

MISUSE OF DRUGS ACT, 2016*(Act 5 of 2016)***ARRANGEMENT OF SECTIONS****PART I - PRELIMINARY****Sections**

1. Short title and commencement
2. Interpretation
3. Classification and designation of controlled drugs and precursors
4. Legitimate activity involving controlled drugs

PART II - OFFENCES INVOLVING CONTROLLED DRUGS

5. Importation and exportation
6. Manufacture and cultivation
7. Trafficking
8. Possession, purchase and use
9. Possession with intent to traffic
10. Organisation, management and financing of drug trafficking
11. Use of premises to commit offence
12. Diversion of precursors, equipment and material
13. Regulation of precursors
14. Inspections of persons and establishments
15. Aiding or attempting the commission of offence
16. Conspiracy to commit offence

PART III - EVIDENCE AND INVESTIGATION

17. Certificate relating to controlled drug
18. Certificate of foreign law
19. Presumption of intent to traffic
20. Presumption of possession
21. Presumption relating to premises
22. Presumption relating to incoming vessel or aircraft
23. Presumption relating to vehicle etc
24. Presumption of use
25. Power of search and seizure
26. Power of arrest
27. Procedure following seizure

28. Secure destruction of controlled drugs, plants and seeds
29. Urine and blood samples
30. Fingerprints, measurements and photographs
31. Protection of informers
32. Undercover officer
33. Powers of investigation
34. Controlled delivery
35. Obstruction of justice

PART IV - COURT PROCEDURE FOR DRUG USERS

36. Identification of drug users and drug dependent persons
37. Assessing drug dependency
38. Dealing with drug users
39. Dealing with drug dependent persons
40. Court-ordered admission to approved institution

PART V - ALTERNATIVE MEASURES FOR DRUG USERS

41. Formal caution for controlled drug
42. Indicative quantities for personal consumption
43. Drug dependent persons not charged with an offence
44. Voluntary admission for treatment and rehabilitation
45. Voluntary admission to residential programme
46. Agreement to drug testing

PART VI - SENTENCING

47. Sentencing for offences under this Act
48. Aggravating factors
49. Mitigating factors
50. Travel restriction order
51. Transitional provision

PART VII- GENERAL

52. Jurisdiction
53. Indemnity
54. Regulations
55. Repeal and savings



MISUSE OF DRUGS ACT, 2016

(Act 5 of 2016)

I assent

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

J. A. Michel
President

15th April, 2016

AN ACT to provide for effective measures against abuse and diversion of controlled drugs and precursors; facilitate the investigation and prosecution of offences involving controlled drugs, in particular drug trafficking; promote the treatment, education, rehabilitation, recovery and social reintegration of drug users and drug dependent persons; ensure the availability of controlled drugs for legitimate medical and scientific use; facilitate implementation of Seychelles' commitments under the international drug control conventions and for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the Misuse of Drugs Act, 2016 and shall come into operation on such date as the Minister may, by Notice published in the *Gazette*, appoint.

Short title and
commencement

Interpretation

2. In this Act, unless the context otherwise requires —

“1961 Convention” means the Single Convention on Narcotic Drugs of 1961 as amended by its 1972 Protocol;

“1971 Convention” means the Convention on Psychotropic Substances of 1971;

“1988 Convention” means the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;

“approved facility” means a place declared under this Act to be an approved facility for the purposes of drug testing, the assessment of drug dependency, or the provision of outpatient treatment or harm reduction services to drug dependent persons, including syringe and needle exchange programmes;

“approved institution” means a place declared under this Act to be an approved institution for the purposes of inpatient treatment and rehabilitation of drug dependent persons or residential education and social reintegration programmes for drug users;

“article liable to seizure” means anything whatsoever, including cash and instrumentalities of use, cultivation or manufacture, by means of or in respect of which an offence under this Act or a related money laundering offence has been or is being committed, or which contains or constitutes evidence of such an offence;

“cannabis” means any part, excluding seeds, of a plant of the genus cannabis from which the resin

has not been extracted, by whatever name it may be designated;

“cannabis plant” means a plant of the genus *Cannabis*;

“cannabis resin” means the separated resin, whether crude or purified, obtained from the cannabis plant;

“chief officer of NDEA” means a person appointed under section 12(1) of the NDEA Act;

“child” means a person who has not attained the age of majority;

“Class A drug”, “Class B drug” or “Class C drug” means a controlled drug specified in Part I, II or III respectively of the First Schedule in accordance with section 3;

“Commissioner of Police” means a person appointed under Article 160(1) of the Constitution;

“controlled delivery” means the practice of allowing unlawful or suspicious consignments of controlled drugs or articles liable to seizure to pass into, within, out of, or through Seychelles, with the knowledge and under the supervision of NDEA or police, with a view to the investigation and identification of persons involved in offences under this Act.

“controlled drug” —

- (a) means all narcotic drugs, whether synthetic or natural, plants and preparations classified in Schedules I, II, III and IV of the 1961

Convention, and all psychotropic substances classified in Schedules I, II, III and IV of the 1971 Convention, which are specified in the First Schedule to this Act; and

- (b) includes any other narcotic or psychotropic substance, plant or preparation, including any new psychoactive substance, which may be included in the First Schedule to this Act by the Minister under section 3(2); but
- (c) does not include a preparation containing a Class B or Class C drug that is compounded in such a way as to present no or a negligible risk of abuse and from which the substance cannot be recovered by readily applicable means.

“corresponding law” means a law in force providing for the control and regulation in a country other than Seychelles of the manufacture, trafficking, use, export or import of a narcotic or psychotropic substance, preparation or product in pursuance of the Conventions or any other treaty, agreement or arrangement to which the Republic and the government of that country are parties;

“cultivation by enhanced indoor means” in relation to a controlled drug, means cultivation of a plant inside a building or a structure involving at least one of the following processes—

- (a) nurturing the plant in nutrient enriched water, with or without mechanical support;
- (b) application of an artificial source of light or heat;
- (c) suspending the plant's roots and spraying them with nutrient solution;

“document” has the meaning ascribed to it by section 2 of the Evidence Act;

“drug dependent person” means a person who through the use of a controlled drug has developed a psychological or physical dependency upon the effect of that drug; and

“dependency on a controlled drug” has a corresponding meaning;

“informer” means a person who has given information to NDEA or police with respect to an offence under this Act;

“manufacture” includes any process of production of a controlled drug or the refining or transformation of one controlled drug into another;

“Minister” means the Minister responsible for Home Affairs;

“NDEA” means the National Drugs Enforcement Agency constituted by the NDEA Act;

“NDEA Act” means the National Drugs Enforcement Agency Act, 2008;

“NDEA agent” means a person appointed under section 13(1) of the NDEA Act;

“new psychoactive substance” means a substance of abuse, either in a pure form or a preparation, that is not controlled by the 1961 Convention or the 1971 Convention but which may pose a public health threat;

“officer” means a police officer or NDEA agent;

“offender” means a person who has been convicted of an offence under this Act;

“organised criminal group” means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more acts which constitute criminal conduct as specified in paragraph (a) to (d) of section 3(9) of the Anti-Money Laundering Act, 2006;

“police” means the Seychelles Police Force constituted by the Police Force Act;

“precursor” means the substances and preparations thereof frequently used in the unlawful manufacture of controlled drugs, as classified in Tables I and II of the 1988 Convention, which are listed in the Third Schedule to this Act, but does not include a preparation containing a precursor that is compounded in such a way that the substance cannot be recovered by readily applicable means;

“repealed Act” means the Misuse of Drugs Act, 1990;

“traffic” means —

- (a) to sell, broker, supply, transport, send, deliver or distribute;
- (b) to offer to do anything mentioned in paragraph (a); or
- (c) to do or offer to do any act preparatory to or for the purposes mentioned in paragraph (a); and

“trafficking” has a corresponding meaning; and

“undercover officer” means a person authorised under section 32(1)(a) of this Act.

3.(1) Controlled drugs and preparations thereof shall be classified in the First Schedule to this Act according to the degree of control to which they should be subject, as follows—

Classification and designation of controlled drugs and precursors

- (a) Class A: Drugs that are subject to special measures of control in view of the particular harms that their non-medical or non-scientific use can cause, including those classified in Schedule IV of the 1961 Convention and in Schedule I of the 1971 Convention;
- (b) Class B: Drugs having a medical and/or scientific use which should be subject to control in view of the harms that their non-medical or non-scientific use can cause, including those classified in Schedule II of the 1971 Convention, and in Schedule II and Schedule I of the 1961 Convention, except the drugs included in its Schedule IV;
- (c) Class C: Drugs having a medical and/or scientific use which should be subject to control in view of the harms that their non-medical or non-scientific use can cause, but of a less substantial degree than Schedule II drugs, including those preparations classified in Schedule III of the 1961 Convention and in Schedule III and Schedule IV of the 1971 Convention.

(2) The Minister may in consultation with the Minister responsible for health amend the First and Third Schedules.

(3) The Minister may, in consultation with the Minister responsible for health by notice published in the *Gazette*

appoint an independent advisory body to review the First and Third Schedules on a continuing basis and recommend amendments as appropriate, including new inclusions, deletions, or transfer of controlled drugs from one class to another.

Legitimate activity involving controlled drugs

4.(1) A controlled drug may be manufactured, imported or exported, and dealt with in Seychelles for medical or scientific purposes in accordance with regulations made under this Act.

(2) In any proceedings under this Act a person claiming to have acted pursuant to a provision of this Act or to regulations made under subsection (1) shall bear the burden of proving that fact.

PART II - OFFENCES INVOLVING CONTROLLED DRUGS

Importation and exportation

5. A person who imports or exports a controlled drug in contravention of this Act commits an offence and is liable on conviction to the penalty specified in the Second Schedule.

Manufacture and cultivation

6.(1) A person who manufactures a controlled drug in contravention of this Act commits an offence and is liable on conviction to the penalty specified in the Second Schedule.

(2) A person who cultivates a controlled drug in contravention of this Act commits an offence and is liable on conviction to the penalty specified in the Second Schedule.

(3) A person who possesses or purchases any instrument, utensil, apparatus or equipment intended to facilitate the manufacture of a controlled drug in contravention of this Act commits an offence and is liable on conviction to the penalty specified in the Second Schedule.

(4) Where an offence of cultivation under subsection (2) is committed using enhanced indoor means, the Court shall treat the offence as aggravated in nature.

7.(1) A person who traffics in any quantity of a controlled drug, whether on his or her own behalf or on behalf of another person, whether the other person is in Seychelles or not, in contravention of this Act commits an offence of trafficking and is liable on conviction to the penalty specified in the Second Schedule.

Trafficking

(2) A person who traffics in a substance, preparation or product which purports to be a controlled drug but is not, or which purports to be a controlled drug but is so low in purity as not to be usable as such, whether on his or her own behalf or on behalf of another person, whether the other person is in Seychelles or not, also commits an offence of trafficking and is liable on conviction to the penalty specified for an offence under subsection (1).

(3) Where a person is charged with an offence under this section and the Court is of the opinion that the person is not guilty of that offence but is guilty of an offence under section 8 or section 9, the Court may convict the person of the offence under section 8 or section 9 even though the person was not charged with that offence.

(4) Where a person is convicted of an offence of trafficking in more than 1.5 kilogrammes of cannabis or cannabis resin or more than 250 grammes of any other controlled drug, the Court shall treat the offence as aggravated in nature.

8.(1) A person who possesses, purchases, or uses a controlled drug in contravention of this Act commits an offence and is liable on conviction to the penalty specified in the Second Schedule.

Possession,
purchase
and use

(2) A person who possesses or purchases any pipe, syringe, utensil, apparatus or other article intended to facilitate the use of a controlled drug in contravention of this Act commits an offence and is liable on conviction to the penalty specified in the Second Schedule.

(3) Notwithstanding subsections (1) and (2), a person who possesses a clean syringe or needle obtained from an approved facility pursuant to a regulated exchange programme, or who uses a controlled drug by means of such syringe or needle, does not contravene this Act if the syringe or needle—

- (a) is, or was immediately before use, in its original packaging;
- (b) is possessed or used only by the person who obtained it from the approved facility; and
- (c) where applicable, is declared to an officer before any search is conducted.

Possession
with intent
to traffic

9.(1) A person who possesses a controlled drug, whether lawfully or not, with intent to traffic in contravention of this Act commits an offence of trafficking and is liable on conviction to the penalty specified for an offence under section 7(1).

(2) Where a person is charged with an offence under this section and the Court is of the opinion that the person is not guilty of that offence but is guilty of an offence under section 8, the Court may convict the person of the offence under section 8 even though the person was not charged with that offence.

Organisation,
management
and financing
of drug
trafficking

10. A person who organises, manages or finances an offence under section 5,6,7 or 9 of this Act commits an offence of trafficking and is liable on conviction to the penalty specified for an offence under section 7(1).

Use of
premises to
commit
offence

11.(1) An owner, occupier or person in charge of or concerned with the management of any place or premises who permits or suffers such place or premises or any part thereof to be—

- (a) used in connection with the import or export of a controlled drug in contravention of section 5;

- (b) used for the manufacture or cultivation of a controlled drug in contravention of section 6; or
- (c) acquired, maintained, or used for the purpose of trafficking in a controlled drug in contravention of section 7,

commits an offence and is liable on conviction to the penalty specified in the Second Schedule.

(2) An owner, occupier or person in charge of or concerned with the management of any place or premises who permits or suffers such place or premises or any part thereof to be acquired, maintained, or used for the purpose of the use of a controlled drug in contravention of section 8(1) commits an offence and is liable on conviction to the penalty specified in the Second Schedule.

12.(1) A person who manufactures, imports, exports, traffics, purchases, or possesses or has in his or her control a precursor or any equipment or material, including seeds —

Diversion of precursors, equipment and material

- (a) for the purpose of using it in or for the cultivation or manufacture of a controlled drug in contravention of section 6; or
- (b) knowing that the precursor, equipment or material is to be used for a purpose specified in paragraph (a),

commits an offence and is liable on conviction to the penalty specified in the Second Schedule.

(2) Notwithstanding any other written law, an import or export permit shall not be granted for any precursor, equipment or material if there are reasonable grounds to suspect that the consignment is destined for the cultivation or manufacture of a controlled drug in contravention of this Act.

Regulation of
precursors

13.(1) This section applies to every person who manufactures, imports, exports, trades or distributes whether in wholesale or retail any precursor.

(2) A person referred to in subsection (1) shall enter in a register any acquisition or transfer of any precursor at the time of acquisition or transfer, without leaving any blank space or erasing or overwriting any previous entry, indicating the date of the acquisition or transfer, the name and the quantity of the precursor acquired or transferred, and the name, address and occupation of both the purchaser and vendor, provided that a retailer need not enter the name or details of the purchaser.

(3) The register maintained under subsection (2) shall be kept for at least 5 years after the last entry, for presentation whenever required by the chief officer of NDEA or the Commissioner of Police or upon an order of Court.

(4) A person referred to in subsection (1) shall immediately notify the chief officer of NDEA or the Commissioner of Police of —

- (a) any order or transaction that appears suspicious, particularly as regards the quantity of the precursor ordered or purchased, the repetition of such orders and purchases, modes of payment or transport used in connection with the order or purchase or any loss or theft; and
- (b) any proposed export of a precursor, which notification shall in any event be no later than 7 working days prior to the export.

Inspections of
persons and
establishments

14.(1) Every person licensed to manufacture, import, export, transport, trade or distribute whether in wholesale or retail any precursor or any equipment or material designed or known to be used in the cultivation or manufacture of controlled drugs shall be subject to, and shall provide all

reasonable assistance to facilitate, inspections carried out at least every 2 years in such manner as may be prescribed.

(2) Where there are reasonable grounds to suspect that any precursor, equipment or material, including seeds, is to be used in the cultivation or manufacture of a controlled drug in contravention of this Act, an officer may, without a warrant, seize that precursor, equipment or material and detain it in accordance with this Act.

(3) The nature and quantity of any precursor seized under subsection (2) shall be recorded and reported to the chief officer of NDEA or the Commissioner of Police.

15.(1) A person who —

- (a) aids, abets, counsels, incites or procures another person to commit an offence under this Act;
- (b) does or omits to do any act for the purpose of enabling another person to commit an offence under this Act; or
- (c) attempts to commit or does any act preparatory to or in furtherance of the commission of an offence under this Act,

Aiding or attempting the commission of offence

commits an offence is liable to the punishment for the offence.

(2) A person who aids, abets, counsels, incites or procures the commission in any place outside Seychelles of an act which would if done in Seychelles constitute an offence under this Act, and which is punishable under a corresponding law in that place, commits an offence and is liable on conviction to the penalty specified in the Second Schedule.

Conspiracy to
commit
offence

16. A person who agrees with another person or persons that a course of conduct shall be pursued which, if pursued—

- (a) will necessarily amount to or involve the commission of an offence under this Act by one or more of the parties to the agreement; or
- (b) would necessarily amount to or involve the commission of an offence under this Act by one or more of the parties to the agreement but for the existence of facts which renders the commission of the offence impossible,

commits an offence and is liable to the punishment provided for the offence.

PART III - EVIDENCE AND INVESTIGATION

Certificate
relating to
controlled
drug

17.(1) The Minister may, for the purposes of this Act appoint a forensic analyst or other expert person for examining, testing and certifying suspected controlled drug, plant, seed and other articles seized under this Act.

(2) A certificate purporting to be signed by a forensic analyst or other expert person appointed by the Minister under subsection (1) and purporting to relate to a controlled drug, plant or seed or to a sample thereof, shall be admitted in evidence in any proceedings for an offence under this Act, on its production by the prosecution without proof of signature and, until the contrary is proved, the certificate shall be prima facie evidence of all matters contained therein.

(3) A forensic analyst or other expert person signing a certificate under subsection (2) shall not be required to attend Court or give evidence unless a notice for attendance is filed in Court and served on the Attorney General at least 21 days before the date fixed for trial, which notice shall specify the grounds on which the person's attendance is required.

(4) Where a notice has been served under subsection (3), but the Court is of the view that the grounds specified in the notice do not raise a genuine issue about the evidential value of the certificate, the Court may direct that the attendance of the person is not required.

18. A certificate purporting to be issued by or on behalf of the government of a country other than Seychelles and purporting to state the terms of a corresponding law in that country shall be admitted in evidence, in any proceedings for an offence under this Act, on its production by the prosecution without proof of signature and the certificate shall be conclusive evidence —

Certificate of foreign law

- (a) that it is issued by or on behalf of the government of that country;
- (b) that the terms of the law are as stated in the certificate; and
- (c) that any facts stated in the certificate as constituting an offence under the corresponding law do constitute the offence.

19.(1) A person who is proved or presumed to have had in his or her possession or custody or under his or her control —

Presumption of intent to traffic

- (a) 100 grammes or more of opium;
- (b) 3 grammes or more of morphine;
- (c) 2 grammes or more of diamorphine (heroin) or cocaine; or
- (d) 25 grammes or more of —
 - (i) cannabis; or
 - (ii) cannabis resin,

shall be presumed, until the person proves the contrary, to have had the controlled drug in his or her possession with intent to traffic in contravention of section 9 of this Act.

(2) Where the presumption in subsection (1) is not engaged, it shall be a question of fact whether a person possessed any controlled drug with intent to traffic.

(3) In determining whether a controlled drug was possessed with intent to traffic under subsection (1) or subsection (2), the Court shall have regard to all relevant circumstances, including where applicable any evidence that the person has engaged in a deliberate pattern of activity whereby amounts in his or her possession at any time are maintained at a level below a threshold specified in subsection (1).

Presumption
of possession

20.(1) A person who is proved to have had in his or her possession or custody or under his or her control —

- (a) anything containing a controlled drug;
- (b) the key of anything containing a controlled drug;
- (c) the key of any place or premises or any part thereof in which a controlled drug is found,
or
- (d) a document of title relating to a controlled drug, or any other document intended for the delivery, or which would require the delivery to the person, of a controlled drug,

shall be presumed, until the person proves the contrary, to have possessed the controlled drug.

(2) The fact that a person never had physical possession of a controlled drug shall not be sufficient to rebut the presumption in subsection (1).

(3) Where one of two or more persons with the knowledge and consent of the other person or persons has any controlled drug in that person's possession, all of the persons shall be deemed to be in possession of the controlled drug.

21.(1) Where a pipe, syringe, utensil, apparatus or other article intended for the use of a controlled drug is found in any place or premises, it shall be presumed, until the contrary is proved, that the place or premises is used for the purpose of the use of a controlled drug.

Presumption relating to premises

(2) A person found in or escaping from any place or premises which is proved or presumed to be used for the purpose of the use of a controlled drug shall, until the person proves the contrary, be presumed to have used a controlled drug in the place or premises.

(3) A person found in or escaping from any place or premises in which plants are being cultivated in contravention of section 6 shall be presumed, until the person proves the contrary, to have been cultivating the plants.

(4) A person found in or escaping from any place or premises in which a controlled drug is being manufactured in contravention of section 6 shall be presumed, until the person proves the contrary, to have been manufacturing the controlled drug.

22. Where a controlled drug is found in any vessel or aircraft arriving from any place outside Seychelles, it shall be presumed, until the contrary is proved, that the controlled drug has been imported with the knowledge of the master or captain.

Presumption relating to incoming vessel or aircraft

23. Where a controlled drug is found in a vehicle, vessel or aircraft, other than a vessel or aircraft referred to in section 22, it shall be presumed, until the contrary is proved, that the controlled drug is in the possession of the owner of the

Presumption relating to vehicle etc

vehicle, vessel or aircraft and of the person in charge of the vehicle, vessel or aircraft for the time being.

Presumption
of use

24. Where a controlled drug is found in the urine or blood of a person as a result of a test carried out under this Act, the Road Transport Act, or the Criminal Procedure Code, the person shall be presumed, until the person proves the contrary, to have used the controlled drug.

Power of
search and
seizure

25.(1) An officer may at any time, without a warrant —

- (a) stop and search any person whom the officer reasonably suspects of having in his or her possession a controlled drug or an article liable to seizure;
- (b) enter and search any place or premises in which the officer reasonably suspects that there is to be found a controlled drug or an article liable to seizure; and
- (c) search any person found in the place or premises referred to in paragraph (b).

(2) An officer or an officer of customs may at any time, without a warrant —

- (a) stop, board and search any vessel, aircraft or vehicle if the officer reasonably suspects that there is to be found in the vessel, aircraft or vehicle a controlled drug or an article liable to seizure under to this Act;
- (b) search any person found in a vessel, aircraft or vehicle referred to in paragraph (a); and
- (c) stop and search any person entering or leaving Seychelles whom the officer reasonably suspects to have committed an offence under this Act.

(3) An officer or an officer of customs exercising functions under subsection (1) or subsection (2) —

- (a) may, with such assistance as the officer deems necessary in the circumstances, use such force as is reasonably necessary in the circumstances;
- (b) shall ensure that any woman searched is searched by a female officer;
- (c) shall seize and detain any controlled drug; and
- (d) may seize and detain any article liable to seizure and any vessel, aircraft or vehicle in which a controlled drug or article liable to seizure has been found.

26.(1) An officer may arrest without warrant a person who has committed, or whom the officer reasonably suspects to have committed, an offence under this Act and may search the person arrested.

Power of
arrest

(2) An officer exercising functions under subsection (1), when making an arrest —

- (a) shall ensure that any woman searched is searched by a female officer;
- (b) shall seize and detain any controlled drug found on the person arrested; and
- (c) may seize and detain any article liable to seizure found on the person arrested.

27.(1) A substance, preparation or product which is seized under this Act as a controlled drug shall be —

Procedure
following
seizure

- (a) detained in secure custody under the supervision of NDEA or police until securely

destroyed by the written direction of the chief officer of NDEA or the Commissioner of Police; and

- (b) without limiting paragraph (a), shall be—
 - (i) visually examined, weighed and documented as soon as reasonably possible following seizure; and
 - (ii) except in the case of seizures under section 41, tested by a forensic analyst or other expert person appointed by the Minister under section 17(1) as soon as reasonably practicable following seizure.

(2) Testing under subsection (1)(b) may be limited to a representative sample or samples of the substance, preparation or product seized, in which case—

- (a) the entire substance, preparation or product shall first be visually examined and weighed;
- (b) the process of selecting and taking the sample or samples shall be clearly documented and certified by the forensic analyst or other expert person appointed by the Minister under section 17(1); and
- (c) the sample or samples shall be separately detained in secure custody under the supervision of NDEA or police until securely destroyed by the written direction of the chief officer of NDEA or the Commissioner of Police.

(3) A certificate issued under subsection (2) shall be admitted in evidence in any proceedings for an offence under this Act in accordance with section 17(2).

(4) Plants and seeds which are seized under this Act shall be—

- (a) detained in secure custody under the supervision of NDEA or police until securely destroyed by the written direction of the chief officer of NDEA or the Commissioner of Police; and
- (b) without limiting paragraph (a) —
 - (i) shall be visually examined, weighed and documented as soon as reasonably possible following seizure; and
 - (ii) may be examined (as a whole or by means of a representative sample or samples) by a forensic analyst or other expert person appointed by the Minister under section 17(1), for the purpose of proceedings for an offence under this Act, which examination shall take place as soon as reasonably practicable following seizure.

(5) Precursors, equipment and materials and any articles liable to seizure which are seized under this Act shall be securely detained by NDEA or police until dealt with in accordance with an order of the Court or a written direction of the chief officer of NDEA or Commissioner of Police.

(6) An item referred to in subsection (5) which is not required as evidence in proceedings under this Act or any other written law shall be released as soon as reasonably practicable to the person from whom it was seized by written direction of the chief officer of NDEA or Commissioner of Police.

(7) A person from whom an item referred to in subsection (5) was seized may apply to Court at any time for an

order as to its disposition, following at least 7 days notice to NDEA or police of intention to make the application.

Secure
destruction
of controlled
drugs, plants
and seeds

28.(1) A suspected controlled drug or cannabis plant which has been seized and processed under section 41 shall be destroyed securely under the written direction of the chief officer of NDEA or the Commissioner of Police.

(2) A substance, preparation or product, plant or seed which has been processed under section 27 and which is not required as evidence in proceedings for an offence under this Act shall be destroyed as soon as reasonably practicable under the written direction of the chief officer of NDEA or the Commissioner of Police.

(3) A controlled drug, plant or seed, including a sample of a controlled drug, which has been detained in accordance with this Act and which is required as evidence in proceedings for an offence under this Act shall be destroyed —

- (a) in the case of a controlled drug from which a representative sample or samples has been extracted in accordance with section 27(2), as soon as reasonably practicable, but not before the expiry of 7 days after notice of the intended destruction is served on the person from whom the item was seized;
- (b) by order of Court made on application by the prosecution, following at least 7 days notice to the accused person of intention to make the application; or
- (c) otherwise as soon as reasonably practicable following the final conclusion of the proceedings.

(4) A person who objects to the destruction of any item under subsection (3)(a) may apply to Court within 7 days of

receipt of notice of the intended destruction for an order for the continued detention or alternative disposition of the item.

(5) Any controlled drug seized under this Act for which no proceedings for an offence can be taken for any reason whatsoever may be destroyed by the NDEA or police under the written direction of the chief officer of NDEA or the Commissioner of police.

(6) All destructions carried out under this section shall be documented in writing by NDEA or police.

29.(1) Notwithstanding section 30B of the Criminal Procedure Code, a person in custody, including a person in prison, who is reasonably suspected of being under the influence of a controlled drug may be requested to consent to the taking of a urine or blood sample to test for the presence of drugs.

Urine and
blood
samples

(2) A request under subsection (1) may be made by the chief officer of NDEA, the Commissioner of Police, the Superintendent of Prisons, or any person authorised in writing by one of those persons to make such requests.

(3) A person who receives a request under subsection (1) shall be informed—

- (a) that the person is suspected of being under the influence of a controlled drug;
- (b) that the person has the right to refuse to give the sample; and
- (c) of the consequences of refusal to give the sample.

(4) The consequences of refusal to give a sample are—

- (a) in the case of a urine sample, that the person's refusal may be used as evidence against the

person in Court, and that the person may not be able to deny that he or she was under the influence of a controlled drug; and

- (b) in the case of a blood sample, that the requestor may apply to Court for an order authorising the taking of the sample without consent under section 30B or 30C of the Criminal Procedure Code.

(5) The person shall confirm in writing whether he or she consents or refuses to give the sample.

(6) Evidence of a person's refusal to give a urine sample under this section shall be admissible in any subsequent proceedings as prima facie evidence that the person was under the influence of a controlled drug at the time.

(7) Notwithstanding section 30A(2) of the Criminal Procedure Code, where a person refuses consent to a urine or blood sample under this section, a person authorised to request such consent may apply to Court for an order authorising the taking of a sample from the person in accordance with that section.

(8) Notwithstanding sections 30A and 30B of the Criminal Procedure Code, if a person is believed by an officer on the advice of a registered medical practitioner to be incapable of consenting to a blood or urine sample because of the effects of a controlled drug, the officer shall record his or her belief to that effect in writing and may authorise the taking of a blood sample without the need for an application to Court.

30.(1) Notwithstanding sections 30B and 30E of the Criminal Procedure Code, any person authorised in writing by the chief officer of NDEA or the Commissioner of Police for the purpose of this section may cause fingerprints, measurements and photographs to be taken, for purposes of use and record, of any person arrested by NDEA or police on

reasonable suspicion of committing an offence under Part II of this Act, including any person who is to be formally cautioned under section 41.

(2) A person arrested shall cooperate with any direction which is reasonably necessary to give effect to subsection (1).

(3) Fingerprints, measurements and photographs taken by NDEA under subsection (1) shall be made available to Police, and shall be admissible to prove the identity of the person arrested if that fact is placed in issue in any subsequent proceedings.

31.(1) Subject to any written law, no witness in any civil or criminal proceedings shall be obliged —

Protection of informers

- (a) to disclose the name and address of an informer; or
- (b) to answer any question if the answer thereto would lead, or would tend to lead, to the discovery of the identity or of the name or address of the informer.

(2) If any document in evidence or liable to inspection in any civil or criminal proceedings contains an entry in which an informer is named or described or from which the informer could be identified, the Court shall cause all such entries to be deleted, redacted or concealed so far as may be necessary to prevent the discovery of the identity of the informer.

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

Undercover officer

(b) An authorisation granted under paragraph (a) may be revoked in writing at any time.

(2) For the purpose of subsection (1)(a), an undercover officer may obtain and have in his or her possession a controlled drug.

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

(4) An undercover officer other than an officer who, after having acquired a controlled drug under subsection (2), fails to deliver such controlled drug as soon as possible to an officer commits an offence and is liable on conviction to the penalty specified in the Second Schedule.

(5) The Commissioner of Police or the chief officer of NDEA shall warn an undercover officer who is not an officer, in writing, of the provisions of subsection (4).

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

Powers of
investigation

33.(1) Where a Judge in chambers is satisfied by information on oath that there is reasonable ground to suspect that an offence under this Act or a related money laundering offence has been or is likely to be committed, the Judge may issue a warrant authorising an officer to —

- (a) tap or place under surveillance, for a period not exceeding 6 months, the telephone lines used by any person suspected of participation in the commission of the offence;
- (b) have access to and place under surveillance, for a period not exceeding 6 months, the

- computer systems used by any person suspected of participation in the commission of the offence;
- (c) place under surveillance, for a period not exceeding 6 months, any bank account suspected of being used for operations related to the offence;
 - (d) have access to all records held by financial institutions and other reporting entities under the Anti-Money Laundering Act, 2006 that may reasonably concern transactions related to the offence; and
 - (e) have access to the premises and operations of any licensee under the Postal Sector Act, for a period not exceeding 6 months, for the purpose of detecting unlawful consignments of controlled drugs, precursors, or articles liable to seizure.

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

34.(1) A controlled delivery does not contravene this Act if authorised in accordance with this section.

Controlled
delivery

(2) A controlled delivery may be authorised in writing by the Commissioner of Police, the chief officer of NDEA, or any person authorised for that purpose by the Commissioner of Police or the chief officer of NDEA.

(3) A controlled delivery may be authorised unconditionally or subject to conditions, including the substitution or partial substitution of a consignment of controlled drugs with other substances.

(4) A controlled delivery shall not be authorised unless the person granting the authorisation is satisfied on reasonable grounds that —

- (a) an offence under this Act is being or is likely to be committed;
- (b) the nature and extent of the suspected offence are sufficiently serious to justify the use of controlled delivery;
- (c) any unlawful activity involved in conducting a controlled delivery shall be limited to the maximum extent possible consistent with conducting an effective controlled delivery;
- (d) the operation shall be conducted in a way that ensures to the maximum extent possible, any controlled drug or precursor involved in the controlled delivery shall be under the control of an officer at the end of the controlled delivery; and
- (e) the controlled delivery shall not be conducted in such a way that —
 - (i) any person is likely to be induced to commit an offence that the person would otherwise not have intended to commit; or
 - (ii) any person is likely to be killed, injured, or seriously endangered.

Obstruction
of justice

35.(1) A person who —

- (a) obstructs an officer or any other person in the exercise of any functions under this Act or regulations made thereunder;

- (b) gives false information to an officer in respect of any investigation or prosecution under this Act, including information that is misleading by omission;
- (c) breaches a travel restriction order or any requirement of section 50; or
- (d) without reasonable excuse, fails to comply with any other requirement of this Act or regulations made thereunder,

commits an offence and is liable on conviction to the penalty specified in the Second Schedule.

(2) A person who uses force, threats or intimidates or promises, offers or gives any undue gift, concession or other advantage to another person in order to prevent or obstruct an investigation by NDEA or police into any offence under this Act or any related money laundering offence commits an offence and is liable on conviction to the penalty specified in the Second Schedule.

(3) Where an offence under subsection (2) is committed by or in relation to an officer, the Court shall treat the offence as aggravated in nature.

PART IV - COURT PROCEDURE FOR DRUG USERS

36.(1) A person who is charged with cultivation, possession, purchase, or use of a controlled drug in such a small quantity as to satisfy the Court that the controlled drug is intended for his or her personal consumption shall be identified by the Court as a drug user at the earliest reasonable opportunity and subsequently dealt with as a drug user in accordance with section 38.

Identification
of drugs users
and drug
dependent
persons

(2) Notwithstanding subsection (1), the Court may decline to identify a person as a drug user where that person —

- (a) is also charged with another offence under this Act or any other written law, or
- (b) subject to the Rehabilitation of Offenders Act, has a prior conviction for an offence under section 5, section 6, section 7, section 9, section 10 or section 12 of this Act or an equivalent offence under the repealed Act or a corresponding law.

(3) Notwithstanding subsection (1), a person who is charged with an offence under this Act and who appears to the Court to be dependent on a controlled drug shall be identified by the Court as a drug dependent person at the earliest reasonable opportunity, and subsequently dealt with as a drug dependent person in accordance with section 39.

(4) A person who is charged with an offence under any other written law in circumstances where the offence appears to the Court to be motivated by dependency on a controlled drug shall also be identified by the Court as a drug dependent person at the earliest reasonable opportunity, and subsequently dealt with as a drug dependent person in accordance with section 39.

(5) Notwithstanding subsection (4) the Court shall consider the seriousness of the nature of that offence prior to identifying the person as a drug dependent person.”.

Assessing
drug
dependency

37.(1) In considering the question of dependency on a controlled drug under section 36(3) or (4) the Court shall have regard to—

- (a) any admission or denial of dependency made by the person;
- (b) any evidence of prior convictions (subject to the Rehabilitation of Offenders Act) under the repealed Act or any corresponding law or formal cautions for drug use under this Act;

- (c) any other credible evidence of a history of drug use or dependency; and
- (d) the result of any assessment reported to the Court by an approved facility.

(2) Where a person does not admit that he or she is dependent on a controlled drug, the Court shall offer the person the opportunity to be assessed for dependency at an approved facility without cost to that person.

(3) If an offer made under subsection (2) is refused or the assessment does not take place within 10 days, the Court shall order that the assessment take place at a specified approved facility within such period as the Court may specify in the order.

(4) If a person who agrees or is ordered to be assessed for dependency on a controlled drug is in custody, the Court may authorise an officer or probation officer to remove the person from their place of detention for the purpose of the assessment.

(5) Where a person who is ordered to be assessed for dependency fails or neglects to appear for the assessment, an officer may arrest the person without a warrant and produce him at the facility specified in the order.

(6) The result of an assessment conducted under subsection (2) or (3) shall be reported to the Court in writing without delay.

38.(1) In dealing with a person who has been identified as a drug user under section 36(1), whether before or after conviction, the primary objective of the Court shall be to ensure that the person takes responsibility for his or her actions without being unnecessarily stigmatised as an offender.

(2) A drug user shall not be convicted or, where convicted, shall not be sentenced to imprisonment unless the Court considers that there is no reasonable alternative measure in the circumstances.

(3) The alternative measures to be considered by the Court in dealing with a drug user are measures primarily directed to the person's education, rehabilitation and social reintegration, including—

- (a) discharge without conviction on the basis of a formal caution administered in accordance with section 41, with or without conditions;
- (b) conviction and discharge under the Probation of Offenders Act, either absolute or on conditions which may include agreement to drug testing under section 46;
- (c) a probation order under the Probation of Offenders Act, the conditions of which may include agreement to drug testing under section 46;
- (d) a suspended sentence passed under section 282 of the Criminal Procedure Code, the conditions of which may include agreement to drug testing under section 46, and which shall not when passed in relation to a drug user be treated for any purpose as a sentence of imprisonment, except where it has taken effect under section 283 of the Criminal Procedure Code;
- (e) voluntary admission to a residential programme for education and social reintegration under section 45, which may be in lieu of part or all of a sentence of imprisonment; and
- (f) an order that the drug user be assessed for drug dependency under section 37(3) with a view to his or her admission to an approved

institution for treatment and rehabilitation in lieu of part or all of a sentence of imprisonment, in accordance with section 39.

(4) The measures specified in paragraphs (a), (c), (d), and (e) of subsection (3) are only available to the Court where the drug user admits the truth of the charge.

39.(1) In dealing with a drug dependent person, whether before or after conviction, the primary objective of the Court shall be to ensure that the person has access to all available treatment, education, rehabilitation, recovery and social reintegration services necessary to effectively address the person's dependency and prevent further drug-related harm.

Dealing with
drug
dependent
persons

(2) Notwithstanding anything in this Act or any other written law, a drug dependent person who is in custody, whether in prison or in an approved institution, shall remain subject to the supervision of the Court for the purpose of giving effect to subsection (1), including, without limitation, for the purposes of assessing whether the person is still a drug dependent person.

(3) Notwithstanding anything in this Act or any other written law, a drug dependent person shall not be sentenced to imprisonment unless the Court considers that there is no reasonable alternative measure available in the circumstances.

(4) The alternative measures to be considered by the Court in dealing with a drug dependent person include —

- (a) a probation order made under the Probation of Offenders Act, the conditions of which shall include, at minimum, agreement to drug testing under section 46;
- (b) a suspended sentence passed under section 282 of the Criminal Procedure Code, the conditions of which shall include, at

minimum, agreement to drug testing under section 46, and which shall not when passed in relation to a drug dependent person be treated for any purpose as a sentence of imprisonment, except where it has taken effect under section 283 of the Criminal Procedure Code;

- (c) voluntary admission to an approved institution for treatment and rehabilitation under section 44, which may be in lieu of part or all of a sentence of imprisonment; and
- (d) an order under section 40 that the person be admitted to an approved institution for treatment and rehabilitation in lieu of part or all of a sentence of imprisonment.

(5) The measures specified in paragraphs (a), (b) and (c) of subsection (4) are not available to the Court unless the drug dependent person admits his or her dependency.

Court-ordered
admission to
approved
institution

40.(1) The Court may order an admission to an approved institution—

- (a) in the course of sentencing a drug dependent person in accordance with section 39, in lieu of part or all of a sentence of imprisonment; or
- (b) otherwise upon the application of the Attorney General, in relation to a person who has been assessed to be dependent on a controlled drug but does not admit his or her dependency or is not in the view of the Court receiving appropriate treatment and rehabilitation.

(2) An order made under subsection (1) shall—

- (a) wherever possible, be made with the person's agreement;
- (b) in any event, be made on the basis of a report to the Court from an approved institution confirming the person's suitability for the relevant service;
- (c) specify the approved institution and the initial duration of the order;
- (d) authorise regular drug testing of the person in accordance with the standard procedures of the institution;
- (e) provide for regular review by the Court at intervals of no more than 3 months;
- (f) provide for liberty for the person or his or her representative and the Attorney General to apply to Court for review or amendment at any time; and
- (g) not remain in effect for longer than a total period of one year, except where the person consents and the approved institution confirms the person's suitability to remain subject to the order.

(3) A person who is admitted to an approved institution pursuant to an order made under subsection (1) shall not be discharged or transferred from the specified institution before the expiry of the order without leave of Court.

(4) Where a person who is admitted to an approved institution under this section or section 44 or section 45 escapes from that institution, an officer may, without warrant, arrest that person and return him or her to that institution.

(5) Any period served by a drug dependent person in an approved institution pursuant to an order made under subsection (1) in the course of sentencing shall be counted as time served in prison for the purpose of the sentence for the offence for which the person has been convicted.

PART V - ALTERNATIVE MEASURES FOR DRUG USERS

Formal
caution for
controlled
drug

41.(1) A person who is reasonably suspected by an officer to be —

- (a) under the influence of a controlled drug, or
- (b) in possession of a controlled drug or cannabis plant in such a small quantity as to indicate that the drug or plant is intended for his or her personal consumption,

may be formally cautioned in accordance with this section as an alternative to prosecution.

(2) A formal caution under this section shall be administered —

- (a) following arrest;
- (b) in writing, on such form as may be prescribed, signed or marked by the person cautioned;
- (c) on the basis that the person accepts responsibility for using or possessing a controlled drug or cultivating a cannabis plant in contravention of this Act; and
- (d) subject to any appropriate conditions to which the officer and person agree, which conditions may include referral to social support services, assessment for drug dependency, or agreement to drug testing under section 46.

(3) Any suspected controlled drug or cannabis plant found in the person's possession shall be seized at the time of arrest, visually examined, weighed, and recorded on the written formal caution.

(4) NDEA and police shall maintain a shared electronic record of all formal cautions and shall cross-check that record before administering a formal caution under this section.

(5) If a person has received two formal cautions for any controlled drugs within the last 12 months, a third caution may only be administered on condition that the person agrees to attend an approved facility within 10 days for assessment for drug dependency. No additional cautions may be administered during the following 12 months.

(6) Notwithstanding subsection (5), a person may only receive one formal caution for heroin, and then only on condition that the person agrees to attend an approved facility within 10 days for assessment for drug dependency. No additional cautions for heroin may be administered.

(7) A formal caution administered under this section —

- (a) is a bar to prosecution of the person cautioned for the act described in the caution, and
- (b) does not create a criminal record, but
- (c) is admissible in Court as evidence of the act described in the caution in any other criminal proceedings initiated within five years from the date of the caution, and otherwise as specified in this Act.

42.(1) The indicative quantity of the following controlled drug to be regarded as indicative of personal consumption for the purpose of section 36 and 41 shall be —

Indicative
quantities for
personal
consumption

- (a) in the case of cannabis or cannabis resin, 10 grammes;
- (b) in the case of cannabis plants, three plants;
- (c) in the case of heroin and cocaine, 0.1 grammes or one dose.

(2) The existence of an indicative quantity shall not exclude consideration of other factors that are indicative of personal consumption.

(3) The Minister may amend the indicative quantity specified in subsection (1) or add any controlled drug and its indicative quantity by regulations made under this Act.

Drug dependent persons not charged with an offence

43.(1) Where the Commissioner of Police or the chief officer of NDEA, reasonably suspects that any person is dependent on a controlled drug, he or she may offer that person the opportunity to be assessed for dependency at an approved facility without cost to that person.

(2) The Minister may appoint any other person for the purpose of subsection (1).

(3) If an offer made under subsection (1) is refused or the assessment does not take place within 10 days, the Attorney General may apply to the Court for an order that the person be assessed for dependency at a specified approved facility within such period as the Court may specify in the order.

(4) Where a person who is ordered to be assessed for dependency under subsection (3) fails or neglects to appear for the assessment, an officer may arrest the person without a warrant and produce him or her at the facility specified in the order.

(5) The result of an assessment conducted under subsection (3) shall be reported to Court in writing without delay.

44.(1) A person who has been assessed as dependent on a controlled drug may seek voluntary admission to an approved institution for the purpose of treatment and rehabilitation.

Voluntary admission for treatment and rehabilitation

(2) A statement made by a person who has not been charged with an offence for the purpose of obtaining admission under this section shall not be admissible in evidence against that person in connection with an offence under section 8.

(3) A person who is admitted to an approved institution under this section may consent to his or her detention in that institution for an initial period of 6 months, unless that period is shortened by order of Court or by the person in charge of the institution.

(4) A person may consent to extending the duration of his or her admission under this section for further periods not exceeding 6 months at a time and 3 years in aggregate.

(5) Any period served by a drug dependent person in an approved institution as a result of voluntary admission agreed to in the course of sentencing under section 39, including any extended period under subsection (4) which is approved by the Court, shall be counted as time served in prison for the purpose of the sentence for the offence for which the person has been convicted.

45.(1) A person who has been identified by the Court as a drug user or who accepts that he or she has abused controlled drugs may seek voluntary admission to an approved institution to complete a residential programme approved by the Minister for the purpose of education, rehabilitation and social reintegration.

Voluntary admission to residential programme

(2) Without limiting the generality of subsection (1), a child who has attained the age of 15 years may seek admission

to a residential programme under this section with the consent of a guardian.

(3) A statement made by a person who has not been charged with an offence for the purpose of obtaining admission under this section shall not be admissible in evidence against that person in connection with an offence under section 8.

(4) Admission to a residential programme under this section shall be conditional upon —

- (a) a report from the relevant institution confirming the person's suitability for the programme; and
- (b) the person and, where applicable, the person's guardian signing a contract confirming their commitment to the programme, in such form and upon such conditions as may be prescribed.

(5) A person who is admitted to an approved institution under this section may consent to his or her detention in that institution for an initial period of 6 months, unless that period is shortened by order of Court or by the person in charge of the institution.

(6) A person may consent to extending the duration of his or her admission under this section for further periods not exceeding 6 months at a time and 18 months in aggregate.

(7) Any period served by a drug user in an approved institution as a result of voluntary admission agreed to in the course of sentencing under section 38, including any extended period under subsection (6) which is approved by the Court, shall be counted as time served in prison for the purpose of the sentence for the offence for which the person has been convicted.

46.(1) A person who seeks voluntary admission to an approved institution under section 44 or section 45 shall agree to submit to regular drug testing in accordance with the standard procedures of the institution during the period of his or her admission.

Agreement
to drug
testing

(2) A person who is being formally cautioned under section 41 may as a condition of the caution agree to attend at an approved facility for drug testing at specified intervals for a period not exceeding 6 months.

(3) A person, other than a person referred to in subsection (1) or (2), who is being dealt with by the Court under section 38 or section 39 may agree to an order directing the person to attend at an approved facility for drug testing at specified intervals for a period not exceeding 1 year.

(4) A person who has agreed to drug testing under this section shall not refuse or fail to submit to a drug test within the scope of that agreement.

(5) A positive drug test, or a refusal or failure to submit to drug testing in contravention of subsection (4) or section 40(1), shall be reported by the approved institution or facility without delay—

- (a) in the case of a drug testing agreement, to NDEA;
- (b) in the case of a drug testing order, to the Court.

PART VI - SENTENCING

47.(1) In sentencing a person convicted of an offence under Part II of this Act, whether upon a guilty plea or following trial, the Court shall have regard to—

Sentencing
for offences
under this
Act

- (a) the objectives of the Act;

- (b) the degree of control to which the relevant controlled drug is subject; and
- (c) the general objectives of transparency and proportionality in sentencing.

(2) Where an aggravating or mitigating factor identified in section 48 or section 49 applies to the circumstances of an offence, the Court shall expressly identify that factor and give weight to it in considering the appropriate sentence.

(3) In sentencing a person who has been identified as a drug user or a drug dependent person, the Court shall follow the process set out in section 38 or section 39.

(4) In sentencing a person convicted of an offence under section 8 of this Act, the Court shall not impose a sentence of imprisonment unless satisfied that a non-custodial sentence is inappropriate in all the circumstances.

(5) In sentencing a person convicted of an offence under this Act in circumstances where the offence is aggravated in nature, the Court shall have due regard to the indicative minimum sentence for aggravated offence of that kind.

Aggravating
factors

48.(1) Aggravating factors (factors that support a more serious sentence) for offences under this Act include—

- (a) the presence and degree of a commercial element in the offending, particularly where controlled drugs have been imported into Seychelles;
- (b) the involvement in the offence of an organised criminal group to which the offender belongs;

- (c) the involvement of the offender in other offences facilitated by or related to commission of the offence;
- (d) the use of violence or weapons by or on behalf of the offender;
- (e) the fact that the offender holds public office or a high-profile position in the community, particularly if the offence is connected with the office or position in question;
- (f) the targeting, involvement, use, or exploitation of children in connection with the offence;
- (g) the fact that the offence was committed in a penal or educational institution, social service facility or in other places related to education, sports, or social activities, or in their immediate vicinity; and
- (h) prior convictions (subject to the Rehabilitation of Offenders Act), particularly for similar offences, whether foreign or domestic, or prior formal cautions under this Act.

(2) Where one or more of the aggravating factors identified in subsection (1) is present to a significant extent, the Court shall treat the offence as aggravated in nature.

49. Mitigating factors (factors that support a reduction in sentence) for offences under this Act include—

Mitigation
factors

- (a) the offender's admission of the truth of the charge through a guilty plea, particularly an early guilty plea;

- (b) the offender's acceptance of responsibility for the harm or potential harm associated with his or her offence;
- (c) any substantial assistance given by the offender to law enforcement authorities, as an informer or otherwise, in the prevention, investigation, or prosecution of any other offence under this Act;
- (d) the absence of any commercial element in the offence;
- (e) the presence of an element of coercion, for example from a family member or employer;
- (f) the absence of prior convictions or prior formal cautions under this Act; and
- (g) the fact that no other person was involved in or directly harmed by the offence.

Travel
restriction
order

50.(1) Where a person has been convicted of an offence under this Act that is aggravated in nature, the Court shall at the time of sentencing consider whether to make a travel restriction order under this section, and may make that order in addition to any other sentence imposed on the offender.

(2) A travel restriction order is an order that prohibits the offender from leaving Seychelles at any time in the period which—

- (a) begins with the offender's release from custody (other than by way of temporary release); and
- (b) continues after that time for a specified period of not less than 2 years.

(3) A travel restriction order may contain a direction to the offender to surrender, or cause to be surrendered, to the Immigration and Civil Status Department any Seychelles passport held by him or her.

(4) Where an offender's passport is held pursuant to subsection (3), the Immigration and Civil Status Department shall securely retain the passport for so long as the travel restriction order is in effect, subject to any period of suspension directed by the Court, and shall not release it to the offender thereafter except by direction of the Court on application by the offender.

(5) A person subject to a travel restriction order may apply to Court upon notice to the Attorney General—

- (a) at any time after the end of the minimum period, and not within 3 months after the making of any previous application of its kind, for revocation of the order; or
- (b) at any time after the making of the order, on compassionate grounds, for suspension of the order for a specified period.

(6) The Court shall not revoke or suspend a travel restriction order under subsection (5) unless satisfied that it is appropriate to do so in all the circumstances, with particular regard to—

- (a) the nature of the offence in respect of which the order was imposed; and
- (b) the person's conduct since the making of the order.

(7) Where a travel restriction order is suspended under subsection (5)—

- (a) the person subject to the order shall ensure that he or she is in Seychelles on the date when the period of suspension ends;
 - (b) the person subject to the order shall comply with any direction made by the Court to surrender his or her passport on that date; and
 - (c) the period of suspension shall not be counted towards the duration of the original travel restriction order.
- (8) In this section “minimum period” means—
- (a) in the case of a travel restriction order for a period of 5 years or less, the period of 2 years beginning on the date when the order took effect;
 - (b) in the case of a travel restriction order for more than 5 years, the period of 4 years beginning on the date when the order took effect.

Transitional
provision

51.(1) The Chief Justice may, in consultation with the Minister constitute a tribunal consisting of one or more judicial officers for the purpose of this section.

(2) Notwithstanding anything in this Act or any other written law, an offender who is serving a sentence of imprisonment for an offence under the repealed Act may apply to the tribunal constituted under subsection (1) for review of the outstanding portion of that sentence in accordance with the this Act.

(3) An application under subsection (2) shall be filed—

- (a) in the case of an offender sentenced prior to the date on which this Act comes into

- operation, within 3 months from that date;
and
- (b) in the case of an offender sentenced on or after the date on which this Act comes into operation for an offence committed prior to that date, within 3 months from the date of sentencing.
- (4) An offender shall be entitled to legal aid for the purpose of making an application under subsection (2).
- (5) An application under subsection (2) —
- (a) shall be made in the form set out in the Fourth Schedule;
- (b) shall be supported by an affidavit from the offender;
- (c) may be supported by other affidavit evidence; and
- (d) shall be served on the Attorney General and the facility or institution in which the offender is currently detained.
- (6) A response to the review application, which may be supported by affidavit evidence, shall be filed and served by the Attorney General within 21 days of service of the application.
- (7) The offender and the Attorney General are entitled to be heard upon the application but may not call or cross-examine any witness without leave of the tribunal, which leave shall only be granted in exceptional circumstances.
- (8) In considering the application the tribunal shall take into account —

- (a) whether the offence in question would be treated as an offence of an aggravated nature under this Act, in which case there shall be a presumption against review;
 - (b) the relative severity of the sentence for the offence in light of the law in force at the time the sentence was passed;
 - (c) the range of sentences that might be imposed if the offender were to be convicted of a similar offence under this Act;
 - (d) the conduct of the offender while in prison and the evidence of his or her rehabilitation; and
 - (e) the prospect of social reintegration and the risk of reoffending if the offender is released.
- (9) The tribunal shall after considering the application either —
- (a) confirm the current sentence; or
 - (b) vary the sentence by reducing, by any amount, the time remaining to be served in prison, upon such conditions as the tribunal may consider appropriate in the circumstances, including any condition which could have been imposed if the offender were sentenced under this Act.
- (10) A decision on review under this section may be appealed by either party to the Court of Appeal.
- (11) Nothing in this section shall entitle an offender to seek the payment of compensation or other redress for time served in accordance with a sentence lawfully imposed.

PART VII - GENERAL

52.(1) The courts of Seychelles shall have jurisdiction to try an offence under this Act when —

Jurisdiction

- (a) the offence was committed in Seychelles;
- (b) the offence was committed in any other place over which the Republic has jurisdiction; or
- (c) the offence was committed outside Seychelles —
 - (i) by a citizen of Seychelles;
 - (ii) by a person who is physically present in Seychelles and who will not be extradited to face trial under a corresponding law in relation to the act constituting the offence;
 - (iii) on board a vessel displaying no flag; or
 - (iv) on board a foreign vessel concerning which the flag state has authorised Seychelles to take appropriate action pursuant to article 17 of the 1988 Convention.

(2) When an act which, if wholly done in Seychelles, would be an offence against this Act is done partly within and partly beyond the jurisdiction, every person who in Seychelles does or makes any part of such act may be tried and punished under this Act in the same manner as if such act had been done wholly within the jurisdiction.

(3) Notwithstanding section 4 of the Criminal Procedure Code, any offence under this Act may be tried by the Magistrates' Court.

Indemnity

53.(1) The Republic shall not be liable to make good any damage caused to any goods or property as a result of any entry, search, seizure, detention or destruction under this Act unless the damage is caused by an act done in bad faith or without reasonable care by a person appointed under this Act, or a public officer, in the exercise or purported exercise of functions under this Act.

(2) A person shall not be subject to any criminal or civil liability in respect of an act done —

- (a) in the exercise or purported exercise of functions under this Act, including in a controlled delivery under section 34; or
- (b) in lawfully giving assistance to a person referred to in paragraph (a),

unless the person acted in bad faith or without reasonable care.

Regulations

54.(1) The Minister may, in consultation with the Minister responsible for health, make regulations for carrying into effect the objectives and purposes of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may provide for —

- (a) authorising the possession, use, sale, supply, prescription or other dealing in, or the manufacture or importation or exportation of, any controlled drug for medical or scientific purposes;
- (b) prescribing the circumstances and conditions under which controlled drugs and precursors may be possessed, used, sold, supplied, prescribed or otherwise dealt with or manufactured or imported or exported, including conditions as to the packaging, labelling, storage or transportation of, and the

keeping of records and the making of returns and reports in respect of, controlled drugs and precursors;

- (c) prescribing the manner of inspection of a person licensed to manufacture, import, export, transport, trade or distribute whether in wholesale or retail any precursor or any equipment or material designed or known to be used in the cultivation or manufacture of controlled drugs;
- (d) declaring any place to be an approved institution and providing for the management, maintenance and inspection of approved institutions, including approved residential programmes;
- (e) providing for the control, supervision, release on temporary leave, aftercare and social reintegration of persons who have been admitted to an approved institution;
- (f) declaring any place to be an approved facility and providing for the conditions of services provided by approved facilities, including drug testing, assessment, treatment, and harm reduction services such as syringe and needle exchange programmes;
- (g) prescribing the quantity of any controlled drug to be regarded as indicative of personal consumption for the purpose of section 36 and section 41;
- (h) prescribing the conditions of secure destruction for controlled drugs, plants and seeds seized under this Act; and

- (i) prescribing any form, contract, register or other document to be used under this Act or any payment required in respect of any matter under this Act.

(3) The Minister may by regulation amend the First Schedule or the Third Schedule.

Repeal and
savings

55. (1) The Misuse of Drugs Act, 1990 is hereby repealed.

(2) The repeal under subsection (1) shall not—

- (a) affect the previous operation of the repealed Act or anything duly done or suffered under it;
- (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act;
- (c) affect any penalty, forfeiture or punishment incurred in respect of any offence under the repealed Act;
- (d) affect any investigation, legal proceedings or remedy in respect of any right, privilege, obligation or liability referred to in paragraph (b) or any penalty, forfeiture or punishment referred to in paragraph (c);

and the investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the Act referred to in subsection (1) had not been repealed.

(3) Notwithstanding the repeal under subsection (1), statutory instruments made under the repealed Act that are in operation immediately prior to the date on which this Act comes into operation shall continue in operation until amended or repealed under this Act.

FIRST SCHEDULE – CONTROLLED DRUGS*(Section 3)***Part I – Class A Drugs**

1. -
- 1.1. Acetorphine.
- 1.2. Acetylmethadol.
- 1.3. Allylprodine.
- 1.4. Alphacetylmethadol.
- 1.5. Alphameprodine.
- 1.6. Alphamethadol.
- 1.7. Alphaprodine.
- 1.8. 2-amino-1-(2, dimethoxy-4- tetrahydro-6,-methyl) phenylpropane.
- 1.9. Anileridine.
- 1.10. Benzethidine.
- 1.11. Benzylmorphine (3-benzylmorphine).
- 1.12. Betacetylmethadol.
- 1.13. Betameprodine.
- 1.14. Betamethadol.
- 1.15. Betaprodine.
- 1.16. Bezitramide.
- 1.17. Bufotenine.
- 1.18. Cannabinol, except where contained in cannabis or cannabis resin.
- 1.19. Cannabinol derivatives.
- 1.20. Clonitazene.
- 1.21. Coca leaf
- 1.22. Cocaine.
- 1.23. Codoxime.
- 1.24. Desomorphine.
- 1.25. Dextromoramide.
- 1.26. Diamorphine.
- 1.27. Diampromide.
- 1.28. Diethylthiambutene.
- 1.29. Difenoxin.
- 1.30. Dihydromorphine.
- 1.31. Dihydrodesoxymorphine, commonly known as Krokodil.
- 1.32. Dimenoxadole.

- 1.33. Dimepheptanol
- 1.34. 3-(1,2-dimethylheptyl)-1-hydroxyl-7, 8, 9, 10, 6, 9-trimethyl-6-Hdibenzo [a, d] pyan.
- 1.35. Dimethylthiambutene.
- 1.36. Dioxaphetyl butyrate.
- 1.37. Diphenoxylate.
- 1.38. Dipipanone
- 1.39. Drotebanol.
- 1.40. Ecgonine, and any derivative of ecgonine which is convertible to ecgonine or to cocaine.
- 1.41. Ethylmethylthiambutene.
- 1.42. Etonneitazene.
- 1.43. Etorphine.
- 1.44. Etoxidine.
- 1.45. Fentanyl.
- 1.46. Furethidine.
- 1.47. Hydrocodone.
- 1.48. Hydromorphinol.
- 1.49. Hydromorphone.
- 1.50. Hydroxypethidine.
- 1.51. Isomethadone.
- 1.52. Ketobemidone.
- 1.53. Levomethorphan.
- 1.54. Levomoramide.
- 1.55. Levophenacymorphan.
- 1.56. Levorphanol.
- 1.57. Lysergamide.
- 1.58. Lysergide and other N-alkyl derivatives of lysergamide.
- 1.59. Mescaline.
- 1.60. Metazocine.
- 1.61. Methadone.
- 1.62. Methadyl acetate.
- 1.63. Methyl-desorphine
- 1.64. Methyl-dihydromorphine. (16-methyl-didymorphine).
- 1.65. Metopon.
- 1.66. Morpheridine.
- 1.67. Morphine.
- 1.68. Morphine methobromide, morphine N-oxide and other pentavalent nitrogen morphine derivatives.

- 1.69. Myrophine.
- 1.70. Nicomorphine 3, 6-dinicotinoyl morphine.
- 1.71. Noracymethadol.
- 1.72. Norlevorphanol.
- 1.73. Normethadone.
- 1.74. Normorphine.
- 1.75. Norpipanone.
- 1.76. Opium, whether raw, or medicinal.
- 1.77. Oxycodone.
- 1.78. Oxymorphone.
- 1.79. Parahexyl (3-hexyl-1 hydroxyl-7, 8, 9, 10 tetrahydro-6, 6, 9-trimethyl 6H-dibenzo.
- 1.80. Pethidine.
- 1.81. Phenadoxone.
- 1.82. Phenampromide.
- 1.83. Phenazocine.
- 1.84. Phenomorphan.
- 1.85. Piminodine.
- 1.86. Piritramide.
- 1.87. Poppy-straw and concentrate of poppy straw.
- 1.88. Proheptazine.
- 1.89. Properidine (1-methyl-4 phenyl-piperidine-4-carboxylic acid isopropyl ester).
- 1.90. Psilocin.
- 1.91. Psilocybine.
- 1.92. Racemethorphan.
- 1.93. Racemoramide.
- 1.94. Racemorphan.
- 1.95. Thebacon.
- 1.96. Thebaine.
- 1.97. Trimeperidine.
- 1.98. 4-Cyano-2-dimethylamino-4 4-diphenylbutane.
- 1.99. 4-Cyano-1-methyl-4-phenyl piperidine.
- 1.100. N,N-Dimethyltryptamine.
- 1.101. N, N-Dimethyltryptamine.
- 1.102. 2,5-Dimethoxy-, 4-dimethyl phenethylamine.
- 1.103. 1-Hydroxy-3-pentyl-6a,7,10, 10a-tetra hydro-6,6 9-trimethyl-6-H-dibenzo [b,d] pyan.

- 1.104. 1-Methyl-4-phenylpiperidine-4 carboxylic acid.
 - 1.105. 2-Methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
 - 1.106. 4-Phenylpiperidine-4-carboxylic acid ethyl ester.
2. Any stereoisomeric form of a substance for the time being specified in paragraph 1 not being dextromethorphan or dextrorphan.
 3. Any ester or ether of a substance for the time being specified in paragraph 1 or 2 not being a substance for the time being specified in Part II of this Schedule.
 4. Any salt of a substance for the time being specified in any of paragraphs 1 to 3.
 5. Any preparation or other products containing a substance or product for the time being specified in any of paragraphs 1 to 4.
 6. Any preparation designed for administration by injection which includes a substance or product for the time being specified in any of paragraphs 1 to 3 of Part II of this Schedule.

Part II - Class B Drugs

1. -

- 1.1. Acetyldihydrocodeine.
- 1.2. Amphetamine.
- 1.3. Cannabis and cannabis resin.
- 1.4. Codeine.
- 1.5. Dexamphetamine.
- 1.6. Dihydrocodeine.
- 1.7. Ethylmorphine (3-ethyl-morphine).
- 1.8. Methylamphetamine.
- 1.9. (hA) Methylenedioxymethamphetamine.
- 1.10. Methylphenidate.
- 1.11. Nicocodine.
- 1.12. Nicodicodine.
- 1.13. Norcodeine.
- 1.14. Phenmetrazine.
- 1.15. Pholcodine.
- 1.16. Propiram.
- 1.17. Buprenorphine.
- 1.18. Tetrahydrocannabinol.

2. Any stereoisomeric form of a substance for the time being specified in paragraph 1.
3. Any salt of a substance for the time being specified in paragraph 1 or 2.
4. Any preparation or other product containing a substance or product for the time being specified in any of paragraphs 1 to 3, not being a preparation falling within paragraph 6 of Part I of this Schedule.

Part III - Class C Drugs

- 1.-
 - 1.1. Benzphetamine.
 - 1.2. Chlorphentermine.
 - 1.3. Flunitrazepam.
 - 1.4. Maphentermine.
 - 1.5. Methaqualone.
 - 1.6. Phendimetrazine.
 - 1.7. Pipradrol.
2. Any stereoisomeric form of a substance for the time being specified in paragraph 1.
3. Any salt of a substance for the time being specified in paragraph 1 or 2.
4. Any preparation or other product containing a substance for the time being specified in any of paragraphs 1 to 3.

Part IV - Interpretation

For the purpose of this Schedule —

“Cannabinol derivatives” means, except where contained in cannabis or cannabis resin, tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives;

“coca leaf” means the leaf of any plant of the genus *Erythroxylon* from whose leaves cocaine can be extracted either directly or by chemical transformation;

“concentrate of poppy straw” means the material produced when poppy straw has entered into a process for the concentration of its alkaloids;

“medicinal opium” means raw opium which has undergone the process necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopoeia, whether it is in the form of powder or is granulated or is in any other form, and whether it is or is not mixed with neutral substances;

“opium poppy” means the plant of the species *Papaversomniferum* L;

“preparation” means a mixture, solid or liquid, containing a controlled drug;

“poppy straw” means all parts, except the seeds, of the opium poppy, after mowing;

“raw opium” includes powdered or granulated opium but does not include medicinal opium.

SECOND SCHEDULE PENALTIES

Section creating offence	General nature of offence	Maximum sentence				Indicative minimum sentence for aggravated offence		
		Class A drug	Class B drug	Class C drug	Class A drug	Class B drug	Class C drug	
		Life imprisonment Fine of SCR 1 million	50 years imprisonment Fine of SCR 500,000	40 years imprisonment Fine of SCR 500,000	20 years imprisonment	15 years imprisonment		
5	Importation or exportation							
6(1)	Manufacture							
7(1) 7(2) 9 10	Trafficking	Life imprisonment Fine of SCR 750,000	50 years imprisonment Fine of SCR 500,000	40 years imprisonment Fine of SCR 500,000	20 years imprisonment	15 years imprisonment		
6(2)	Cultivation							
6(3)	Possession or purchase of utensil etc. for manufacture							
11(1)	Use of premises for import, export, manufacture, cultivation, trafficking	30 years imprisonment Fine of SCR 500,000	20 years imprisonment Fine of SCR 300,000	15 years imprisonment Fine of SCR 200,000	10 years imprisonment	8 years imprisonment		5 years imprisonment
12	Diversion of precursor, equipment or material							
8(1)	Possession, purchase or use							
11(2)	Use of premises for use of controlled drug	15 years imprisonment Fine of SCR 300,000		10 years imprisonment Fine of SCR 200,000	8 years imprisonment		5 years imprisonment	
15(2)	Aiding or abetting offence outside Seychelles							
35(2)	Corruption of NIDEA or police investigation							
32(4)	Failure of undercover officer to deliver drug	5 years imprisonment Fine of SCR 200,000						
8(2)	Possession or purchase of utensil etc. for use							
35(1)	Obstruction of officer; failure to comply with requirement of Act							3 years imprisonment
					5 years imprisonment			

THIRD SCHEDULE*(Section 2 and 13)***PRECURSORS**

1. -

- 1.1. Acetic anhydride acetone.
- 1.2. N-Acetylanthranilic acid.
- 1.3. Anthranilic acid.
- 1.4. Ephedrine ethyl ether.
- 1.5. Ergometrine hydrochloric acid.
- 1.6. Ergotamine methyl ethyl ketone.
- 1.7. Isosafrolepiperidine.
- 1.8. Lysergic acid.
- 1.9. Sulphuric acid.
- 1.10. 3, 4-Methylenedioxyphenyl-2-propanone toluene.
- 1.11. Norephedrine.
- 1.12. Phenylacetic acid.
- 1.13. 1-Phenyl-2-propanone.
- 1.14. Piperonal.
- 1.15. Potassium permanganate.
- 1.16. Pseudoephedrine.
- 1.17. Safrole.

2. The salt of a substance in this Schedule whenever the existence of such salt is possible.

**FOURTH SCHEDULE
FORMS**

[Section 51(1)]

Application for review of sentence

In the matter of the Misuse of Drugs Act, 2016

1. I, _____, date of birth _____, with NIN _____, currently serving a sentence of imprisonment at _____, hereby apply under section 51(1) of the Misuse of Drugs Act, 2016 for review of the outstanding portion of my sentence.
2. I was sentenced for the offence/s of _____ under section/s _____ of the Misuse of Drugs Act, 1990.
3. A copy of my sentence is enclosed, dated _____
[If the original sentence was appealed or reviewed:] A copy of the decision of the appeal court on my sentence is enclosed, dated _____
4. An affidavit by me in support of this application is enclosed.
[Optional; repeat as necessary:] An affidavit by _____ in support of this application is also enclosed.
5. I understand that I am entitled to legal aid for the purpose of making this application.
6. I understand that I am not entitled to seek the payment of compensation or other redress for time served in accordance with a sentence lawfully imposed.

Signed this.....day of20.....

.....
Applicant

.....
[If applicable:] Attorney for the applicant

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 5th April, 2016.



Ms. Luisa Waye-Hive
Assistant Clerk to the National Assembly