (b) authorizing the person to be taken in custody by a **[police officer]** to any place stated in the order for the purpose of having the medical examination carried out; and
  - (c) authorizing any medical practitioner to carry out such examination and to provide such medical treatment as may be reasonable and appropriate in the circumstances.
- (3) No person shall without reasonable excuse refuse or fail to submit to a medical examination as directed by order made under **subsection (2)**:

**Penalty:** imprisonment not exceeding **[P...]** **standard imprisonment units**, fine not exceeding **[F...]** **standard fine units**, or both.

#### **80. Applications made by use of telecommunications**

For the purposes of **subsections 72(1), 74(2), 75 (1) , 76(1) or 79(2)**, an information may be submitted to the **[name of Court]** in person, by telephone or by other means of telecommunication, subject to and in accordance with any rules made from time to time by the **[name of Court]**.

#### **81. Use of force**

For the purpose of exercising any of the powers conferred under **sections 75, 76, 77 or 78**, a **[police officer]** may use as much force as is reasonably necessary in the circumstances.

#### **82. Temporary detention of certain suspects**

- (1) Any person, other than a person suspected on reasonable grounds of having committed an offence only against **section 56**, may be arrested and detained for questioning for a period of **[24 hours?]** if suspected on reasonable grounds of being involved in the commission of any offence against **Part III** of this Act.
- (2) The **[name of Court]** **[Director of Public Prosecutions]** **[Attorney-General]** may authorize one or more extensions, each of **[24 hours]** duration, if satisfied that it is in the interests of justice and not contrary to the broader public interest to do so, but in no case shall the cumulative period of temporary detention exceed **[96 hours]**.

#### **83. Power to destroy cannabis and other unlawful crops**

- (1) Subject to subsection (2), where it appears to any police officer, on reasonable grounds, that cannabis plants, coca bushes or opium poppy or any other plants that are a drug of abuse are:
  - (a) growing in the wild; or

**[(b) being cultivated unlawfully,]**

he or she may, without warrant and with such assistance and force as is reasonable, enter any place on or in which they are growing and cause them to be uprooted and destroyed.

**[(2) The powers under subsection (1) (b) to uproot and destroy shall not be exercised unless the police officer believes, on reasonable grounds, that in all the circumstances:**

- (a) sufficient samples and other evidence have been collected to properly establish the identity [and estimated number, quantity and weight] of the plants under unlawful cultivation; and**
- (b) it appears to the officer necessary to exercise the powers forthwith, in order to prevent other persons known or unknown from:**
  - (i) unlawfully harvesting, removing, concealing or using the plants; or**
  - (ii) endangering the life or safety of the officer or any person,**

**before the plants can be safely seized, secured and dealt with in accordance with proper investigatory practice.]**

### *Division 3 - Post seizure Procedures*

#### **84. Collection and processing of evidence at seizures**

- (1) The officer in charge at the seizure scene shall ensure that any material evidence is collected and processed, and in particular that any seized drug of abuse, analogue or controlled chemical is properly marked for identification, weighed, counted, sampled, sealed, labelled and, until destroyed or otherwise disposed of in accordance with **Division 5**, preserved for evidentiary purposes;
- (2) Where any substance seized is found in packages or containers of similar size and weight and bearing identical markings, and colour testing of the contents of a representative number of them yields similar results for each, the seizing officer shall cause all such packages or containers to be classified, serially numbered and separated into lots ready for weighing, counting, sampling, sealing and labelling.
- (3) Where it is physically possible to count and weigh the seizure as a complete entity, the seizing officer shall cause it to be counted and weighed. Where it is not physically possible to count or weigh the seizure as a complete entity, the seizing officer shall cause its count or gross weight and net weight as the case may be to be estimated.
- (4) The seizing officer shall also prepare a report of the seizure as soon as possible but no later than **[24 hours]** after seizure, which include particulars of:
  - (a) the time, place and date of seizure;
  - (b) the identity of the seizing officer and all persons present;
  - (c) the circumstances in which seizure took place;
  - (d) a description of the vehicle, vessel, place or person searched and the location where the substance was found;
  - (e) a description of the substance found;



- (f) a description of packaging, seals, and other identifying features;
  - (g) a description of quantity, volume and units and the measurement method employed;
  - (h) a description of any preliminary identification test used and results (*eg test kit*);
  - (i) all subsequent movements of the seized substance; and
  - (j) any other **prescribed matter**.
- (5) The officer in charge of an investigation following a seizure shall ensure that all items of evidentiary value are stored in appropriate conditions for the prevention of loss, theft or any other form of misappropriation, as well as accidental or accelerated deterioration.

#### *Division 4 - Scientific Analysis*

##### **85. Designation of analysts**

The Minister may designate any appropriately qualified and experienced person or class of persons in **[name of State]** **[or elsewhere]** as an analyst for the purposes of this Act and the regulations.

##### **86. Sampling and analysis of bulk seizures of prohibited plants, drugs of abuse, analogues, precursors, etc**

- (1) As soon as possible but no later than **[2 working days]** after counting and weighing any significant quantity of seized substance, samples shall be taken for scientific analysis, in duplicate.
- (2) Any samples taken under subsection (1) shall be signed or otherwise marked for identification by the seizing officer and any other person present when it is taken.

#### *Division 5 - Disposal of Seized Drugs of Abuse, Analogues and Precursors*

##### **87. Early disposal of seized drugs, chemicals and analogues**

- (1) If scientific analysis of a sample indicates that the seized substance is a drug of abuse, analogue, or controlled chemical, the seizing officer shall forthwith forward a copy of any scientific analysis report to the **[Director of Public Prosecutions]** and to the **Minister of Health**.
- (2) Where following receipt of the report referred to in **sub-section (1) and after consultation with the [Minister of Health]**, the **[Director of Public Prosecutions]** is of the opinion that:
  - (a) proceedings are likely to be brought against any person (whether or not the identity of that person is yet known);
  - (b) physical preservation of all the seized substances is not necessary for the purposes of any actual or contemplated proceedings under **this Act**;

and that they,

- (i) may properly and lawfully be used, in **[name of State]** for medical or scientific purposes, or in small

amounts for the training of personnel responsible for carrying out functions under **this Act**; or

- (ii) cannot be safely, securely or conveniently stored until the final determination of such proceedings,

the **[Director of Public Prosecutions]** shall apply to a **[Magistrate]** for an order directing the disposal of such part of the seized substances or samples as he or she certifies are not necessary to retain for the purposes of the due administration of justice.

- (3) Where the **[Director of Public Prosecutions]** has made an application for a disposal order under **subsection (2)** in relation to a seizure, and the **[Magistrate]** is satisfied that:

- (a) the seized substances are illegal property liable to forfeiture under this Act;
- (b) the provisions of this section relating to the taking and analysis of samples have been complied with;
- (c) sufficient samples have been taken, analyzed and preserved to enable all material questions relating to the seized substances to be properly determined in any actual or contemplated proceedings under this Act; and
- (d) any suspect or accused person in relation to the seizure has had reasonable opportunity to have samples independently analyzed at that person's expense,

the **[Magistrate]** shall order the disposal of such seized substances or samples as the **[Attorney-General]** **[Director of Public Prosecutions]** has certified need not be retained for the purpose of the due administration of justice.

- (4) Where, in relation to any seized drug of abuse, analogue or controlled chemical, and after reasonable investigatory efforts, the **[Director of Public Prosecutions]** is:

- (a) of the opinion that proceedings are not likely to be brought against any person for the reason only that no suspect has been identified or located; and
- (b) satisfied that sufficient samples have been taken, analyzed and preserved to enable all material questions relating to the seized substances to be properly determined should any suspect be ultimately identified and proceedings be brought,

the **[Director of Public Prosecutions]** may order the disposal of such part of the seized substances or samples as he or she certifies are not necessary to retain for the purposes of the due administration of justice.

- (5) Substances subject to an order under **subsection (3) or (4)** shall be disposed of only:

- (a) by delivery to the **[Minister of Health]** for use exclusively in meeting the lawful medical, scientific or training needs of **[name of State]**; or
- (b) by incineration, or such other safe means of destruction as the **[Minister of Health]** may direct.

- (6) Subject to this section, in any prosecution for an offence against this Act or regulations, a certificate or report:

- (a) purporting to be signed by the officer in charge of carrying out a disposal order made under **subsection (3) or (4)** and two witnesses to the disposal; and
- (b) stating;
  - (i) that the substance, the subject of an order, has been disposed of in accordance with the order; and
  - (ii) the identity and quantity of the substance disposed of,

is admissible in evidence.

- (7) In the absence of evidence to the contrary, a certificate or report admissible under **subsection (6)** is proof of the statements contained therein, without proof of the signature, expertise or official character of the person appearing to have signed it.

*Division 6 - Special Enforcement Powers at Sea*

**88. Conditions and limitations on the exercise of special enforcement powers**

- (1) The powers conferred on authorized officers in **sections 89, 90, 91, 92 and 93** shall be exercisable in relation to any ship described in **section 2 (2) (c)** for the purposes of detecting and taking appropriate action in respect of offences **[described in Part III of this Act]**.
- (2) Those powers shall not be exercised outside the seaward limits of the territorial sea of **[name of State]** except with the authority of **[Collector of Customs] [Minister of Defence]** and he or she shall not give such authority unless satisfied that:
- (a) in the case of a ship of a convention State, that State:
- (i) requested assistance of **[name of State]** for the purposes of detecting possible serious criminal offences and taking appropriate action; or
- (ii) authorized **[name of State]** to act for that purpose: or
- (b) in the case of a ship of no nationality or assimilated to a ship of no nationality, it is appropriate to do so
- (3) The **[Collector of Customs] [Minister of Defence]** shall impose such conditions or limitations on the exercise of the powers:
- (a) in a case to which **subsection (2)(a)** applies, as may be necessary to give effect to any conditions or limitations imposed by that State; and
- (b) in any other case, as may be appropriate.
- (4) The **[Collector of Customs] [Minister of Defence]** may, either on his or her own initiative or in response to a request from a convention State, authorize a convention State to exercise, in relation to a **[name of State]** ship, powers corresponding to those conferred on authorized officers under **sections 89, 90, 91, 92, and 93**, but subject to such conditions or limitations, if any, as he or she may impose.
- (5) **Subsection (4)** is without prejudice to any agreement made, or which may be made, on behalf of **[name of State]** whereby **[name of State]** undertakes not to object to the exercise of any other State in relation to a **[name of State]** ship of powers corresponding to those conferred on authorized officers under **sections 89, 90, 91, 92 and 93**.
- (6) The powers conferred on authorized officers under **sections 89, 90, 91, 92, and 93** shall not be exercised in the territorial sea of any State other than **[name of State]** without the authority of **[Collector of Customs] [Minister of Defence]**, who shall not give such authority unless that State has consented to the exercise of those powers.
- (7) A certificate purporting to be issued by or on behalf of the government of any State to the effect that the importation or export of a controlled drug is prohibited by the law of that State shall be evidence, and in **[name of State]** sufficient evidence, of the matters stated.

**89. Power to stop, board, divert and detain**

- (1) For the purpose of this Division, an **[authorized officer]** may stop a ship, board it and, if the officer thinks it necessary for the exercise of his or her functions, require it to be taken to a port in **[name of State]** and detain it there.
- (2) Where an **[authorized officer]** is exercising his or her powers with the authority of **[Collector of Customs] [Minister of Defence]** pursuant to **sections 89, 90, 91, 92 and 93**, the officer may require the ship to be taken to a port in the convention State in question or, if that State has so requested, in any other State willing to receive it.
- (3) For any of those purposes, the officer may require the master or any member of the crew to take such action as may be necessary.
- (4) If an **[authorized officer]** detains a vessel, he or she shall serve on the master a notice in writing stating that it is to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by the officer.
- (5) Notwithstanding any law to the contrary, where an **[authorized officer]** has seized any thing in the exercise of his or her powers under this Division, the thing may be brought into **[name of State]** and dealt with in accordance with this Act or the **Money-Laundering and Proceeds of Crime Act, 2000**.

**90. Power to search and obtain information**

- (1) An **[authorized officer]** may search the ship, anyone on it, and anything on it including its cargo.
- (2) An **[authorized officer]** may require any person on the ship to give information concerning him or herself or anything on the ship.
- (3) Without prejudice to the generality of those powers, an **[authorized officer]** may:
  - (a) open any container;
  - (b) make tests and take samples of anything on the ship;
  - (c) require the production of documents, books or records relating to the ship or anything on it;
  - (d) make photographs or copies of anything whose production he or she has power to require.

**91. Powers in respect of suspected offence**

- (1) If an **[authorized officer]** has reasonable grounds to suspect that a **serious offence** relating to Part III of this Act has been committed on the ship, he or she may:
  - (a) arrest without warrant anyone whom he or she has reasonable grounds to suspect is guilty of the offence; and
  - (b) seize and detain anything found in the ship which appears to him or her to be evidence of the offence.

**92. Assistance**

- (1) An **[authorized officer]** may take with him or her to assist in the exercise of powers conferred under this Division;
  - (a) any other person; and

(b) any other equipment or materials.

(2) A person whom an **[authorized officer]** takes to assist, may perform any of the officer's functions, but only under the officer's supervision.

**93. Use of reasonable force**

An **[authorized officer]** may use reasonable force, if necessary, in the performance of his or her functions.

**94. Evidence of authority**

An authorized officer shall, if required, produce evidence of his or her authority.

**95. Protection of officers**

An **[authorized officer]** shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his or her functions under this Division if the **[name of Court]** is satisfied that the act was done with due diligence and in good faith and that there were reasonable grounds for doing it.

**96. Offences**

A person commits an offence if he or she:

- (a) intentionally obstructs an **[authorized officer]** in the performance of any of his or her functions under this Division;
- (b) fails without reasonable excuse to comply with the requirement made by an **[authorized officer]** in the performance of those functions; or
- (c) in purporting to give information required by an **[authorized officer]** for the performance of those functions:
  - (i) makes a statement he or she knows to be false in a material particular, or recklessly makes a statement which is false in a material particular; or
  - (ii) intentionally fails to disclose any material particular.

**Penalty:** imprisonment not exceeding **[P...]** **standard imprisonment units**, fine not exceeding **[F...]** **standard fine units**, or both.:

*Division 7 - Evidentiary Matters*

**97. Burden of proof**

- (1) No exception, exemption, excuse or qualification prescribed by law is required to be set-out or negated in any indictment information or other process commencing proceedings for an offence under this Act.
- (2) In any prosecution under this Act, the prosecutor is not required, except by way of rebuttal, to prove that a certificate,

licence, permit or other qualification does not operate in favour of the accused, whether or not the qualification is set out in the information or indictment.

**98. Factual presumption relating to liability of corporations**

- (1) Where in proceedings for an offence against **Division 1 of Part III of this Act** in respect of any conduct, it is necessary to establish the state of mind of a corporation, it is sufficient to show that a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in by:
- (a) a director, servant or agent of a corporation within the scope of his or her actual or apparent authority: or
  - (b) any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the corporation, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,
- shall be deemed, for the purposes of this Act, to have also been engaged in by the corporation.
- (3) A reference in **subsection (1)** to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief, suspicion or purpose of the person and that person's reasons for his or her intention, opinion, belief, suspicion or purpose.
- (4) Where at any time a corporation commits an offence under this Act with the consent or connivance, or because of neglect by, any individual, the individual also commits that offence if at the time:
- (a) the individual is a director, manager, secretary or other similar officer of the corporation:
  - (b) the individual is purporting to act as such an officer: or
  - (c) the corporation is managed by its members of whom the individual is one.

**99. Factual presumptions relating to possession of drugs of abuse or analogues**

If in the prosecution of a person for an offence against this Act or the regulations it is proved that a drug of abuse or analogue was found:

- (a) in the immediate vicinity of the accused; or
- (b) on any animal, vehicle, vessel, or aircraft, and that the accused was at the time on or in charge of, or that he or she accompanied, any such animal, vehicle, vessel, or aircraft,

it shall be presumed, until the contrary is proved, that the accused was found in possession of the drug or analogue.

**100. Factual presumption relating to a particular purpose**

For the purposes of this Act, a person shall be deemed to have engaged in conduct (whether by act or omission) for a particular purpose if the person engaged in the conduct for purposes that included that purpose, and that purpose was a substantial purpose.

**101. Factual presumptions relating to purpose of supply of drugs of abuse or analogues**

(1) **In subsection (2):**

- (a) "school" means any educational institution, except a university or other tertiary institution, where full time education, including pre-school education is provided to pupils; and
- (b) "school grounds" means land, whether contiguous or not, buildings or accommodation, sporting or other facilities used for or in connection with the activities of a school.

(2) If in a prosecution of a person for an offence against **subsection 46(1)** it is proved that the accused was found unlawfully in possession of any drug of abuse or analogue:

- (a) in or on any school grounds or within a distance [**100 metres**] therefrom; or
- (b) of a quantity of drugs or analogues which exceeds the quantity which the accused could have acquired for medical or scientific purposes pursuant to this Act,

it shall be presumed, until the contrary is proved, that the possession was for the purpose of supply.

[(3) **For the purposes of this Act, where a person:**

- (a) **has in his or her possession;**
- (b) **imports into or exports from [name of State]; or**
- (c) **has in his or her possession for the purpose of importing into or exporting from [name of State],**

**a trafficable quantity or a commercial quantity of a drug of abuse or analogue, it shall be presumed until the contrary is proved that the possession, import, export, intended import or intended export, as the case may be, is for the purpose of sale or supply.] NB: This clause is only relevant if quantity-based schedules are used for Schedules I, II and II of this Act. The quantities enable differentiation between a "commercial" and "trafficable" quantities in relation to each drug of abuse there listed .**

**102. Proof of street or market value of drug of abuse etc.**

For the purposes of this Act, it shall be competent for any [**authorized officer**] who is or has recently carried out duties relating to the investigation of offences against **Part III** of the Act, to give evidence in any proceedings relating to:

- (a) an offence against **that Part**;
- (b) **Part II of the Money-Laundering and Proceeds of Crime Act, 2000;**
- (c) a serious offence,

as to the street or market value in [**name of State**] of any drug of abuse, analogue or controlled chemical, and as to the demand for, availability of and other circumstances pertaining to its sale, supply or distribution, and the [**name of Court**] may give such probative weight to that evidence as it thinks fit.

**103. Factual presumption relating to samples**

If in any prosecution for an offence against this Act it is proved that a sample which was taken from any substance possesses particular properties, it shall be presumed, until the contrary is proven, that any such substance possesses the same properties.

**104. Proof of continuity of possession of exhibits**

- (1) In any proceedings under this Act, continuity of possession of any exhibit tendered as evidence may be proved by testimony given under oath by, or the affidavit or solemn declaration of, the person claiming to have had it in possession.
- (2) Where the affidavit or solemn declaration of a person is offered in proof of continuity of possession under **subsection (1)**, the **[name of Court]** may require the person to appear before it for examination or cross-examination in respect of the issue of continuity of possession.

**105. Admissibility of official records**

A copy of any record of a ministry, department, agency, municipality or other body established by or pursuant to a law of **[name of State]**, or of any statement containing information from the records kept by any such ministry, department, agency, municipality or other body, purporting to be certified by an official having custody of that document or those records, is admissible in evidence in any prosecution for an offence against this Act, and in the absence of evidence to the contrary, is proof of the facts contained in the document, without proof of the signature or official character of the person purporting to have certified it.

**106. Proof of certificate or report of scientific analysis**

- (1) Subject to this section, in any prosecution for an offence against this Act or regulations, a certificate or report purporting to be signed by an analyst and stating that an article, sample or substance has been submitted to, examined and analyzed by the analyst and stating the results of the analysis or examination, is admissible in evidence.
- (2) In the absence of evidence to the contrary, a certificate or report admissible under **subsection (1)** is proof of the statements contained therein, without proof of the signature, expertise or official character of the person appearing to have signed it.
- (3) Without limiting the generality of **subsection (1)**, the certificate or report may include a statement in relation to a drug of abuse, analogue or controlled chemical, as to:
  - (a) when and from whom it was received;
  - (b) what, if any identifying labels or other things accompanied it;
  - (c) what container it was in;
  - (d) a description of it, and its weight;
  - (e) if it, or any portion of it, was analyzed:
    - (i) the name of the method of analysis;
    - (ii) the results of the analysis, including as to its identity pure drug or chemical content; and
  - (f) how it was dealt with after handling by the analyst, including details of:
    - (i) the quantity retained;
    - (ii) the name of the person, if any, to whom any retained quantity was given; and



(iii) measures taken to secure any retained quantity.

- (4) The party against whom a certificate or report is produced under **subsection (1)** may, with leave of **the [name of Court]**, require the attendance of the analyst for the purpose of cross-examination.
- (5) Unless **the [name of Court]** otherwise orders, no certificate or report shall be received in evidence under **subsection (1)**, unless the party intending to produce it has, before the trial, given to the party against whom it is intended to be produced reasonable notice of that intention, together with a copy of that certificate or report.

**107. Proof that [name of State] is a party to a drug control convention**

A certificate by the **[Attorney-General]** stating that:

- (a) an international drug control convention entered into force for **[name of State]** on a specified date; and
- (b) as at the date of the certificate, the convention remains in force for **[name of State]**

is, for the purpose of any proceedings under this Act, *prima facie* evidence of those facts.

**108. Proof of prohibited import or export of a drug of abuse etc., under foreign law**

A certificate purporting to be issued by or on behalf of a foreign State to the effect that the import or export of a drug of abuse, controlled chemical, controlled equipment, or controlled material is prohibited by the law of that State shall for the purpose of any proceedings under this Act, be *prima facie* evidence of the matters stated.

**109. Offence of interfering etc., with evidence**

Any person who unlawfully interferes with, uses, takes or disposes of any seized substance or any sample thereof, or who unlawfully interferes with, or falsifies the results of any analysis with the intention of interfering with the proper course of justice, commits an offence.

**Penalty:** in the case of a natural person, imprisonment not exceeding **[P...] standard imprisonment units**, fine not exceeding **[F...] standard fine units**, or both, and in the case of a corporation, fine not exceeding **[five]** times that maximum:

*Division 8 - General*

**110. Designation of authorized officers**

The **[Minister of Justice]** may in writing designate any **[police officer] [customs officer] [and any other person or class of persons]** to be an **[authorized officer]** for purposes relating to the exercise powers under **Divisions 2 and 6 of Part V of this Act**.

**111. Delegation**

- (1) The **[Attorney-General]**, **[Minister of Health]** and any other person on whom any power is conferred by this Act may,

either generally or as otherwise provided by the instrument of delegation, delegate to:

- (a) any officer of his or her department, all or any of his or her powers under this Act, except:
    - (i) this power of delegation;
    - (ii) the power to grant exemption from the operation of the Act or the regulations under **section 112**; and
    - (iii) the power to make regulations under **section 126**;
  - (b) any **[authorized officer]**, any power conferred under **Part V**, except the power to authorize the boarding of ships under **section 89**.
- (2) Any person on whom any power or function is conferred by a provision of this Act may delegate the whole or any part of that function by notice in **[the Gazette]** subject to such conditions and limitations as may be specified in the notice.

#### **112. Exemption from operation of Act or regulations**

Subject to **subsection 5(3)**, **[the Minister]** may, on such terms and conditions as he or she deems necessary, exempt any person or class of persons or any drug of abuse, controlled chemical or item of controlled equipment or material, or any class thereof, from the application of **all or any provisions of this Act or the regulations** if, in the opinion of Minister, the exemption is necessary for a medical or scientific purpose and is otherwise in the public interest.

#### **113. Offence of tipping-off**

- (1) Except for the purposes of the due administration and enforcement of this Act, no person shall, without lawful authority or reasonable excuse, disclose to another person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him or her under this Act:
- (a) the fact that he or she is subject to such an investigation;
  - (b) any details of the investigation; or
  - (c) disclose to any other person either the identity of any person who is the subject of such an investigation or any details of such an investigation.

**Penalty:** in the case of a natural person, imprisonment not exceeding **[P...]** **standard imprisonment units**, fine not exceeding **[F...]** **standard fine units**, or both, and in the case of a corporation, fine not exceeding **[five]** times that maximum:

- (2) **Subsection (1)** shall cease to apply in relation to the identity of the person or details of the investigation when:
- (a) a search warrant issued under **Part V** has been executed at the person's premises;
  - (b) a warrant for the arrest of the person has been issued, or the person has been arrested.

#### **114. Obstruction of officers etc.,**

No person shall:

- (a) furnish to any officer any information which the person is required to furnish which is to the person's knowledge or belief false or misleading in a material particular;
- (b) by any other act or omission whatsoever, wilfully hinder or obstruct any officer in the exercise of his or her powers under this Act.

**Penalty:** in the case of a natural person, imprisonment not exceeding [P...] **standard imprisonment units**, fine not exceeding [F...] **standard fine units**, or both, and in the case of a corporation, fine not exceeding [five] times that maximum:

#### 115. **Perverting the course of justice**

(1) Any **inspector or [police officer]**, who maliciously:

- (a) enters or searches or causes to be entered or searched any place, person, clothing of that person, or property under the control of that person;
- (b) seizes the property of any person on the pretence of seizing or searching for any drug of abuse, analogue, controlled chemical or item of controlled equipment or material or other property liable to be forfeited under this Act [**or to be confiscated under the Money Laundering and Proceeds of Crime Act, 2000**], or of seizing any record, article or other thing liable to be seized under this Act: or
- (c) detains, searches or arrests any person,

commits an offence.

**Penalty:** imprisonment not exceeding [P...] **standard imprisonment units**, fine not exceeding [F...] **standard fine units**, or both.

(2) Any person who maliciously gives false information leading to the arrest of a person or a search being made pursuant to this Act commits an offence.

**Penalty:** imprisonment not exceeding [P...] **standard imprisonment units**, fine not exceeding [F...] **standard fine units**, or both.

#### 116. **Immunity where official powers or functions exercised diligently and in good faith**

No suit, prosecution or other legal proceedings shall lie against the Government, or any officer or other person in respect of anything done by or on behalf of that person, with due diligence and in good faith, in the exercise of any power or the performance of any function under this Act or the regulations.

#### 117. **Protection of informers**

(1) Subject to **subsection (3)**, no witness in any proceedings under this Act shall be obliged:

- (a) to disclose the name or address of any informer who has given information with respect to an offence under this Act, or of any person who has assisted in detecting, investigating or otherwise assisting with respect to the due administration or enforcement of this Act; or
- (b) to answer any question if the answer thereto would lead, or would tend to lead, to the discovery of the name, address or identity of such informer or person,

if the informer or person is not a witness in the proceedings.

- (2) If any record which is in evidence or liable to inspection in any proceedings contain an entry in which any such informer or person is named or described or which might lead to his or her discovery, the **[name of Court]** shall cause all such entries to be concealed from view or to be obliterated so far as may be necessary to protect the informer or such person from discovery.
- (3) If in any proceedings before the **[name of Court]** under this Act the **[name of Court]**, after full enquiry into the case, is satisfied that an informer wilfully made a material statement which he or she knew to be false or did not believe to be true, or if in any other proceedings the **[name of Court]** is of the opinion that justice cannot be fully done between the parties thereto without disclosure of the name of the informer or other person who has assisted in any investigation or the proceedings under this Act, the **[name of Court]** may permit enquiry and require full disclosure concerning the informer or person.

#### **118. Conditional immunity where offenders assist the prosecution**

- (1) The **[Attorney-General]** may, with a view to obtaining the evidence of any person who appears to have been directly or indirectly concerned in the contravention of any provision of this Act, grant to the person immunity from prosecution for any offence under this Act on condition that the person makes a full and true disclosure of the whole circumstances relating to the contravention.
- (2) Any immunity granted by the **[Attorney-General]** under **subsection (1)** and accepted by a person shall, to the extent to which the immunity extends, render the person immune from prosecution for any offence in respect of which immunity was tendered.
- (3) If it appears to the **[Attorney-General]** at any time that any person to whom immunity has been tendered under **subsection(1)** has:
  - (a) failed or refused to comply with any term or condition on which immunity was granted;
  - (b) wilfully concealed anything or given false or misleading evidence; or
  - (c) subsequent to the grant of immunity, has committed an offence against this Act,

the **[Attorney-General]** may by notice in writing to the person withdraw the immunity, whereupon the person may be tried for the offence in respect of which immunity was granted and any other offence of which the person appears to have been guilty in connection with that offence.

#### **119. Limited official secrecy**

- (1) This section applies to any inspector, analyst, **[authorized officer]** or other person who is, or has been, a person exercising powers or performing duties under this Act.
- (2) Subject to **subsection (3)**, a person to whom this section applies shall not, either directly or indirectly, except in the exercise of a power or the performance of a duty under this Act;
  - (a) make a record of, or divulge or communicate to any person any information acquired by the first person concerning the business, professional or personal affairs of a third person;
  - (b) produce to a person a document produced to or otherwise acquired by the first person, by reason of the exercise of those powers or the performance of those duties.

**Penalty:** imprisonment not exceeding **[P...]** standard imprisonment units, fine not exceeding **[F...]** standard

**fine units**, or both.

- (3) Nothing in this section applies in relation to the giving of information or the production of a document:
- (a) to an **[authorized officer]** while acting in the course of his or her duties;
  - (b) to the **[name of Court]** in relation to any proceedings under this Act or the **[Money Laundering and Proceeds of Crime Act, 2000]**;
  - (c) to a treatment assessment panel established under **Part IV** of this Act;
  - (d) to any person where the giving of information or the production of the document is necessary to remove a threat to the life or health of the person;
  - (e) subject to subsection (4), to any other person for the purposes of:
    - (i) any investigation, prosecution or other proceedings in **[name of State]** or elsewhere; or
    - (ii) the due administration and enforcement of this Act.
- (4) Nothing in **subsection (3)(e)** entitles any person to obtain, by way of discovery, any information or document to which he or she would not be entitled under the ordinary rules relating to discovery.

#### **120. Penalty for offences where no penalty expressly provided**

Every person who contravenes a provision of:

- (1) this Act for which punishment is not otherwise provided; or
- (2) of a regulation made pursuant to this Act,

is guilty of an offence and liable on conviction to imprisonment not exceeding **[P...] standard imprisonment units**, fine not exceeding **[F...] standard fine units**, or both, and in the case of a corporation, fine not exceeding **[five]** times that maximum:

### **PART VI FUND FOR DRUG ABUSE PREVENTION AND CONTROL**

#### **121. Establishment of the Fund**

There is hereby established in the accounts of **[name of State]** an account to be known as the **[name of State] Fund For Drug Abuse Prevention and Control**.

#### **122. Receipts and disbursements**

- (1) There shall be credited to the Fund:
- (a) any sums of money allocated to the Fund from time to time by parliamentary appropriation;
  - (b) any property paid or transferred to the Fund pursuant to or in accordance with;

- (i) **section 67(3)(b) of the Money Laundering and Proceeds of Crime Act, 2000;**
  - (ii) **section 18 of the Mutual Assistance in Criminal Matters Act, 2000;**
  - (c) any voluntary payment, grant or gift made by any person for the purposes of the Fund; and
  - (d) any income derived from the investment of any amount standing to the credit of the Fund.
- (2) The assets of the Fund shall be applied towards meeting expenses incurred in carrying out and furthering the purposes of this Act, and in particular, in preventing drug abuse in **[name of State]**, in providing treatment and rehabilitation facilities and services of drug dependent persons, in detecting, investigating, prosecuting or adjudicating any proceedings which may be taken under this Act, [and] in giving or receiving international cooperation under the **[Mutual Assistance in Criminal Matters Act, 2000]**[and in contributing to the activities of intergovernmental bodies specializing in the fight against illicit traffic in and abuse of narcotic drugs and psychotropic substances].

### 123. **Board of Trustees**

The Fund shall be administered by a board of trustees appointed by the **[Minister of Justice]**, which shall meet no less than **[4 times]** each year, report annually to Parliament on its administration of the Fund, and consist of:

- (a) a chairperson, nominated by the **[Minister of Justice]**;
- (b) a **[current or]** former judge or magistrate, nominated by the **[Chief Justice of the name of Court]**;
- (c) the **[Commissioner of Police]**, or his or her nominee;
- (d) the **[Commissioner of Customs and Excise]**, or his or her nominee;
- (e) the **[Director of Public Prosecutions]**, or his or her nominee;
- (f) the **[Anti-Corruption Commissioner]**, or his or her nominee;
- (g) the **[Director of Health Services]**, or his or her nominee;
- (h) the **[Chief Medical Officer]**, or his or her nominee who shall be a practicing or former practicing medical practitioner;
- (i) the **[Chief Pharmacist]**, or his or her nominee who shall be a practicing or former practicing pharmacist;
- (j) a person nominated by the **[Minister of Finance]**;
- (k) a person nominated by the **[President of the Bankers' Association]** of **[name of State]**, who shall be a practicing or former practicing member of that association;
- (l) a person nominated by the **[President of the Law Society]** of **[name of State]**, who is a practicing or former practicing member of that society;

## PART VII - MISCELLANEOUS

### [124. **Paramountcy and repeal**

[(1) **The provisions of Divisions 2, 3 and 4 of Part II and of Division 1 of Part VII of this Act have paramountcy over any inconsistent provisions of any other law in force in [name of State].**

[(2) **The [former drug control legislation, is repealed.]**

## 125. **Transitional**

- (1) Where a person has committed an offence against **the [former drug control legislation]** and proceedings for that offence have not been instituted against that person before the date of commencement of this Act, the person may be proceeded against for that offence and dealt with as if that Act had not been repealed by this Act.
- (2) Where any proceedings instituted before the date of commencement of this Act for an offence against **the [former drug control legislation]** have not been finally concluded by that date, the proceedings shall be deemed to continue, and everything done in relation to those proceedings before that date has effect as if it had been done under this Act, and the person may be dealt with as if that Act had not been repealed by this Act;
- (3) Where in a case to which **subsection (2)** applies, any penalty, punishment, forfeiture or confiscation provided for by the **[former drug control legislation]** is varied by this Act, the lesser penalty, punishment, forfeiture or confiscation shall apply in respect of any offence committed before the coming into force of this Act.
- (4) Every licence, registration, permit, authorization or certificate issued under the **[former drug control legislation]** or regulations made under that Act, and in force immediately before the coming into force of this Act, shall be deemed to continue in force under this Act until **[insert date] [until revoked by the [Minister of Health].**

## 126. **Regulations**

The **[Attorney-General/Minister of Justice/Minister of Health]** may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient for giving effect to it, and, without restricting the generality of the foregoing, may make regulations:

- (a) amending any Schedule, in accordance with **section 6** of this Act;
- (b) governing, controlling, limiting, authorizing the import into **[name of State]**, export from **[name of State]**, production, packaging, sending, transportation, delivery, sale, provision, administration, possession or obtaining of or other dealing in any drug of abuse, controlled chemical or item of control equipment or material;
- (c) prescribing the fees payable on application for any registration, licence or permit provided for by this Act;
- (d) relating to the method of production, preservation, testing, packaging or storage of any drug of abuse, controlled chemical or item of controlled equipment or material;
- (e) relating to the premises, processes or conditions for the manufacture, sale or supply of any drug of abuse or controlled chemical, equipment or material, and deeming such premises, processes or conditions to be or not to be suitable for the purposes of the grant or holding of registration or a licence or permit provided for by this Act;
- (f) relating to the qualifications of persons engaged in the production, preservation, testing, packaging, storage, supplying or otherwise dealing in any drug of abuse, controlled chemical or item of controlled equipment or material;
- (g) prescribing standards of composition, strength, concentration, potency, purity or quality or any other property of any drug of abuse;

- (h) relating to the labelling, packaging, size, dimensions, fill and other specifications of packages used for the import into **[name of State]**, export from **[name of State]**, sending, transportation, delivery, sale, supply or other dealing in any drug of abuse;
- (i) relating to the distribution of samples of any drug of abuse;
- (j) controlling or limiting the advertising for sale of any drug of abuse;
- (k) relating to the establishment, maintenance, keeping or provision of records, books, electronic data or other documents by persons or classes of persons for the purposes of this Act in respect of drugs of abuse, controlled chemical, controlled equipment and controlled materials;
- (l) relating to the making and provision of reports by persons or classes of persons for the purposes of this Act in respect of drugs of abuse, controlled chemical, controlled equipment and controlled materials;
- (m) relating to the powers and duties of inspectors in relation to the enforcement, and compliance with, the regulations;
- (n) relating to the powers and duties of analysts;
- (o) relating to the detention and disposal of any drug of abuse or controlled chemical, equipment or material;
- (p) relating to the taking of samples of substances;
- (q) relating to the communication of any information obtained under this Act or the regulations to any person or class of persons in **[name of State]** or elsewhere] to whom, in the opinion of the **[Minister of Justice][Minister of Health][Attorney-General]** it is necessary or desirable to communicate that information for the proper administration or enforcement of this Act, the regulations made under this section, or any law of **[name of State]** relating to international assistance in criminal matters;
- (r) relating to the making, serving, filing and manner of proving service of any notice, order, report or other document required or authorized under this Act or the regulations;
- (s) prescribing forms for the purposes of this Act or the regulations;
- (t) conferring powers or imposing duties and functions in relation to treatment panels;
- (u) exempting, on such terms and conditions as may be specified in the regulations, any person or class of persons or any drug of abuse, controlled chemical or item of controlled equipment or material, or any class thereof, from the application of all or any of the provisions of this Act or the regulations; and
- (v) prescribing anything that, by this Act, is to be or may be prescribed.

#### **127. Administration of this Act**

The parts and divisions of this Act shall be administered by such Ministers as may be designated by order in **[the Gazette]**.



**SCHEDULE 1 - PROHIBITED DRUGS OF ABUSE**

This Schedule includes:

- The following substances, designated by their international non-proprietary names or the names used in the international conventions in force;
- Their isomers, unless specifically excepted, whenever the existence/of/such isomers is possible within the specific chemical/designation;
- Their esters and ethers, unless specifically excepted, whenever/the/existence of such esters and ethers is possible;
- Their salts, including the salts of esters, ethers and isomers,/whenever the existence of such salts is possible;
- Preparations of these substances, unless exempted by law.

(FROM SCHEDULE IV OF THE CONVENTION ON NARCOTIC DRUGS, 1961)

Acetorphine	Acetyl-alpha-methyl-	Methyl-3-fentanyl
Cannabis and cannabis resin	fentanyl	Methyl-3-thio-
Desomorphine	Alphacetylmethadol	fentanyl
Etorphine	Alpha-methylfentanyl	MPPP
Heroin	Beta-hydroxyfentanyl	Para-fluorofentanyl
Ketobemidone	Beta-hydroxy-methyl-3-	PEPAP
	fentanyl	Thiofentanyl

(FROM SCHEDULE I OF THE CONVENTION ON PSYCHOTROPIC SUBSTANCES, 1971)

Brolamphetamine	Etryptamine	Parahexyl
Cathinone	(+)-Lysergide	PMA
DET	MDA	Psilocine, psilotsin
DMA	Mescaline	Psilocybine
DMHP	Methcathinone	Rolicyclidine
DMT	Methyl-4 aminorex	STP, DOM
DOET	MMDA	Tenamphetamine
Eticyclidine	MDMA	Tenocyclidine
	N-ethyl MDA	Tetrahydrocannabinol
	N-hydroxy MDA	TMA

**SCHEDULE II - HIGH RISK DRUGS OF ABUSE**

(FROM SCHEDULE I  
of the Convention on Narcotic Drugs, 1961)

Acetylmethadol	Ethylmethyl-	Normorphine
Alfentanil	thiambutene	Norpipanone
Allylprodine	Etonitazene	Opium
Alphameprodine	Etoxeridine	Oxycodone
Alphamethadol	Fentanyl	Oxymorphone
Alphamethylthio-	Furethidine	Pethidine
fentanyl	Hydrocodone	Pethidine
Alphaprodine	Hydromorhinol	intermediate A
Anileridine	Hydromorphone	(4-cyano-1-methyl-
Benzethidine	Hydroxypethidine	4-phenyl-piperidine)
Benzylmorphine	Isomethadone	Pethidine
Betacetylmethadol	Levomethorphan	intermediate B
Betameprodine	Levomoramide	(4-phenylpiperidine-4-
Betamethadol	Levophenacylmorphan	carboxylic acid
Betaprodine	Levorphanol	ethyl ester)
Bezitramide	Metazocine	Pethidine
Clonitazene	Methadone	intermediate C
Coca (leaf)	Methadone intermediate	(1-methyl-4-
Cocaine	(4-cyano-2-dimethyl-	phenylpiperidine-
Codoxime	amino-4,4-diphenyl	4-carboxylic acid)
Concentrate of poppy	butane)	Phenadoxone
straw	Methyl-desorphine	Phenampromide
Dextromoramide	Methyldihydromorphone	Phenazocine
Diampromide	Metopon	Phenomorphane
Diethylthiambutene	Moramide	Phenoperidine
Difenoxin	Morpheridine	Piminodine
Dihydromorphine	Morphine	Piritramide
Dimenoxadol	Morphine methobromide	Proheptazine
Dimepheptanol	and other pentavalent	Properidine
Dimethylthiambutene	nitrogen morphine	Racemethorphan
Dioxaphetyl butyrate	derivatives	Racemoramide
Diphenoxylate	Morphine-N-oxide	Racemorphan
Dipipanone	Myrophine	Sufentanil
Drotebanol	Nicomorphine	Thebacon
Ecgonine,	Noracymethadol	Thebaine
its esters and	Norlevorphanol	Tilidine
derivatives	Normethadone	Trimeperidine

(FROM SCHEDULE II  
of the Convention on Narcotic Drugs, 1961)

Acetyldihydrocodeine	Ethylmorphine	Pholcodine
Codeine	Nicodicodine	Propiram
Dextropropoxyphene	Nicocodine	
Dihydrocodeine	Norcodeine	

(FROM SCHEDULE II  
of the Convention on Psychotropic Substances, 1971)

Amphetamine	Methamphetamine	Phenmetrazine
Dexamphetamine	Methamphetamine racemate	Secobarbital
Fenetylline	Methaqualone	Zipeprol
Levamphetamine	Methylphenidate	
Mecloqualone	Phencyclidine	

**SCHEDULE III - RISK DRUGS OF ABUSE**

SCHEDULE III  
of the Convention on Psychotropic Substances, 1971

Amobarbital	Cathine	Pentazocine
Buprenorphine	Cyclobarbital	Pentobarbital
Butalbital	Glutethimide	Flunitrazepam

SCHEDULE IV  
of the Convention on Psychotropic Substances, 1971

Allobarbital	Ethinamate	Methylprylon
Alprazolam	Ethyl loflazepate	Midazolam
Aminorex	Etilamphetamine	Nimetazepam
Amphepramone	Fencamfamin	Nitrazepam
Barbital	Fenproporex	Nordazepam
Benzphetamine	Fludiazepam	Oxazepam
Bromazepam	Flurazepam	Oxazolam
Brotizolam	Halazepam	Pemoline
Butobarbital	Haloxazolam	Phendimetrazine
Camazepam	Ketazolam	Phenobarbital
Chlordiazepoxide	Lefetamine	Phentermine
Clobazam	Loprazolam	Pinazepam
Clonazepam	Lorazepam	Pipradrol
Clorazepate	Lormetazepam	Prazepam
Clotiazepam	Mazindol	Pyrovalerone
Cloxazolam	Medazepam	Secbutabarbital
Delorazepam	Mefenorex	Temazepam
Diazepam	Meprobamate	Tetrazepam
Estazolam	Mesocarb	Triazolam
Ethchlorvynol	Methylpheno-barbital	Vinylbital

**SCHEDULE IV - TOXIC CHEMICAL INHALANTS**

**SCHEDULE V - CONTROLLED CHEMICALS**

This annex includes:

- The following substances, designated by their international non-proprietary names or the names used in the international conventions in force;
- The salts of these substances, whenever the existence of such salts is possible, with the exception of sulphuric acid and hydrochloric acid.

**DIVISION I**

(Table I of the 1988 Convention)

Ephedrine	N-acetylanthranilic acid
Ergometrine	Isosafrole
Ergotamine	3,4-methylenedioxyphenyl-
Lysergic acid	2-propanone
1-phenyl-2-propanone	Piperonal
Pseudoephedrine	Safrole

**DIVISION II**

(Table II of the 1988 Convention)

Acetic anhydride	Hydrochloric acid
Acetone	Methyl ethyl
Anthranilic acid	ketone
Ethyl ether	Potassium permanganate
Phenylacetic acid	Sulphuric acid
Piperidine	Toluene

**SCHEDULE VI**

**DIVISION 1 - CONTROLLED EQUIPMENT**

Encapsulating machines

Tabletting machines

Rotary evaporators

Laboratory equipment with a capacity for large volume production (eg round bottom flasks of 25 litres or above and related condensers, separating funnels and heating apparatus)

**DIVISION 2 - CONTROLLED MATERIAL**

Gelatin capsules

[eg glucose, lactose, phenolphthalein ]

[prescribed bulking agents eg magnesium stearate, calcium oxide (“talc”)]

[colouring materials or food dyes]



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## UNDCP MODEL DRUG ABUSE BILL 2000

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