

LAWS OF KENYA

**NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES
(CONTROL) ACT**

No. 4 of 1994

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**NO. 4 OF 1994 NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES
(CONTROL) ACT**

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NO. 4 OF 1994

**NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES
CONTROL ACT**

[Date of assent: 8th July, 1994.]

[Date of commencement: 26th August, 1994.]

An Act of Parliament to make provision with respect to the control of the possession of, and trafficking in, narcotic drugs and psychotropic substances and cultivation of certain plants; to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances and for connected purposes

[L.N. 291/1994, Act No. 2 of 2002, Act No. 7 of 2007, Act No. 9 of 2009, Act No. 12 of 2012.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Narcotic Drugs and Psychotropic Substances (Control) Act, 1994.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**addict**” means a person addicted to any narcotic drug or psychotropic substance;

“**bank**” means a bank, financial institution or mortgage finance company as defined in section 2 of the Banking Act (Cap. 488) and includes the Central Bank of Kenya;

“**cannabis**” means the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by tops) from which the resin has not been extracted, by whatever name they may be designated;

“**cannabis oil**” means any liquid containing any quantity however small of tetrahydro-cannabinol;

“**cannabis plant**” means any plant of the genus cannabis by whatever name called and includes any part of that plant;

“**cannabis resin**” means the separated resin, whether crude or purified, obtained from cannabis but does not include cannabis oil;

“**charge**” includes a lien, hypothecation, pledge and other security on property or created to secure the payment of a debt or performance of an obligation;

“**coca bush**” means the plant of any species of the genus erythroxylon from which cocaine can be extracted;

“**coca leaves**” means the leaves of the coca bush from which cocaine can be extracted either directly or by chemical transformation;

“**Commissioner**” means the Commissioner of Customs and Excise;

“**conveyance**” means a conveyance of any description used for the carriage of persons or goods and includes any aircraft, vehicle or vessel;

“**court**” means a court of competent jurisdiction;

“**cultivate**”, in relation to any plant, includes growing the plant, sowing or scattering the seed produced by the plant or any part thereof, nurturing or tending the plant or harvesting the flowers, fruits, leaves or seeds or the whole or any part of the plant;

“**dentist**” means a person registered as a dentist under the Medical Practitioners and Dentists Act (Cap 253);

“**export**” means the taking or conveying, or causing to be taken or conveyed, out of Kenya;

“**illicit traffic**”, in relation to narcotic drugs and psychotropic substances, means—

- (a) cultivating any coca bush or gathering any portion of a coca plant;
- (b) cultivating the opium poppy or any cannabis plant;
- (c) engaging in the conveyance production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, importation, exportation or transshipment of narcotic drugs or psychotropic substances; or
- (d) handling or letting out of any premises for the carrying on of any of the activities referred to in paragraphs (a) to (c),

other than as permitted under this Act or any regulations made, or any conditions of any licence, issued thereunder and includes— (i) financing, directly or indirectly, any of those activities;

- (ii) abetting or conspiring in the furtherance of, or in support of doing any of, those activities; and
- (iii) harbouring persons engaged in any of those activities;

“**international convention**” means—

- (a) the Single Convention on Narcotic Drugs, 1961 adopted by the United Nations Conference at New York in March, 1961;
- (b) the Protocol, amending the Convention mentioned in paragraph (a), adopted by the United Nations Conference at Geneva in March, 1972;
- (c) the Convention on Psychotropic Substances, 1971 adopted by the United Nations Conference at Vienna in February, 1971;
- (d) the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted at Vienna on 19th December, 1988; and

- (e) any other international convention or protocol or any other instrument amending an international convention relating to narcotic drugs or psychotropic substances which may be ratified or acceded to by Kenya after the commencement of this Act;

“**manufacture**”, in relation to narcotic drugs or psychotropic substances, includes—

- (a) all processes other than production, by which such drugs or substances may be obtained;
- (b) refining of such drugs or substances; or
- (c) making of preparations (otherwise than in a pharmacy on a prescription) with or containing such drugs or substances;

“**medicinal opium**” means opium which has undergone the processes necessary to adopt it for medicinal use;

“**medical practitioner**” means a person registered under the Medical Practitioners and Dentists Act (Cap. 253) as a medical practitioner;

“**narcotic drug**” means any substance specified in the First Schedule or anything that contains any substance specified in that Schedule;

“**opium**” includes raw opium, powdered opium, and opium wholly or partially prepared for any use or purpose, whatever its content of morphine may be;

“**opium poppy**” means—

- (a) the plant of the species *papaver somniferum*; and
- (b) the plant of any other species of *papaver* from which opium or any *phenanthrene* alkaloid can be extracted and which the Minister may, by notice in the *Gazette*, declare to be opium poppy for the purposes of this Act;

“**poppy straw**” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered;

“**premises**” includes any land, building or other place;

“**preparation**”, in relation to a narcotic drug or psychotropic substance, means any one or more of such drugs or substances in dosage form or any solution or mixture, in whatever physical state, containing one or more of such drugs or substances;

“**proceeds**”, in relation to an act or activity, means property wholly or partly derived or obtained directly or indirectly from that act or activity;

“**produce**”, where the reference is to producing a narcotic drug or psychotropic substance, means producing it by manufacture, cultivation or any other method and “**production**” shall be construed accordingly;

“**prohibited plant**” means any plant specified in the Third Schedule;

“**property**” means any movable or immovable property, and includes—

- (a) any right, interest, title, claim, chose in action, power, privilege,

whether present or future and whether vested or contingent, in relation to any property, or which is otherwise of value;

- (b) any transfer executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable property whereof the person executing the transfer is the proprietor or possessed of or wherein he is entitled to a contingent right, either for his whole interest or for any less interest;
- (c) any monetary instrument;
- (d) any other instrument or securities; and
- (e) any other tangible or intangible property;

“psychotropic substance” means any substance specified in the Second Schedule or anything that contains any substance specified in that Schedule;

“registered pharmacist” means a person who is registered as a pharmacist under the Pharmacy and Poisons Act (Cap. 244);

“trafficking” means the importation, exportation, manufacture, buying, sale, giving, supplying, storing, administering, conveyance, delivery or distribution by any person of a narcotic drug or psychotropic substance or any substance represented or held out by such person to be a narcotic drug or psychotropic substance or making of any offer in respect thereof, but does not include—

- (a) the importation or exportation of any narcotic drug or psychotropic substance or the making of any offer in respect thereof by or on behalf of any person who holds a licence therefore under this Act in accordance with the licence;
- (b) the manufacturing, buying, sale, giving, supplying, administering, conveying, delivery or distribution of any narcotic drug or psychotropic substance or the making of any offer in respect thereof, by or on behalf of any person who has a licence therefore under this Act in accordance with the licence; or
- (c) the selling or supplying or administering for medicinal purposes, and in accordance with the provisions of this Act, of any narcotic drug or psychotropic substance or the making of any offer in respect thereof, by a medical practitioner or veterinary surgeon or dentist or by any other person qualified to do so on the instructions of the medical practitioner or veterinary surgeon or dentist; or
- (d) the selling or supplying in accordance with the provisions of this Act, of any narcotic drugs or psychotropic substances by a registered pharmacist;

“veterinary surgeon” means a veterinary surgeon licensed under the Veterinary Surgeons Act (Cap. 366) to practice veterinary surgery and medicine.

[Act No. 2 of 2002, Sch.]

PART II – PROHIBITION OF POSSESSION OF, AND TRAFFICKING IN, NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES AND CULTIVATION OF CERTAIN PLANTS

3. Penalty for possession of narcotic drugs, etc.

(1) Subject to subsection (3), any person who has in his possession any narcotic drug or psychotropic substance shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable—

- (a) in respect of cannabis, where the person satisfies the court that the cannabis was intended solely for his own consumption, to imprisonment for ten years and in every other case to imprisonment for twenty years; and
- (b) in respect of a narcotic drug or psychotropic substance, other than cannabis, where the person satisfies the court that the narcotic drug or psychotropic substance was intended solely for his own consumption, to imprisonment for twenty years and in every other case to a fine of not less than one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, or to imprisonment for life or to both such fine and imprisonment.

(3) Subsection (1) shall not apply to—

- (a) a person who has possession of the narcotic drug or psychotropic substance under a licence issued pursuant to section 16 permitting him to have possession of the narcotic drug or psychotropic substance; or
- (b) a medical practitioner, dentist, veterinary surgeon or registered pharmacist who is in possession of a narcotic drug or psychotropic substance for any medical purposes; or
- (c) a person who possesses the narcotic drug or psychotropic substance for medical purposes from, or pursuant to a prescription of, a medical practitioner, dentist or veterinary surgeon; or
- (d) a person authorized under the regulations to be in possession of the narcotic drug or psychotropic substance.

4. Penalty for trafficking in narcotic drugs, etc.

Any person who trafficks in any narcotic drug or psychotropic substance or any substance represented or held out by him to be a narcotic drug or psychotropic substance shall be guilty of an offence and liable—

- (a) in respect of any narcotic drug or psychotropic substance to a fine of one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, and, in addition, to imprisonment for life; or
- (b) in respect of any substance, other than a narcotic drug or psychotropic substance, which he represents or holds out to be a narcotic drug or psychotropic substance to a fine of five hundred thousand shillings, and, in addition, to imprisonment for a term not exceeding twenty years.

5. Penalty for other acts connected to narcotic drugs, etc.

(1) Subject to this Act, any person who—

- (a) smokes, inhales, sniffs or otherwise uses any narcotic drug or psychotropic substance; or
- (b) without lawful and reasonable excuse, is found in any house, room or place to which persons resort for the purpose of smoking, inhaling, sniffing or otherwise using any narcotic drug or psychotropic substance; or
- (c) being the owner, occupier or concerned in the management of any premises, permits the premises to be used for the purpose of—
 - (i) the preparation of opium for smoking or sale, or the smoking, inhaling, sniffing or otherwise using any narcotic drug or psychotropic substance; or
 - (ii) the manufacture, production, sale or distribution of any narcotic drug or psychotropic substance in contravention of this Act; or
- (d) has in his possession any pipe or other utensil for use in connection with the smoking, inhaling or sniffing or otherwise using of opium, cannabis, heroin or cocaine or any utensil used in connection with the preparation of opium or any other narcotic drug or psychotropic substance for smoking,

shall be guilty of an offence and liable to a fine of two hundred and fifty thousand shillings or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(2) Any person who, knowing or having reason to believe that a parcel, package, container or other thing contains any narcotic drug or psychotropic substance, handles the parcel, package, container or other thing, shall, except where such handling is by a public officer in the course of his official duties or a registered pharmacist, be guilty of an offence and liable to a fine of one hundred thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(3) Any person who commits any offence referred to in subsection (2) in relation to any narcotic drug or psychotropic substance with a view to aiding, abetting or procuring the trafficking in the narcotic drug or psychotropic substance shall be liable to the penalty prescribed by section 4.

6. Penalty for cultivation of certain plants

Any person who—

- (a) cultivates any prohibited plant; or
- (b) being the owner, occupier or concerned in the management of any premises, permits the premises to be used for the purpose of the cultivation, gathering or production of any prohibited plant,

shall be guilty of an offence and liable to a fine of two hundred and fifty thousand shillings or three times the market value of the prohibited plant, whichever is the greater, or to imprisonment for a term not exceeding twenty years or to both such fine and imprisonment.

7. Forfeiture of land used for cultivation of prohibited plants

(1) Where a person is convicted of an offence under section 6 with reference to the cultivation of the prohibited plant on any land, not being Government land, and that person was at the time of the commission of the offence—

- (a) the owner of the land on which the prohibited plant was cultivated;
- or (b) the holder of a lease, licence, permit or any other similar right in the land and he has carried on the cultivation of the prohibited plant with the consent, co-operation or assistance of the owner of the land,

then, the court convicting him shall, in addition to the penalty provided for that offence in section 6, order the land to be forfeited to the Government.

(2) Where a person is convicted of any offence under section 6 with reference to the cultivation of any prohibited plant on any land, not being Government land, and—

- (a) such person was, at the time of the commission of the offence, the holder of a lease, licence, permit or any other similar right in the land on which the prohibited plant was cultivated; and
- (b) the cultivation of the prohibited plant was carried on without the consent, co-operation or assistance of the owner of the land,

then, the court convicting him shall, in addition to the penalty provided for that offence in section 6, order that the lease, licence, permit or any other right in the land shall stand terminated forthwith and thereupon all the interest in the land of the person so convicted shall revert to the owner of the land, who shall, subject to the other provisions of this Act, be entitled to enforce the order as if it were an order for possession made in his favour by a tribunal under the Rent Restriction Act (Cap. 296):

Provided that the person so convicted shall not be entitled either to remove any prohibited plant from the land or to receive any sum by way of compensation for or otherwise in relation to the value of any such plant.

(3) Where a person is convicted of an offence under section 6, with reference to the cultivation of any prohibited plant on any Government land, and such person is the holder of a lease, licence, permit or any other similar right in the land, then, subject to subsection (4), the court convicting him shall, in addition to the penalty provided for that offence in section 6, order the lease, licence, permit or any other right in the land of the person so convicted shall revert the Government.

(4) Where under this section—

- (a) any land, is forfeited to the Government, the holder of any mortgage or charge on such land, so forfeited shall, where such mortgage or charge was created *bona fide* and for valuable consideration, be entitled, notwithstanding such forfeiture, to enforce the mortgage or charge against the land so forfeited; or
- (b) any lease is forfeited to the Government or stands terminated, the holder of any mortgage or charge on the leasehold right shall, where such mortgage or charge was created *bona fide* and for valuable consideration be entitled, notwithstanding such forfeiture or

termination, to enforce the mortgage or charge against the land to the extent of the value of the leasehold right on the date of the creation of the mortgage or charge:

Provided that this subsection shall not apply in the case of the holder of any mortgage or charge where he was concerned in, or was privy to, the commission of the offence of which the person referred to in section 6 was convicted and as a result of which conviction the land is forfeited to the Government or, as the case may be, the lease is forfeited to the Government or stands terminated.

8. Owner of land to inform police officer, etc.

For the purposes of sections 7 and 9—

- (a) where any person, having any interest in any land, and knowing that any prohibited plant is being cultivated on that land or that the land is being prepared for the purpose of cultivating any prohibited plant, does not promptly inform the officer in charge of the police station nearest either to the land on which the prohibited plant is being cultivated or to the ordinary place of residence or business of such person of that fact, the burden of proving that the person did not consent to, co-operate with or assist in the cultivation of the prohibited plant on that land shall be on that person;
- (b) any reference to cultivation of any plant shall be deemed to include a reference to all activities relating to the cultivation of that plant and harvesting or gathering of the plant or, any part thereof; and
- (c) any reference to the owner, or the holder of any lease, licence, grant, permit or other right in any land shall be deemed, where the land, or the lease, licence, permit or other right, is held by any person jointly or severally with any other person or persons, to be a reference to each other of such persons.

9. Publication of notice

(1) As soon as may be after the conviction of any person under section 6 and before the court makes any order under section 7 the court convicting him shall publish in a newspaper circulating in Kenya and in the *Gazette* a notice stating—

- (a) the particulars of the person convicted;
- (b) the particulars of the land on which the prohibited plant was being cultivated;
- (c) other relevant particulars relating to the offence;
- (d) the date fixed for the hearing of an application for an order under section 7;
- (e) the name and address and the nature of the rights of every person who, according to information available to the court, is the owner or is the intermediate lessee of or has any other right in the land or is in possession of the land at the time of the conviction of the person; and

- (f) such other particulars as may be prescribed by regulations or, subject to such regulations, by rules of court.

(2) The notice referred to in subsection (1) shall be served on all persons who are known to the court, at the time of the conviction of the person under section 6, as being the owners, or as having any interest in, or as being in possession of, the land in respect of which an order is proposed to be made under section 7, and every such person shall be given a reasonable opportunity of being heard before the order is made.

10. Notice where owner of land is holder of a lease

(1) Where the person convicted under section 6 and referred to in section 7 is the holder of a lease, licence, permit or any other right in the land granted by an intermediate lessee and the cultivation of the prohibited plant was carried on by that person without the consent, co-operation or assistance of the intermediate lessee, the intermediate lessee may, before an order of forfeiture is made under any of those provisions, apply to the court convicting the person before the date for hearing specified in the notice under section 9 praying that, instead of the land being forfeited to the Government or reverting to the owner of the land, as the case may be, the intermediate lessee may be allowed to be in possession of the land on the terms of the lease in his favour.

(2) If the court is satisfied of the facts mentioned in subsection (1) in relation to the applicant, and subject to subsection (3), the court may allow the application and thereupon all the interests in the land of the person so convicted shall revert to the intermediate lessee, instead of being forfeited to the Government or reverting to the owner of the land, as the case may be, and the intermediate lessee shall be entitled to enforce the order in the same manner as the owner of the land may enforce an order under section 7:

Provided that the person so convicted shall not be entitled either to remove any prohibited plant from the land or to receive any sum by way of compensation for or otherwise in relation to the value of any such plant.

(3) Where there are more intermediate lessees than one, an application under subsection (1) may be made by any of them and the court convicting any person may allow the application of the intermediate lessee who—

- (a) has not consented to, co-operated with or assisted in the cultivation of the prohibited plant by the convicted person; and
- (b) is among the intermediate lessees who have not so consented, cooperated, or assisted, the intermediate lessee nearest to the convicted person having regard to the order in which the sub-leases were executed.

(4) Upon the making of an order under section 7 the Commissioner of Lands or the Chief Land Registrar, as the case may be, or any officer nominated by him in that behalf shall, with such assistance as, in his opinion, is required or expedient, take possession of the land described in the order for and on behalf of the Government and for that purpose may, if need be, remove therefrom any person

refusing to vacate such land and use such force as may be reasonable for that purpose.

(5) Where an order is made under section 7 or subsection (1) forfeiting any land or reverting any land to the owner or an intermediate lessee of the land, the order shall be treated for all purposes as if it were a transfer or other document effecting a transfer of immovable property or any interest therein and the Commissioner of Lands or Chief Land Registrar shall, on the production to him of the original order, take due notice thereof and shall make such annotations on the records as may be necessary.

11. Power of entry in respect of Government land

(1) Without prejudice to any other provision of this Act in relation to the power to enter or search, where the Commissioner of Lands or any officer authorized by him, any forest officer appointed under the Forests Act (Cap. 385) or any police officer has reasonable ground to suspect that—

- (a) any prohibited plant was or is being cultivated on any Government land, whether held by any person under a lease, licence, permit or any other right, or entered upon by any person without any right; or
- (b) that any prohibited plant is on that land, he may, by himself or with such assistance as in his opinion is reasonable, enter upon and inspect such land.

(2) Without prejudice to any other provision of this Act, where any police officer or any other person authorized by the Commissioner of Police for the purposes of this section has reasonable grounds to suspect—

- (a) that any prohibited plant was, or is being cultivated on any land, not being Government land; or
- (b) that any prohibited plant is on the land, he may, by himself or with such assistance as in his opinion is reasonable, enter upon and inspect the land.

12. Power to court to order destruction of prohibited plants

(1) A court convicting any person of an offence under this Act shall direct the Commissioner of Police or any police officer authorized by him to destroy all the prohibited plants found on any land to which the offence relates and the Commissioner of Police or any such police officer, as the case may be, shall cause all such plants to be destroyed in such manner as may be prescribed by regulations.

(2) Where any police officer authorized in that behalf by the Commissioner of Police is, upon entry and inspection under section 11, satisfied that the plants found on any land, are prohibited plants, he shall destroy them in such manner as may be prescribed by regulations.

13. Provisions relating to certain prescriptions

- (1) A medical practitioner or dentist shall not—

- (a) prescribe for, administer, sell or supply to, any person any narcotic drug or psychotropic substance; or
- (b) sign any prescription or order for the supply of any narcotic drug or psychotropic substance to any person,

unless the narcotic drug or psychotropic substance is required for the medical or dental treatment of the person.

(2) A veterinary surgeon shall not—

- (a) prescribe, administer, sell or supply any narcotic drug or psychotropic substance; or
- (b) sign any prescription or order for the supply of any narcotic drug or psychotropic substance,

otherwise than in accordance with the provisions of the regulations made under section 84.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine of not less than two hundred and fifty thousand shillings or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

14. Penalty for receiving additional narcotic drug or psychotropic substance or prescription without disclosure of earlier receipt

Any person who, in the course of treatment for any physical, dental or mental disorder is supplied with any narcotic drug or psychotropic substance, or a prescription therefor, by a medical practitioner or dentist treating him and who without disclosing that fact receives additional narcotic drugs or psychotropic substances, or a prescription therefor, from any other medical practitioner or dentist, shall be guilty of an offence and liable to a fine of not less than fifty thousand shillings and, in addition, to imprisonment for a term not exceeding ten years.

15. Removal of name from register

Where a medical practitioner, dentist or veterinary surgeon is convicted of an offence under this Act, he shall, notwithstanding anything contained in any other written law, be liable to have his name removed from the register of those licensed or registered to practise within Kenya as a medical practitioner, dentist or veterinary surgeon, as the case may be.

16. Board to issue licences for export, import, manufacture, etc.

- (1) The Minister shall establish a Board which shall consist of—
 - (a) the Attorney-General or his representative;
 - (b) the Permanent Secretary of the Ministry for the time being responsible for Provincial Administration and/or Internal Security or his representative;
 - (c) the Permanent Secretary of the Ministry for the time being responsible for Health or his representative;

- (d) the Commissioner of Police or his representative;
- (e) three other persons appointed by the Minister of whom one shall be appointed as the chairman.

(2) The Board shall—

- (a) issue licences for the importation, exportation, diversion, sale, manufacture, production or distribution (at stated places) of any narcotic drug or psychotropic substance;
- (b) name ports or places in Kenya where any narcotic drug or psychotropic substance may be exported or imported;
- (c) prescribe the manner in which any narcotic drug or psychotropic substance is to be packed or marked for export; and
- (d) prescribe the records to be kept by any person in connection with the export, import, receipt, sale, disposal or distribution of narcotic drugs or psychotropic substances.

17. Penalty for obstruction, etc.

Any person who—

- (a) delays or obstructs any police officer or any person authorized by the Commissioner of Police, the Director of Medical Services or any other person in the exercise of any of his functions under this Act; or
- (b) wilfully destroys or mutilates or attempts to destroy or mutilate any books or documents required, or liable to be produced before any police officer or any person authorised by the Commissioner of Police, the Director of Medical Services or any other public officer or any other person or any other authority or a court under any provision of this Act; or
- (c) refuses or fails to produce, or conceals, or attempts to conceal, any books or documents or stocks of narcotic drugs or psychotropic substances when their production is demanded by any person in the exercise of his powers under this Act; or
- (d) refuses or fails to comply with any lawful order or direction given by any public officer in the course of, or in connection with, the administration of any provision of this Act, not being a non-compliance referred to in paragraph (c),

shall be guilty of an offence and liable to a fine of not less than one hundred thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

18. Penalty for failure to furnish information or to produce evidence, etc.

Any person who—

- (a) fails or refuses to comply with any obligation to give information or to produce any book, record or other document, thing or other

material to which he is subject under or by virtue of any provision of this Act or any order made thereunder; or

- (b) in purported compliance with any obligation to give information or to produce any book, record or other document or other material to which he is subject under or by virtue of any provision of this Act, gives any information which he knows to be false in a material particular or gives any information which he does not believe to be true, or produces or otherwise makes use of any book, record or other document or other material containing any statement which to his knowledge is false in a material particular or which he does not believe to be true; or
- (c) for the purpose of obtaining, whether for himself or any other person the grant or renewal of a licence or authority under this Act—
 - (i) makes any statement or gives any information which he knows to be false in a material particular or which he does not believe to be true; or
 - (ii) produces or otherwise makes use of any book, record or other document or other material containing any statement which to his knowledge is false in a material particular or which he does not believe to be true,

shall be guilty of an offence and liable to a fine of not less than one hundred thousand shillings or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

PART III – FORFEITURE OF NARCOTIC DRUGS, PSYCHOTROPIC SUBSTANCES, IMPLEMENTS AND CONVEYANCE

19. Forfeiture of narcotic drugs, etc.

Where—

- (a) any person is found in possession of any narcotic drug or psychotropic substance and—
 - (i) he has no legal authority for the possession of the narcotic drug or psychotropic substance; or
 - (ii) the narcotic drug or psychotropic substance found in his possession is in excess of the quantity, or is of a quality different from the quality, he is authorized to have in his possession; or
- (b) any narcotic drug or psychotropic substance is found in a place, other than a place where it is authorized to be kept; or
- (c) a contravention of any provision of this Act is committed in relation to any narcotic drug or psychotropic substance,

all the narcotic drugs or psychotropic substances found in the possession of that person or found in that place or in relation to which a contravention of any provision of this Act is committed shall be forfeited to the Government.

20. Forfeiture of conveyance, implement, etc.

(1) Any machinery, equipment, implement, pipe, utensil, or other article used for the commission of any offence under this Act shall be forfeited to the Government.

(2) Every conveyance used for the commission of any offence under this Act or for carrying any machinery, equipment, implement, pipe, utensil or other article used for the commission of any offence under this Act, or any narcotic drug or psychotropic substance, shall be forfeited to the Government:

Provided that where, on application made by the person who was the owner of the conveyance to the court in which any prosecution for any offence under this Act or before which any proceedings under this Act for the forfeiture and condemnation of any conveyance, not being a proceeding under Part IV is pending, the court is satisfied beyond reasonable doubt that—

- (a) the person who was the owner of the conveyance; and
- (b) in the case of an aircraft or ship, every person who was a responsible officer thereof, when it was made use of for such conveyance, was not concerned in or privy to such use, the conveyance shall be restored to the owner by the court.

PART IV – RESTRAINT ORDER, FORFEITURE OF PROPERTY AND PROCEEDS OF CRIME

Interpretation

21. Interpretation of Part

(1) In this Part, unless the context otherwise requires—

“**Court**” means the High Court;

“**defendant**” has the same meaning as in the Civil Procedure Act (Cap. 21);

“**respondent**” means the person against whom an application is made under section 22(1);

“**restraint order**” means any order under section 26(1);

“**revenue**” means all tolls, taxes, rates, duties, fees, fines, penalties, rents and other sums due to the Government or a local authority;

“**specified offence**” means—

- (a) any offence under sections 3, 4, 5 and 6 or any other offence under this Act specified by the Minister by order published in the *Gazette* for the purposes of this Part;
- (b) a conspiracy to commit or an attempt to commit any offence referred to in paragraph (a);

- (c) inciting another person or attempting to incite any person to commit any offence referred to in paragraph (a); or
- (d) aiding, abetting, counselling or procuring any offence referred to in paragraph (a);

(2) For the purposes of this Part references to an “**accused person**” shall be deemed to include reference to any defendant in a complaint in respect of an offence under this Act.

Restraint order

22. Application for restraint order

(1) Where there are reasonable grounds to believe that any person has committed a specified offence and investigation has commenced in relation to it, the Director of Public Prosecutions may apply to the Court for a restraint order in respect of all or any of the property of the person.

(2) An application for a restraint order under subsection (1) may be made *ex parte* to the Court and shall be accompanied by an affidavit sworn on the information and belief of the Director of Public Prosecutions deposing to the following matters—

- (a) the offence alleged to have been committed by the person and in relation to which investigation has commenced;
- (b) the grounds for believing that the person has committed the offence; and
- (c) a description, as far as possible, of the property in respect of which the order is sought.

(3) No application for a restraint order shall be entertained against any person—

- (a) after the investigation referred to in subsection (1) has concluded and it has been decided not to make any complaint or give any information, in respect of the commission of any specified offence by that person; or
- (b) where after the investigation referred to in subsection (1) a complaint has been made or information has been given, a final decision has been given in respect thereof by a court having jurisdiction to give it.

(4) In this section “**final decision**” in respect of any complaint or information means—

- (a) where there has been an appeal from a decision of a court, the decision on that appeal; or
- (b) where there have been more appeals than one from such decision, the decision on the appeal last made.

[Act No. 12 of 2012, Sch.]

23. Transfer after notice of application for restraint order void

Any transfer by any person against whom any application has been made under section 22 of any property to which the application relates or any right or interest in such property shall, while the application is pending and subject to the other provisions of this Part, be void:

Provided that where an application under section 22 is dismissed by the Court, and the Director of Public Prosecutions intimates to the Court that he intends to appeal against the dismissal, the Court may direct that this section shall continue to apply in relation to the property in respect of which the application has been made until the appeal is finally disposed of.

[Act No. 12 of 2012, Sch.]

24. Statement of assets and examination of respondent

(1) The Court may, before or after an order is made on any application under section 22, direct the respondent to submit, within such time as is allowed by the Court, a statement of all his assets and liabilities.

(2) A respondent who, after being directed by the Court to do so under subsection (1)—

- (a) refuses or fails to submit a statement of all his assets and liabilities; or
- (b) submits a statement which is false or misleading in any material particular, shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

25. Service of notice of application for restraint order

(1) Subject to this Act, a copy of the application for a restraint order shall be served on the respondent in the same manner as if it is a notice of motion and the respondent shall be given by the Court a reasonable opportunity of being heard before a final order is made on the application in accordance with the rules of court made in respect thereof, or until rules are made, in accordance with the rules of court applicable to the hearing of motions.

(2) Nothing in subsection (1) shall be deemed to prevent the Court from making such interlocutory orders as it deems appropriate to meet the ends of justice and to prevent the respondent from defeating the purposes of the provisions of this Part before the service of notice under subsection (1) on the respondent.

(3) Without prejudice to subsection (2), the Court may, pending decision on an application under section 22, attach any movable property of the respondent including moneys payable to him.

26. Restraint order

(1) Where an application for a restraint order has been made under section 22, and the Court is satisfied of the matters referred to in that section in relation to the respondent, the Court may make either or both of the following orders—

- (a) prohibiting the respondent or any other person on his behalf, from disposing of, or otherwise dealing with, the property specified in the order or any interest therein; or
- (b) prohibiting the respondent or the other person from disposing of or otherwise dealing with the property or interest therein otherwise than in such manner as may be specified in the order; or
- (c) directing the Official Receiver to take custody and control of the property specified in the order and to manage or otherwise deal with the property in accordance with the directions of the Court.

(2) Where an order has been made under subsection (1)(b)—

- (a) every person who is in possession of any property to which the order relates shall forthwith hand over the property to the Official Receiver, failing which the Official Receiver shall have power to recover possession of that property and for that purpose to break open any lock and to use such force as he deems reasonable; and
- (b) without prejudice to subsection (1), a bank shall not pay to the respondent, or to any other person on the order or on behalf of the respondent any money from sums held in any current, deposit or other account in the bank in the name of the respondent.

27. Notice of order under section 26

An order made under section 26 shall be served on the respondent in the same manner as if it is an order of injunction and shall be published in at least one newspaper circulating in Kenya and in the *Gazette* and, where any property to which the order relates is situated in a country outside Kenya on the date of the order, in at least one newspaper having circulation in that country.

28. Effect of restraint order

(1) Where a restraint order has been made by the Court in respect of any property, all transfers of that property or any interest in that property, during the period when the restraint order is in force, shall be void.

(2) Nothing in subsection (1) shall prevent—

- (a) any court from enforcing a mortgage or charge against any property referred to therein where the Court is satisfied that—
 - (i) the mortgage or charge was created *bona fide* for valuable consideration; or
 - (ii) the person in whose favour the mortgage or charge was created and registered was not concerned in, or privy to, the commission of a specified offence by the person against whom the restraint order has been made; or
- (b) the recovery of any revenue due to the Government or a local authority by sale of any property referred to therein.

(3) Where a restraint order has been made in respect of any property, the Attorney-General shall be made a party to any action or other proceeding for the enforcement of any mortgage or charge against the property.

29. Duration of restraint order

Subject to this Part, a restraint order in respect of any property shall remain in force until it is revoked by the Court or the property, in respect of which it has been made, is forfeited to the Government.

30. Offences in respect of restraint order

Any person on whom an order made under section 26 is served and who, while the order is in force, contravenes, or fails to comply with the order shall be guilty of an offence and liable to imprisonment for a period not exceeding ten years.

31. Management of property by Official Receiver

(1) Where the Court has directed the Official Receiver under section 26 to have the custody and control of any property specified in a restraint order, the Court may—

- (a) on the application of the Director of Public Prosecutions, the Official Receiver or the person against whom the order has been made—
 - (i) give instructions to the Official Receiver in respect of the management of the property; and
 - (ii) decide any question that may arise in the course of the management of the property by the Official Receiver; and
- (b) on the application of the Director of Public Prosecutions or the Official Receiver direct the person against whom the restraint order has been made, to furnish to the Official Receiver, within such time as may be specified by the Court, such information and particulars relating to the property, in respect of which the restraint order has been made, as may be specified in the direction.

(2) The Official Receiver shall not be personally liable—

- (a) for any loss or damage, arising from his having taken custody or control of any property, sustained by a person claiming the property or any interest in the property; or
- (b) for the cost of proceedings taken to establish any claim to the property or to any interest in the property,

unless the Court is of the opinion that the Official Receiver has been guilty of negligence in respect of the taking of custody or control of the property.

(3) The Official Receiver shall not be personally liable for any taxes, duties, rates or other municipal or other statutory charges imposed by or under any law in respect of the property of any person of which he has been directed by a restraint order to take custody and control except to the extent, if any, of rents and profits received by the Official Receiver in respect of that property on or after the date of the restraint order.

(4) Where the Official Receiver has taken custody and control of the property of any person in accordance with a restraint order, he shall be entitled to receive, in respect of the exercise and the performance of his functions in relation to the property, fees equal to the fees that he would be entitled to receive if he were exercising and performing the functions in consequence of his having taken

custody or control of the property by virtue of a receiving order made under the Bankruptcy Act (Cap. 53).

[Act No. 12 of 2012, Sch.]

32. Exclusion of property, recognition of claims, and revocation of restraint order

(1) Any person who has title to any property or claims an interest, including a mortgage or charge in or over any property in respect of which a restraint order has been made, may apply to the Court, within thirty days of the making of the restraint order, stating the particulars of his claim and if the Court is satisfied that the applicant has title to the property, the Court may exclude the property from the operation of the restraint order.

(2) An application under subsection (1) may be entertained by the Court after the expiry of the period of thirty days if the Court is satisfied that there are sufficient reasons to do so.

(3) No order in favour of any applicant under subsection (1) shall be made by the Court if there is reasonable ground to believe that the applicant was concerned in, or privy to, the specified offence alleged to have been committed by the person against whom the restraint order has been made.

(4) Where—

- (a) before the expiry of six months or such further time as may be allowed by the Court in that behalf, from the date of the restraint order, no complaint is made or information is laid before any Court in respect of any specified offence against the person against whom the restraint order is made; or
- (b) a complaint is made or information is laid against such person in respect of a specified offence and the complaint is dismissed or the person is discharged or acquitted by the court which tried him and there is no appeal from the dismissal of the complaint or the discharge or acquittal is confirmed on appeal,

the Court may, on the application of the person against whom the restraint order was made, revoke the restraint order.

33. Stay of hearing of application under section 22

Where an application has been made to the Court under section 22 against any person on the ground that he has committed a specified offence, the Court may, on the application either of the Director of Public Prosecutions or of the respondent, or otherwise, stay the hearing of the application until a final decision has been made in respect of the complaint or information.

[Act No. 12 of 2012, Sch.]

34. Death of person against whom restraint order has been made

(1) Where a person against whom a restraint order has been made dies within the period specified in section 31(1)(b) or before the complaint made or information laid against him in any court in respect of a specified offence is finally decided or

any appeal against any such decision is finally disposed of by the court to which the appeal is made, any of his legal representatives may apply to the Court within sixty days of his death for the revocation or variation of the restraint order.

(2) After hearing the Director of Public Prosecutions and considering such evidence as may be produced by him and after hearing the legal representative who has made the application under subsection (1) and considering the evidence proved by him—

- (a) where the Court is satisfied that the person against whom the restraint order was made had committed the specified offence referred to in the application for the restraint order under section 22, the Court may make an order in accordance with the provisions of section 42, and the provisions of sections 36, 37, 38, 39 and 41(3), (4), (5) and (6) shall *mutatis mutandis* apply to the proceedings under this subsection; and
- (b) in any other case, the Court may revoke the restraint order.

[Act No. 12 of 2012, Sch.]

35. Variation of restraint order

On application made by the person against whom a restraint order has been made, or by any other person, the Court may vary the restraint order in such manner as may be necessary to meet the ends of justice. *Forfeiture of Property*

36. Forfeiture of property

Subject to this Part, where any person has committed a specified offence, all the property owned by him on the date of the commission of that offence or acquired by him after that date shall be forfeited to the Government.

37. Section 36 not to affect certain liabilities

The provisions of section 36 shall not affect—

- (a) the rights of any person who has any mortgage or charge in respect of any property liable to forfeiture under that section where—
 - (i) the mortgage or charge was created before the commission of the specified offence *bona fide* and for valuable consideration;
 - (ii) the mortgagee or chargee was not concerned in or privy to the commission of the offence; or
- (b) the right of any local authority to recover any arrears of revenue by the sale of any such property.

38. Provision for maintenance of wife and children

(1) While making an order for forfeiture of the property of a person under section 41, the Court may place at the disposal of the Official Receiver such part of his property as the Court thinks fit for meeting the liability of such person for paying maintenance to—

(a) his wife, if he has a wife living; and (b) minor child or children, if any, and determine the sum payable to the wife and each minor child, the person to whom the sum payable in respect of each child shall be paid, and the periods of payment.

(2) In determining the value of the property to be placed at the disposal of the Official Receiver under subsection (1) the Court shall have regard to the property released under section 40 to the person against whom the order for forfeiture of property is proposed to be made.

(3) The Court may, on application of the Director of Public Prosecutions, the Official Receiver or any person to whom maintenance is payable under subsection (1) vary its decision in respect of the matters referred to therein.

(4) When maintenance ceases to be payable to the wife and all the children of the person whose property is liable to forfeiture under section 36, the Court shall order the property placed at the disposal of the Official Receiver under subsection (1), including accretions thereto, or the balance of such property including accretion thereto, to be forfeited to the Government.

[Act No. 12 of 2012, Sch.]

39. Provision for payment of moneys owed

(1) Where a person, in respect of whom a notice has been published under section 41(2) or (5), owed immediately before the commission by him of the relevant specified offence, moneys not secured by or charged on property liable to forfeiture under section 36, any person to whom the moneys were due may apply to the Court, within thirty days of the publication of the notice in a newspaper or such further time as may be allowed by the Court, requesting that such part of the property be liable to forfeiture and placed at the disposal of the Official Receiver for the payment of the moneys so owed.

(2) On the receipt of an application under subsection (1) and on being satisfied that the applicant was not concerned in, or privy to, the commission of the offence, the Court may release from forfeiture and place at the disposal of the Official Receiver such part of the property of the person in respect of whom a notice has been published under section 41(2) or (5), as it thinks fit having regard to the following—

- (a) whether the liability was incurred *bona fide*;
- (b) the secured debts of the person;
- (c) the revenues that the person owes to the Government or any local authority; and
- (d) the proportion of the total liabilities of the person to his total assets.

40. Claim by person who has committed a specified offence

(1) Any person in respect of whom a notice has been published under section 41(2) or (5) may apply to the Court, within thirty days of the publication of the notice in a newspaper, for the release from forfeiture of any property belonging to him on the grounds that he acquired it—

- (a) by succession; or

- (b) by gift from a relation who was not concerned in, or privy to, the specified offence of which he was convicted or with reference to which the application for forfeiture has been made under section 41(4), or any other offence under this Act; or
- (c) with moneys earned by him through lawful means.

(2) Where the Court is satisfied that the property was acquired by the person applying under subsection (1) in any manner specified in that subsection, the Court shall, subject to any terms and conditions as may be specified by it, exclude it from the property forfeited to the Government under section 36.

(3) In this section, “**relation**” includes, in the case of a man, his wife or reputed wife and in the case of a woman her husband or reputed husband.

41. Procedure in respect of forfeiture

(1) Where any person has been convicted of a specified offence, and the court convicting him is a court other than the High Court, the court convicting him shall, as soon as possible after such conviction make a report to the High Court stating the particulars of the person so convicted, the offence of which he was convicted and such other particulars as may be prescribed by regulations.

(2) The High Court, on receiving the report under subsection (1) in respect of any person, or on convicting any person for a specified offence, shall publish in a newspaper circulating in Kenya and in the *Gazette*, a notice stating the fact of such conviction, the liability for his property to be forfeited and the right of any person referred to in section 37, 38(1) or 39(1) or by the person in respect of whom the notice is published to apply, within such time as may be specified therein (which shall in the case of an application under section 39(1) or 40(1) be consistent with those provisions), for any relief to which he is entitled under section 37, 38, 39 or 40.

(3) For the purposes of this Part, the conviction of a person for a specified offence shall be deemed to be conclusive evidence that he has committed the specified offence.

(4) Without prejudice to the provisions of subsections (1) and (2), the Director of Public Prosecutions may apply to the Court to recover any forfeiture imposed by section 36.

(5) Where any application is made under subsection (4), the Court shall, as soon as possible after the application is made, publish in a newspaper circulating in Kenya and in the *Gazette* a notice stating the fact of the application having been made and the right of any person referred to in section 37, 38 or 39(1) or by the person in respect of whom the notice is published to apply, within such time as may be specified therein (which shall in the case of an application under section 39(1) or 40(1) be consistent with those provisions), for any relief to which he is entitled under section 37, 38, 39 or 40.

(6) The Court may examine the person, in respect of whose property the application is made—

- (a) to determine his property with respect to any matter relating to an application made under section 37, 38, 39 or 40; or

- (b) where he has not been convicted of the specified offence referred to in the application under subsection (4), with his consent, in respect of the specified offence he is alleged to have committed, and take and receive such other evidence as it deems necessary to adjudicate on the matters arising for decision in the proceedings.
[Act No. 12 of 2012, Sch.]

42. Forfeiture order

(1) At the conclusion of the proceedings under section 41 the Court shall make an order determining—

- (a) whether the person against whom the application has been made has committed a specified offence;
- (b) the property of that person;
- (c) any mortgage or charge secured by or over the property;
- (d) the property placed at the disposal of the Official Receiver under section 39(1) and the sums of money the Official Receiver has to pay in respect of the person mentioned in section 38(1)(a) or (b), the person to whom the sum payable in respect of each minor child shall be paid, and the dates of payment;
- (e) the property excluded from forfeiture under section 40;
- (f) the property forfeited to the Government; and
- (g) the extent to which any property forfeited to the Government, shall be liable for arrears of revenue due to a local authority.

(2) A notice shall be published in a newspaper circulating in Kenya and in the *Gazette* stating the particulars of the property placed at the disposal of the Official Receiver and the property forfeited to the Government under subsection (1).

(3) An order under subsection (1) so far as it relates to immovable property forfeited to the Government shall be treated for all purposes as if it were a transfer or other document effecting the transfer of immovable property and the Commissioner of Lands or Chief Land Registrar, as the case may be, shall take due notice thereof and shall make such annotations on the records as may be necessary.

43. Effect of forfeiture order

(1) Where any order has been made under section 42—

- (a) no mortgage or charge in favour of any person or authority (not being the Government or a local authority), other than a mortgage or charge mentioned in the order as being secured by any or all of the property in respect of which the order is made, shall be enforceable by any court or other authority in respect of the property stated in the order; and
- (b) the property stated in the order as forfeited to the Government shall vest in the Government absolutely subject only to any mortgage or

charge, or arrears of revenue due to a local authority, to which, as expressly stated in the order, the property is subject.

(2) An order under section 42(1) in respect of immovable property shall be treated for all purposes as if it were a transfer or other document effecting the transfer of immovable property and on the production of a certified copy of the order the Chief Land Registrar or the Commissioner of Lands, as the case may be, shall make such annotations on the records as may be necessary.

(3) Every person who is in possession of any property forfeited to the Government under section 42(1) shall, on the production of a certified copy of the order, forthwith hand over possession of it to the officer specified in that behalf, by the Minister for the time being responsible for finance, by general or special order.

(4) Without prejudice to the provisions of subsection (3), an order under section 42(1) may be executed as if it were an order for the delivery of possession of movable or immovable property, as the case may be.

44. Penalty for contravention of section 43(3)

Any person who contravenes the provisions of section 43(3) shall be guilty of an offence and liable to a fine which shall not be less than the value of the property, the possession of which he refuses or fails to hand over in addition to imprisonment for one year.

45. Restoration of forfeited property

(1) Where the conviction of any person for a specified offence is set aside by a court hearing any appeal against the conviction, that person may apply to the Court to restore to him the property so forfeited.

(2) The Court, to which any application is made under subsection (1), may, after giving notice to the Director of Public Prosecutions and after hearing the applicant and the Director of Public Prosecutions and receiving and considering any evidence that it considers necessary for a proper decision in the matter, make such order as it thinks proper and just.

[Act No. 12 of 2012, Sch.]

46. Arrangement regarding tracing, realisation, etc. of property in a country outside Kenya

The Government of Kenya may enter into an arrangement with the Government of any other country and make provisions for the recovery and handing over of possession to the Government of Kenya, of any property in respect of which an order of forfeiture has been made under section 42 and which is in that country or for tracing and preserving any property in that country owned by or under the control of any person who has, or is suspected to have, committed any offence under this Act.

47. Arrangement regarding tracing, realisation, etc. of property in Kenya

(1) The Government of Kenya may enter into an arrangement on a reciprocal basis with the Government of any other country in respect of the recovery, and handing over of possession to the Government of that country of any property in Kenya which is confiscated by or forfeited to the Government of that country in

consequence of the commission by any person of an offence against a corresponding law of that country or for tracing and preserving any property in Kenya owned by or under the control of any person who has, or is suspected to have, committed an offence against such corresponding law.

(2) Where an arrangement referred to in subsection (1) has been entered into between the Government of Kenya and the Government of any other country, the Minister may, by order, give effect to that arrangement and prescribe the procedure in relation to the recovery and handing over of possession to the Government of that country, or tracing and preserving, of any property to which the arrangement applies.

(3) An order made under subsection (2) shall be laid before the National Assembly without unreasonable delay, and if a resolution is passed by the Assembly within twenty days on which it next sits after the order is so laid that the order be annulled, it shall henceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the issuing of a new order.

48. Procedure

(1) Proceedings under this Part shall be deemed to be civil proceedings.

(2) Subject to this Part, the practice and procedure of the Court or any other court in regard to any matter referred to in this Part shall be governed by regulations made by the Attorney-General and, subject to any such regulations, by rules of court.

Money Laundering

49. *Repealed by Act 9 of 2009, Sixth Sch.*

50. Provisions of Part in addition to and not in derogation of Parts II and III

The provision of this Part shall be in addition to, and not in derogation of, the provisions of Part II and Part III in relation to forfeiture of any land, narcotic drug or psychotropic substance, conveyance or any other article or thing.

PART V – REHABILITATION

51. Interpretation of Part

In this Part—

“**Centre**” means a rehabilitation centre established under section 52;

“**Council**” means the Advisory Council for the Rehabilitation of Narcotic Addicts appointed under section 56;

“**Fund**” means the Rehabilitation Fund established under section 53;

“**Minister**” means the Minister for the time being responsible for Health.

52. Rehabilitation Centres

The Minister may establish such number of rehabilitation centres as he thinks fit for the care, treatment and rehabilitation of persons addicted to narcotic drugs or psychotropic substances.

53. Rehabilitation Fund

(1) The Minister shall establish a special fund to be known as the Rehabilitation Fund.

(2) The Fund shall consist of—

- (a) such sums as may be provided by Parliament;
- (b) such portion of the property forfeited to the Government under Part IV as may be assigned to the Fund by the Minister for the time being responsible for Finance by order published in the *Gazette*;
- (c) sums or other property received by the Fund by way of fees, contribution, gift or grant from or by way of testamentary bequest by any person;
- (d) such sums as may be allocated from time to time to the Fund from loan funds;
- (e) moneys earned or arising from any property, investments, mortgages and debentures acquired by, or vested in, the Fund;
- (f) any property, mortgages, debentures, or investments, acquired by, or vested in, the Fund;
- (g) sums borrowed by the Fund for the purposes of meeting any of its obligations or discharging any of its functions; and
- (h) all other sums or other property which may in any manner become payable to, or vested in, the Fund.

(3) For the purposes of this section “**loan funds**” means such sums as may be made available from time to time by the Government by way of loan.

(4) Where by an order under subsection (2)(b) any immovable property is assigned to the Fund, the Minister shall deal with the property in such manner as he thinks fit and may sell the property and use the proceeds of sale for the purposes for which the Fund is established.

(5) The Fund shall be used for meeting the capital and current expenditure relating to the Centres.

54. Board to manage the Fund

(1) Subject to this Part, the Fund shall be administered by a Board consisting of the Permanent Secretary to the Treasury and two other persons appointed by the Minister responsible for finance in consultation with the Minister, of whom one shall be appointed as the Chairman.

(2) The Board may, with the approval of the Minister for the time being responsible for finance, invest or place on a deposit account any of the moneys of

the Fund and any interest earned on moneys so invested or deposited shall be placed to the credit of the Fund.

55. Management of the Fund

- (1) The Board shall—
- (a) impose conditions as to the use to be made of any expenditure authorized by the Board and such conditions may impose any reasonable prohibitions, restrictions or requirements concerning such use or expenditure;
 - (b) cause to be kept proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of the Fund;
 - (c) transmit to the Controller and Auditor-General in respect of each financial year and within four months after the end of such financial year, a statement of account relating to the Fund specifying income to the Fund in such details as the Treasury may from time to time direct in accordance with section 18 of the Exchequer and Audit Act, (Cap. 412) including any investment or deposit made under section 54(2) and shall furnish such additional information as may be deemed sufficient and necessary for the purpose of examination and audit by the Controller and Auditor-General under section 19 of the Exchequer and Audit Act (Cap. 412), and every statement of account shall include details of the balance between the assets and liabilities of the Fund, and indicate the financial status of the Fund, as at the end of the financial year concerned.

56. Advisory council for rehabilitation of narcotic addicts

(1) The Minister shall appoint a council to be known as the Advisory Council for the Rehabilitation of Narcotic Addicts consisting of a chairman and such number of other persons, not exceeding fifteen, as the Minister thinks fit, from among persons who are qualified and have had experience of, and shown capacity in, matters relating to the care, treatment and rehabilitation of persons addicted to narcotic drugs or psychotropic substances or, in administration or finance.

(2) The terms and conditions of appointment of the chairman and other members of the Council shall be such as shall be prescribed by the Minister by regulation.

57. Functions of the Council

The Council shall advise the Minister on such matters, as may be referred to it by the Minister, relating to the administration of the Centres and the care, treatment and rehabilitation of drug addicts.

58. Committal of persons to Centers

(1) A court convicting any person for an offence under this Act may, if the court is satisfied that he is addicted to a narcotic drug or psychotropic substance and that he is in possession of the narcotic drug or psychotropic substance only for his personal consumption, order that such part, as it thinks fit, of the period of imprisonment imposed on him be spent in a Centre specified by the court.

(2) The court may, on the application of the Attorney-General or the person convicted or otherwise, vary or revoke the order.

(3) Where on the report of the officer in charge of the Centre to which a convicted person is committed under subsection (1), or otherwise, the court which committed him to the Centre is satisfied that the convicted person has successfully undergone the treatment and rehabilitation programme of the Centre and that he is no longer an addict the court may, having regard to all the circumstances of the case, grant remission of the whole or part of the remaining period of imprisonment imposed on him.

PART VI – INTERNATIONAL ASSISTANCE IN DRUG INVESTIGATION AND PROCEEDINGS

59. Request by Kenya to other countries

(1) For the purposes of an investigation or proceedings under this Act, the Director of Public Prosecutions may request an appropriate authority of another country to arrange for—

- (a) evidence to be taken, or information, documents or articles to be produced or obtained in that country; or
- (b) a warrant or other instrument authorizing search and seizure to be obtained and executed in that country; or
- (c) a person from that country to come to Kenya to assist in the investigation or proceedings; or
- (d) a restraint order or forfeiture order made under this Act to be enforced in that country, or a similar order to be obtained and executed in that country; or
- (e) an order or notice under this Act to be served on a person in that country; or
- (f) other assistance to be provided, whether pursuant to a treaty or arrangement between Kenya and that country or otherwise.

(2) Requests by other countries to Kenya for assistance of a kind specified in subsection (1) may be made to the Director of Public Prosecutions.

[Act No. 12 of 2012, Sch.]

60. Evidence, etc. obtained from another country

Evidence, documents or articles obtained pursuant to a request made under section 59 shall—

- (a) be received in evidence in Kenya;
- (b) not be used for a purpose other than that specified in that request, except with the consent of the appropriate authority of the foreign country; and
- (c) be returned when its use is no longer required, unless that authority indicates to the contrary.

61. Transfer to Kenya of a person to assist in an investigation or proceedings

(1) The effect of a request under paragraph (c) of section 59 shall be to authorize the entry into and departure from Kenya of the person who is the subject of the request, as well as the presence of the person in Kenya for so long as required for the purposes of the request.

(2) Where the person who is the subject of a request under paragraph (c) of section 59 is in custody in the other country by virtue of a sentence or order of a court or tribunal exercising criminal jurisdiction, the effect of a request under that paragraph shall be to authorize the detention in custody of the person in transit to and from Kenya, and while in Kenya at such places as the Director of Public Prosecutions may specify.

(3) A person in Kenya pursuant to a request under subsection (1) of section 59 shall not—

- (a) be detained, prosecuted or punished for any offence that is alleged to have been committed, or was committed, prior to that person's departure from the requested country pursuant to the request;
- (b) be subjected to any civil suit in respect of any act or omission that is alleged to have occurred, or occurred, prior to that person's departure from the requested country pursuant to the request;
- (c) be required to give evidence or produce a document or thing which he could not be required to give or produce—
 - (i) in any criminal proceeding in Kenya; or
 - (ii) subject to the requesting country conceding any claim by the person to a privilege or immunity under the law of the requested country in any criminal proceedings in the requested country; or
- (d) be required to give evidence or produce a document or thing in any proceeding in Kenya other than the proceeding to which the request relates.

[Act No. 12 of 2012, Sch.]

62. Requests to Kenya for evidence

(1) Where another country requests assistance from Kenya in obtaining evidence for the purpose of an investigation or a proceeding in relation to an offence under corresponding law of that country, the Attorney-General may nominate a court in Kenya to receive such evidence as appears to the court appropriate in order to give effect to the request.

(2) The court nominated pursuant to subsection (1) shall have the same power to secure the attendance of witnesses, administer oaths and receive evidence as it has for the purposes of other proceedings before the court.

(3) The evidence received by the court shall be certified or verified by the court in such manner as the Attorney-General specifies and then furnished to the Attorney-General for transmission to the requesting country.

63. Requests to Kenya for search warrants

(1) Where another country requests assistance from Kenya in obtaining and executing a search and seizure warrant for the purposes of an investigation or proceedings relating to the corresponding law of that country, the Director of Public Prosecutions may apply to the court for the warrant requested.

(2) Where, on application, the court is satisfied that—

- (a) a proceeding or investigation relating to a drug offence has commenced in the requesting country; and
- (b) there are reasonable grounds for believing that a thing relevant to the investigation or proceedings is located in Kenya,

the court may issue a warrant under this section authorizing entry for the purpose of search for the thing and if found seizure of the thing.

(3) The laws of Kenya with respect to the procedure for the making and disposal of an application for an execution of a search warrant shall apply, as if the application were for the issue of a warrant under the Criminal Procedure Code (Cap. 75).

[Act No. 12 of 2012, Sch.]

64. Requests to Kenya for the enforcement of certain orders

(1) Where—

- (a) a court or tribunal of another country issues a restraint order, forfeiture order or pecuniary penalty order in respect of an offence against the corresponding law of that country; and
- (b) that country requests assistance from Kenya in enforcing those orders against property believed to be located in Kenya, the Director of Public Prosecutions may apply to the High Court for the registration of the order.

(2) Where the Director of Public Prosecutions applies to the High Court for registration of an order under subsection (1) the High Court shall register the order.

(3) An order registered in accordance with this section has effect and may be enforced, as if it were an order made under section 26 or 42, as the case may be.

[Act No. 12 of 2012, Sch.]

PART VII – MISCELLANEOUS PROVISIONS

65. Jurisdiction

Any conduct which would constitute a specified offence if engaged in in Kenya shall constitute that offence if engaged in in a Kenyan ship or aircraft.

66. Offences by body corporate

Where any offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly and in addition the court convicting may, where such body corporate is registered under such written law, make an order directing that such body corporate be de-registered.

67. Analysts

(1) The Minister, in consultation with the Minister for the time being responsible for matters relating to Health, may from time to time by notice in the *Gazette* designate any duly qualified analyst whose qualification shall be prescribed by the Minister for the purposes of the Act.

(2) In any prosecution or other proceedings under this Act a certificate signed or purported to be signed by an analyst, designated under subsection (1), stating that he has analysed or examined any substance and the result of his analysis or examination, shall be admissible in evidence and shall be *prima facie* evidence of the statements contained in the certificate and of the authority of the person giving or making the same, without any proof of appointment or designation or signature.

[Act No. 7 of 2007, Sch.]

68. Burden of proof in respect of certain matters

In any proceedings against any person for an offence under this Act, it shall not be necessary for the prosecution to negative by evidence any licence, authority, or other matter of exception or defence, and the burden of proving any such matter shall be on the person seeking to avail himself thereof.

69. Power to question and request production of documents, etc.

(1) For the purpose of investigating the commission, or of preventing the commission, of any offence under this Act or for the purpose of giving effect to any provision of this Act, a police officer may—

- (a) question any person in respect of any matter relevant to that purpose, and such person shall answer fully and truthfully all such questions; or
- (b) request any person to produce before the police officer within such reasonable time not exceeding seven days as may be specified by him, or to allow him access to documents or other materials in the possession or control of such person and relevant to the aforesaid purpose, and such person shall fully and truthfully comply with that request.

(2) A police officer may take one or more copies of any document produced before him, or to which he is allowed to have access, under this section.

(3) The provisions of subsection (1)—

(a) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of any information imposed by any written law, other than this Act, or otherwise; and

(b) shall not confer any right to production of, or to have access to, items subject to legal privilege or excluded material.

(4) Where the documents or other material in respect of which a request to produce or to be allowed access is made under subsection (1)(b), consists of information contained in a computer, the request shall have effect as a request to produce the material in a form in which it can be taken away or, as the case may be, as a request to give access to the material in a form in which it is visible and legible.

70. Interpretation

(1) Subject to subsection (2), in section 69—

“items subject to legal privilege” means—

- (a) communications between an advocate and his client or any person representing his client, made in connection with the giving of legal advice to the client;
- (b) communications between—
 - (i) an advocate and his client or any person representing his client; or
 - (ii) between an advocate, or his client, or any such representative, and any other person,
 made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; or
- (c) items enclosed with or referred to in such communications and made—
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when the items are in the possession of a person who is entitled to possession of them.

(2) Any item held with the intention of furthering a criminal purpose is not an item subject to legal privilege.

(3) Subject to subsection (4), in section 69—

“excluded material” means—

- (a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence; or
- (b) human tissue or tissue fluid which has been taken for the purpose of diagnosis or medical treatment and which a person holds in confidence; or
- (c) journalistic material which a person holds in confidence and which consists of documents or of records other than documents;

(4) A person holds material other than journalistic material in confidence for the purposes of this section if he holds it subject—

- (a) to an express or implied undertaking to hold it in confidence; or
- (b) to a restriction on disclosure or an obligation of secrecy contained in any written law whether made or enacted before or after the commencement of this Act.

(5) A person holds journalistic material in confidence for the purposes of this definition if—

- (a) he holds it subject to such an undertaking, restriction or obligation; and
- (b) it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

(6) In subsection (3)—

“personal records” means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating to—

- (a) his physical or mental health;
- (b) spiritual counselling or assistance given or to be given to him; or
- (c) counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organization, or by any individual who—
 - (i) by reason of his office or occupation has responsibilities for his personal welfare; or
 - (ii) by reason of an order of a court has responsibilities for his supervision;

“journalistic material” means material acquired or created for the purposes of journalism but only if such material is in the possession of a person who acquired or created it for such purposes; and a person who receives material from someone who intends that the recipient shall use it for such purposes is to be taken to have acquired it for those purposes;

“document” includes, in addition to a document in writing—

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (d) any film, microfilm, negative, tape or other device in which one or more visual images are embodied so as to be capable of being reproduced therefrom.

71. Inspection

Any police officer or any other person authorized in writing by the Commissioner of Police for the purposes of this section, the Director of Medical Services or any person authorized by him shall, for the purpose of the execution of this Act, have power to enter the premises, or other place, of any person lawfully carrying on business as a producer, manufacturer, seller or distributor of, or otherwise dealing in, any narcotic drugs or psychotropic substances and to demand the production of, and to inspect, any books or documents relating to his dealings in any such narcotic drug or psychotropic substance and to inspect any stocks of any such narcotic drugs or psychotropic substances and seize and detain any narcotic drug or psychotropic substance, which in the opinion of such authorized person, is below standard or unfit for use for medicinal purposes.

72. Power to search person, vehicles, etc.

(1) Any police officer, or any other person authorized in writing by the Commissioner of Police for the purposes of this section, who has reasonable cause to suspect that any person is in possession of, or is removing, any narcotic drug or psychotropic substance in contravention of this Act may—

- (a) stop and search that person and any conveyance in which he is and any package in his possession or under his control;
- (b) seize and detain for the purposes of proceedings under this Act any narcotic drug or psychotropic substance or any other thing (including any conveyance) which appears to be evidence of the commission of an offence under this Act, found in the course of the search; and
- (c) arrest and detain the person until he can be brought before a magistrate as soon as is reasonably practicable, and dealt with according to law.

(2) Any police officer, or any other person authorized in writing by the Commissioner of Police for the purposes of this section, who has reasonable cause to suspect that any motor vehicle, aircraft, ship, carriage or other conveyance was, or is being, made use of in the commission of any offence under this Act may stop and enter and search the motor vehicle, aircraft, ship, carriage or other conveyance and may for that purpose break open any door and remove any other impediment or obstruction to such entry.

(3) A police officer or authorized person referred to in subsection (1) or (2) may use such assistance and such force as may be reasonable for carrying out his functions under those subsections.

73. Power to search premises

(1) Where information on oath is laid before a magistrate alleging that there is reasonable ground for suspecting that—

- (a) an offence under this Act has been, or is being or is planned to be, committed and that evidence of the commission of, or plan to commit the offence is to be found on any premises or other place; or

- (b) any document or other material directly or indirectly relating to, or connected with, any transaction or dealing which is, or any intended transaction or dealing which, if carried out, would be—
- (i) an offence under this Act; or
 - (ii) in the case of a transaction or dealing carried out or intended to be carried out in any place outside Kenya, an offence against any corresponding law in force in that place,

is in the possession of or under the control of any person in any premises or other place, the Magistrate may, by warrant under his hand, authorize any police officer named in the warrant, with such assistance as that police officer thinks reasonable, at any time or times within one month from the date of the warrant, to enter and search the premises or other place named in the warrant.

(2) A police officer authorized by any warrant under subsection (1) to search any premises or other place may enter and search such premises or other place (including any receptacle found therein) and every person found therein or who, the police officer has reasonable ground to believe, has recently left those premises or that other place, and for that purpose may use such assistance and such force as may be reasonable and may break open any lock, and may seize any narcotic drug or psychotropic substance, or document or other material referred to in subsection (1), found therein or on any such person, and any other article or thing which he has reasonable ground to believe to be evidence of the commission or intended commission of any offence under this Act.

(3) Where information on oath is laid before a magistrate alleging that there is reasonable ground for suspecting that there is concealed on any person, animal or thing or in any receptacle, premises or other place, any movable property—

- (a) liable for forfeiture under Part IV;
- (b) in respect of which a restraint order has been made under section 26; or
- (c) liable for forfeiture under section 36,

the magistrate may, by warrant under his hand, authorize any police officer named in the warrant, with such assistance as that police officer thinks reasonable, at any time or times within one month from the date of the warrant, to enter and search the premises or other place or to search any person, animal, thing or receptacle.

(4) A police officer authorized by any warrant under subsection (3) to search any person, animal, thing, receptacle, premises or other place may search the person, animal, thing or receptacle, or may enter and search any building or other place, and for that purpose may use such assistance and such force as may be reasonable, and may break open any lock, and seize any movable property, referred to in subsection (3) found thereon or therein.

(5) Where any police officer not below such rank as may be specified by regulations is, for reasons to be recorded in writing, satisfied that the delay caused by the time required to apply for and obtain a warrant to enter and search under subsection (1) or (3) would defeat the purpose of the search, he may exercise the powers conferred on him by subsection (2) or (4) in relation to search and seizure without obtaining any warrant for search under subsection (1) or (3).

74. Seizure of narcotic drugs, etc.

Subject to this Act, all articles and things, including any narcotic drug or psychotropic substance, motor vehicle, aircraft, ship, carriage or other conveyance, that are liable to forfeiture under any provision of this Act may be seized and detained by any police officer or any other person authorized in writing by the Commissioner of Police for the purposes of this Act.

74A. Procedure upon seizure of narcotic drugs

(1) Where any narcotic drug or psychotropic substance has been seized and is to be used in evidence, the Commissioner of Police and the Director of Medical Services or a police or a medical officer respectively authorized in writing by either of them for the purposes of this Act (herein referred to as “**the authorised officers**”) shall, in the presence of where practicable—

- (a) the person intended to be charged in relation to the drugs (in this section referred to as “**the accused person**”);
- (b) a designated analyst;
- (c) the advocate (if any) representing the accused person; and
- (d) the analyst, if any, appointed by the accused person (in this section referred to as “the other analyst”), weigh the whole amount seized, and thereafter the designated analyst shall take and weigh one or more samples of such narcotic drug or psychotropic substance and take away such sample or samples for the purpose of analysing and identifying the same.

(2) After analysis and identification of the sample or samples taken under subsection (1), the same shall be returned to the authorized officers together with the designated analysts’ certificates for production at the trial of the accused person.

(3) Upon receipt of the designated analyst’s certificates and the samples analysed in accordance with the foregoing subsections the authorized officers shall, where the drug is found to be a narcotic drug or psychotropic substance within the meaning of this Act, arrange with a magistrate for the immediate destruction by such means as shall be deemed to be appropriate of the whole amount seized (less the sample or samples taken as evidence at any subsequent trial or any contemplated trial particularly where the accused person’s identity is not yet known or the accused person is outside the jurisdiction of Kenya at the time of taking such samples).

(4) The destruction of drugs and psychotropic substances ordered under subsection (3) shall be carried out by the authorised officers in the presence of the Magistrate and the accused person, where practicable, and his advocate (if any) and thereafter the magistrate shall sign a certificate in the prescribed form relating to such destruction.

(5) The production in court by either one of the authorised officers at the trial of an accused person of the sample or samples together with the designated analysts’ certificates and the magistrate’s certificate of destruction shall be conclusive proof as to the nature and quantity of the narcotic drug or psychotropic

substance concerned and of the fact of its destruction in accordance with the provisions of this section.

(6) The provisions of this section shall apply to all proceedings commenced on or after the 7th June, 2002.

[Act No. 2 of 2002, Sch., Act No. 7 of 2007, Sch.]

75. Keeping of property seized under Act

All articles and things, including any narcotic drug or psychotropic substance, motor vehicle, aircraft, ship, carriage or other conveyance seized by any person under this Act shall, as soon as possible, be delivered to the Commissioner of Police with a statement of the particulars relating to the seizure and the Commissioner of Police shall arrange for the articles and things to be kept safely until they are dealt with in accordance with any other provision of this Act, and shall ensure that all reasonable steps are taken to preserve the articles and things while they are so kept.

76. Search of persons and restriction thereto

No female shall be searched except by a female, and no male shall be searched except by a male under this Act.

77. Notice of seizure

(1) Where any narcotic drug or psychotropic substance, motor vehicle, aircraft, ship, carriage or other conveyance or any other article or thing liable for forfeiture is seized under this Act, notice of the seizure shall be given by the person seizing the same as soon as possible to the owner or to the person in charge thereof if such person is not the owner.

(2) A notice under subsection (1) shall be given to the owner or person in charge—

- (a) by delivering the notice personally to the owner or person in charge, as the case may be, or by sending the notice by post to his usual place of abode or business premises; or
- (b) if the owner or person in charge, as the case may be, is not known or, if known, he cannot be found after reasonable enquiry and his usual place of abode and his business premises are not known, or he refuses to accept the notice when tendered to him, by publishing the notice in one newspaper circulating in Kenya.

(3) Any person who claims any article or thing referred to in subsection (1) and seized under this Act, as its owner or any other person duly authorized by such owner may give notice to the Commissioner of Police that he claims the article or thing within thirty days of the date on which the notice of seizure under subsection (1) was delivered under subsection (2)(a) or, if the notice of seizure was not so delivered, of the date on which the owner came to know of the seizure:

Provided that no notice of claim shall be entertained by the Commissioner of Police under this subsection after the expiry of ninety days from the date of the seizure.

(4) Any narcotic drug or psychotropic substance, motor vehicle, aircraft, ship, carriage or other conveyance or any other article or thing seized under this Act and

in respect of which no notice of claim was given before the expiry of the time prescribed therefor shall be deemed to be taken and condemned and may be disposed of by the Minister in such manner as may be prescribed by regulations.

78. Condemnation of seized things

Where a person is convicted of an offence under this Act and any narcotic drug or psychotropic substance, motor vehicle, aircraft, ship, carriage or other conveyance or any other article or thing, liable to forfeiture to the Government under this Act in respect of that offence has been seized under this Act, the court convicting him may, in addition to any other penalty imposed on him, order that the narcotic drug, psychotropic substance, motor vehicle, aircraft, ship, carriage or other conveyance or other article or thing be condemned and forfeited to the Government.

79. Disposal of seizures

(1) Notwithstanding the provisions of section 74A or any other provision of this Act in relation to the seizure of any narcotic drug or psychotropic substance anything seized or condemned under this Act shall be disposed of in such manner as may be prescribed by regulations.

(2) Where any quantity of narcotic drugs or psychotropic substances, has been seized and condemned under this Act, the Minister may order their disposal—

- (a) in the case where the Director of Medical Services certifies that the narcotic drug or psychotropic substance can be used for medicinal purposes, in the manner so certified;
- (b) in any other case, by destruction in such manner and by such person or authority as may be prescribed by regulations.

[Act No. 7 of 2007, Sch.]

80. Power to arrest without warrant

(1) Any police officer may arrest without warrant any person who has committed, or has attempted to commit, or is reasonably suspected by such police officer of having committed or attempted to commit or being about to commit an offence against this Act.

(2) The provisions of subsection (1) shall be in addition to, and not in derogation of, the provisions of any other written law.

81. Punishment of attempt to commit, etc. offences against this Act

Notwithstanding anything contained in any other written law, every person who—

- (a) attempts to commit; or
- (b) conspires with any other person to commit; or
- (c) solicits, incites, aids, abets or counsels or attempts to solicit, incite, aid, abet or counsel any other person to commit; or
- (d) causes or procures, or attempts to cause or procure the commission of; or

(e) is otherwise directly or indirectly knowingly concerned in the commission of an offence under this Act,

may be charged with, tried, convicted and punished in all respects as if he were a principal offender.

82. Fees

(1) The Minister may charge such fees as may be prescribed by regulations for an application for any licence, certificate or authorization or renewal thereof, or for the grant of any licence, certificate or authorization or renewal thereof, under this Act.

(2) Any person or class of persons who is or are undergoing a treatment and rehabilitation programme at a Rehabilitation Centre established under section 52 or is under the care of any such Centre, otherwise than in consequence of an order of a court under section 58, may be required to pay such fees as may be prescribed by regulations by the Minister responsible for health and different fees may be prescribed for different classes of persons having regard to their income or property or both.

83. Penalty for contravention of Act in certain cases

Where any person contravenes any provision of this Act and no penalty is prescribed for such contravention by any other provision of this Act, the person so contravening shall be liable to a fine of one hundred thousand shillings and, in addition, to imprisonment for five years.

84. Regulations

(1) The Minister may make regulations generally for carrying out the purposes of this Act.

(2) Without prejudice to generality of subsection (1), and in particular, the Minister may by regulations make provision for all or any of the following matters—

- (a) prescribing standards for narcotic drugs and psychotropic substances that a licensee may possess, sell or supply to any person and the quantity of any narcotic drug or psychotropic substance that a licensee may have in his possession;
- (b) prescribing conditions regarding the sale or supply of narcotic drugs or psychotropic substances to any person by a licensee, including a medical practitioner or a dentist or registered pharmacist holding a licence;
- (c) prescribing the persons authorized to buy narcotic drugs or psychotropic substances and the conditions to which the authorization shall be subject;
- (d) regulating the issue of prescriptions containing narcotic drugs or psychotropic substances and the dispensing or supplying of narcotic drugs or psychotropic substances on prescriptions, and for requiring persons seeking prescriptions for any narcotic drugs or psychotropic substances to furnish to such authority any such

information relating to those prescriptions as may be specified by regulations;

- (e) regulating the prescription, administration, giving, selling or supplying of any narcotic drugs or psychotropic substances by a veterinary surgeon under section 13(2);
- (f) regulating the importation, exportation or diversion, sale, manufacture, production or distribution (at stated places) of any narcotic drugs or psychotropic substances;
- (g) specifying the port or place in Kenya through which any narcotic drugs or psychotropic substances may transit in Kenya;
- (h) specifying particulars to be contained in any export or import authorization for the exportation or importation of narcotic drugs or psychotropic substances;
- (i) prescribing the form of an application for a removal licence, the forms of a removal licence and the fees that should accompany any such application and payable for the removal licence;
- (j) prescribing the form of application for a diversion certificate and the fees payable therefor;
- (k) prescribing the form of a diversion certificate, the fees payable therefor and the particulars it should contain;
- (l) specifying the manner in which any narcotic drug or psychotropic substance shall be packed, labelled or otherwise kept for export, sale, supply, administration or distribution;
- (m) prescribing the manner of disposal or destruction of narcotic drugs and psychotropic substances under any provision of this Act;
- (n) prescribing the manner of destruction of prohibited plants;
- (o) prescribing the form of notice of application for a restraint order;
- (p) prescribing the manner of hearing a respondent in an application for a restraint order;
- (q) requiring the keeping of records that are to be kept, and the furnishing of information, by any person with respect to narcotic drugs or psychotropic substances or in connection with dealings in narcotic drugs or psychotropic substances;
- (r) prescribing the forms for any purpose under this Act, other than those prescribed under any other provision of this subsection;
- (s) prescribing any other matter that may be, or is required to be, prescribed by this Act by the Minister by regulations.

(3) Regulations may also provide for authorizing any person who is licensed or otherwise authorized and who lawfully keeps any pharmacy for the retailing of poisons in accordance with the provisions of the Pharmacy and Poisons Act (Cap. 244)—

- (a) to manufacture at the shop in the ordinary course of his retail business any preparation, admixture, or extract, of any narcotic drug or psychotropic substance to which this Act applies; or
- (b) to carry on at the pharmacy the business of retailing, dispensing, or compounding, any such narcotic drug or psychotropic substance,

subject to the power of the Minister to withdraw the authorization in the case of a person who has been convicted of an offence under this Act or under the Pharmacy and Poisons Act (Cap. 244) or the Food, Drugs and Chemical Substances Act (Cap. 254), or who cannot, in the opinion of the Minister, properly be allowed to carry on the business of manufacturing or selling or distributing, as the case may be, of any such narcotic drug or psychotropic substance.

(4) The Chief Justice may make rules prescribing the practice and procedure of the High Court or any other court in regard to proceedings for forfeiture and condemnation by any such court under any provision of this Act, or relating to proceedings for a restraint order under Part IV, and for matters connected with or incidental to such proceedings.

(5) The Minister responsible for Health may by regulations make provisions for all or any of the following matters—

- (a) for the administration and management of, and for all matters relating to, Rehabilitation Centres established under section 52, including the security and safety of the persons who are committed or admitted into any such Centres;
- (b) the terms and conditions of appointment of the chairman and other members of the Advisory Council for Rehabilitation of Narcotic Addicts; and
- (c) for any other matter that may be, or is required to be prescribed by this Act by the Minister responsible for health.

(6) Nothing in any regulations made under this section shall be taken as authorizing the sale, or the keeping of an open shop for the retailing, dispensing, or compounding of poisons by any person who is not qualified in that behalf under, or otherwise than in accordance with, the provisions of the Pharmacy and Poisons Act (Cap. 244) or to be in derogation of the provisions of that Act prohibiting, restricting or regulating, the sale of poisons.

85. Penalty for contravention of regulations

(1) Regulations made under section 84 may provide that any person contravening any provision thereof, other than a provision for which a specific penalty is provided, shall be liable to a fine not exceeding two hundred and fifty thousand shillings or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(2) Every person guilty of the contravention of any regulation, not being a regulation made under section 84(4), for which no penalty is expressly provided shall be liable to a fine of one hundred thousand shillings or to imprisonment for three years and in the case of a continuing offence to a further penalty of twenty thousand shillings for each day during which the offence continues.

86. Valuation of goods for penalty

(1) Where in any prosecution under this Act any fine is to be determined by the market value of any narcotic drug, psychotropic substance or prohibited plant, a certificate under the hand of the proper officer of the market value of such narcotic drug or psychotropic substance shall be accepted by the court as *prima facie* evidence of the value thereof.

(2) In this section “**proper officer**” means the officer authorized by the Minister by notification in the *Gazette* for the purposes of this section.

87. Power to amend Schedules

The Minister may, by order, add any substance or plant to the First, Second and Third Schedules and may from time to time delete therefrom any substance or plant the inclusion or exclusion of which, as the case may be, is deemed necessary by him in the public interest.

88. Repeal of Cap. 245

The Dangerous Drugs Act (Cap. 245) is repealed.

FIRST SCHEDULE

[Section 2.]

LIST OF NARCOTIC DRUGS

Acetorphine (3-*O*-acetyltetrahydro-7 α -(1-hydroxy-1-methylbutyl)-6,14-*endoetheno*-oripavine)

Acetyl-alpha-methylfentanyl (*N*-[1-(*a*-methylphenethyl)-4-piperidyl] acetanilide)

Acetylmethadol (3-acetoxy-6-dimethylamino-4, 4-diphenylheptane)

Alfentanil (*N*-[1-[2-(4-ethyl-4, 5-dihydro-5-oxo-1*H*-tetrazol-1-yl) ethyl)-(methoxymethyl)-4-piperidiny]-*N*-phenylpropanamide monohydrochloride)

Allylprodine (3-allyl-1-methyl-4-phenyl-4-propionoxypiperidine)

Alphacetylmethadol (alpha-3-acetoxy-6-dimethylamino-4, 4-diphenylheptane)

Alphameprodine (alpha-3-ethyl-1-methyl-4-phenyl-4-propionoxypiperidine)

Alphamethadol (alpha-6-dimethylamino-4, 4-diphenyl-3-heptanol)

Alpha-methylfentanyl (*N*-[1-(*a*-methylphenethyl)-4-piperidyl] propionanilide)

Alpha-methylthiofentanyl (*N*-[1-[1-methyl-2-(2-thienyl) ethyl]-4-piperidyl] propionanilide)

Alphaprodine (alpha-1, 3-dimethyl-4-phenyl-4-propionoxy piperidine)

Anileridine (1-*para*-aminophenethyl-4-phenylpiperidine-4-carboxylic acid ethyl ester)

Benzethidine (1-(2-benzyloxyethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester)

Benzylmorphine (3-benzylmorphine)

Betacetylmethadol (beta-3-acetoxy-6-dimethylamino-4, 4-diphenylheptane)

Beta-hydroxyfentanyl (N-[1-(beta-hydroxyphenethyl)-4-piperidyl] propionanilide)

Beta-hydroxy-3-methylfentanyl (N-[1-(beta-hydroxyphenethyl)-3-methyl-4-piperidyl] propionanilide)

Betameprodine (beta-3-ethyl-1-methyl-4-phenyl-4-propionoxypiperidine)

Betamethadol (beta-6-dimethylamino-4, 4-diphenyl-3-heptanol)

Betaprodine (beta-1, 3-dimethyl-4-phenyl-4-propionoxypiperidine)

Bezitramide (1-(3-cyano-3, 3-diphenylpropyl)-4-(2-oxo-3-propionyl-benzimidazolyl)-piperidine)

Cannabis (Indian Hemp) and Cannabis resin (Resin of Indian Hemp)

Clonitazene (2-*para*-chlorbenzyl-1-diethylaminoethyl-5-nitrobenzimidazole)

Coca Leaf

Cocaine (methyl ester of benzoyllecgonine)

Codoxime (dihydrocodeinone-6-carboxymethyloxime)

Concentrate of poppy straw (the material arising when poppy straw has entered into a process for the concentration of its alkaloid when such material is made available in trade).

Desomorphine (dihydrodeoxymorphine)

Dextromoramide ((+)-4-[2-methyl-4-oxo-3, 3-diphenyl-4-(1-pyrrolidinyl)-butyl]morpholine)

Diampromide (N-[(2-methylphenethylamino)-propyl]-propionanilide)

Diethylthiambutene (3-diethylamino-1, 1-di-(2'-thienyl)-butene)

Difenoxin (1-(3-cyano-3, 3-diphenylpropyl)-4-phenylisonipecotic acid)

Dihydromorphine

Dimenoxadol (2-dimethylaminoethyl-1-ethoxy-1, 1-diphenylacetate)

Dimepheptanol (6-dimethylamino-4, 4-diphenyl-3-heptanol)

Dimethylthiambutene (3-dimethylamino-1, 1-di-(2'-thienyl)-1-butene)

Dioxaphetyl butyrate (ethyl-4-morpholino-2, 2-diphenylbutyrate)

Diphenoxylate (1-(3-cyano-3, 3-diphenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester)

Dipipanone (4, 4-diphenyl-6-piperidine-3-heptanone)

Drotebanol (3, 4-dimethoxy-17-methylmorphinan-6 β , 14-diol)

Ecgonine, its esters and derivatives which are convertible to ecgonine and cocaine

Ethylmethylthiambutene (3-ethylmethylamino-1, 1-di-(2'-thienyl)-1-butene)

Etonitazene (1-diethylaminoethyl-2-*para*-ethoxybenzyl-5-nitrobenzimidazole)

Etorphine (tetrahydro-7 α -(1-hydroxyl-1-methylbutyl)-6, 14-*endo*etheno-oripavine)

Etoperidine (1-[2-(2-hydroxyethoxy)-ethyl]-4-phenylpiperidine-4-carboxylic acid ethyl ester)

Fentanyl (1-phenethyl-4-N-propionylanilinopiperidine)

Furethidine (1-(2-tetrahydrofurfuryloxyethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester)

Heroin (diacetylmorphine)

Hydrocodone (dihydrocodeinone)

Hydromorphanol (14-hydroxydihydromorphine)

Hydromorphone (dihydromorphinone)

Hydroxypethidine (4-*meta*-hydroxyphenyl-1-methylpiperidine-4-carboxylic acid ethyl ester)

Isomethadone (6-dimethylamino-5-methyl-4, 4-diphenyl-3-hexanone)

Ketobemidone (4-*meta*-hydroxyphenyl-1-methyl-4-propionylpiperidine)

Levomethorphan* ((-)-3-methoxy-N-methylmorphinan)

Levomoramide ((-)-4-[2-methyl-4-oxo-3, 3-diphenyl-4-(1-pyrrolidinyl)-butyl]morpholine)

Levophenancylmorphin ((-)-3-hydroxy-N-phenacylmorphinan)

Levorphanol* ((-)-3-hydroxy-N-methylmorphinan)

Metazocine (2'-hydroxy-2, 5, 9-trimethyl-6, 7-benzomorphan)

Methadone (6-dimethylamino-4, 4-diphenyl-3-heptanone)

Methadone-Intermediate (4-cyano-2-dimethylamino-4, 4-diphenylbutane)

Methyldesorphine (6-methyl-delta-6-deoxymorphine)

Methyldihydromorphine (6-methyldihydromorphine)

3-methylfentanyl (N-(3-methyl-1-phenethyl-4-piperidyl) propionanilide)

3-methylthiofentanyl (N [3-methyl-1-[2-(2-thienyl) ethyl]-4-piperidyl] propionanilide)

Metopon (5-methyl-dihydromorphinone)

Moramide-Intermediate (2-methyl-3-morpholino-1,1-diphenylpropane carboxylic acid)

Morpheridine (1-(2-morpholinoethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester)

Morphine

Morphine Methobromide and other pentavalent nitrogen morphine derivatives, including in particular the morphine-N-oxide derivatives, one of which is Codeine-N-Oxide

Morphine-N-Oxide

MPPP (l-methyl-4-phenyl-4-piperidinol propionate (ester))

Myrophine (myristylbenzylmorphine)

Nicomorphine (3, 6-dinicotinylmorphine)

Noracymethadol ((±)-alpha-3-acetoxy-6-methylamine-4, 4-diphenylheptane)

Norlevorphanol ((-)-3-hydroxymorphinan)

Normethadone (6-dimethylamino-4, 4-diphenyl-3-hexanone)

Normorphine (demethylmorphine) or (N-demethylated morphine)

Norpipanone (4, 4-diphenyl-6-piperidino-3-hexanone)

Opium

Oxycodone (14-hydroxydihydrocodeinone)

Oxymorphone (14-hydroxydihydromorphinone)

Para-fluorofentanyl (4'-fluoro-N-(l-phenethyl-4-piperidyl) propionanilide)

PEPAP (l-phenethyl-4-phenyl-4-piperidinol acetate (ester))

Pethidine (l-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester)

Pethidine-Intermediate-A (4-cyano-l-methyl-4-phenylpiperidine)

Pethidine-Intermediate-B (4-phenylpiperidine-4-carboxylic acid ethyl ester)

Pethidine-Intermediate-C (l-methyl-4-phenylpiperidine-4-carboxylic acid)

Phenadoxone (6-morpholino-4, 4-diphenyl-3-heptanone)

Phenampramide (N-(l-methyl-2-piperidinoethyl)-propionanilide)

Phenazocine (2'-hydroxy-5, 9-dimethyl-2-phenethyl-6, 7-benzomorphan)

Phenomorphin (3-hydroxy-N-phenethylmorphinan)

Phenoperidine (l-(3-hydroxy-3-phenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl)

Piminodine (4-phenyl-1-(3-phenylaminopropyl)-piperidine-4-carboxylic acid ethyl ester)

Piritramide (l-(3-cyano-3, 3-diphenylpropyl)-4-(l-piperidino)-piperidine-4-carboxylic acid amide)

Proheptazine (1, 3-dimethyl-4-phenyl-4-propionoxyazacycloheptane)

Properidine (l-methyl-4-phenylpiperidine-4-carboxylic acid isopropyl ester)

Racemethorphan ((±)-3-methoxy-N-methylmorphinan)

Racemoramide ((±)-4-[2-methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidinyl)-butyl]morpholine)

Racemorphan ((±)-3-hydroxy-N-methylmorphinan)

Sufentanil (*N*-[4-(methoxymethyl)-1-[2-(2-thienyl)-ethyl]-4-piperidyl]propionanilide)

Thebacon (acetyldihydrocodeinone)

Thebaine

Thiofentanyl (*N*-[1-[2-(2-thienyl) ethyl]-4-piperidyl] propionanilide)

Tilidine ((±)-ethyl-trans-2-(dimethylamino)-1-phenyl-3-cyclohexene-1-carboxylate)

Trimeperidine (1,2,5-trimethyl-4-phenyl-4-propionoxypiperidine); and

The isomers, unless specifically excepted, of the drugs in this Schedule whenever the existence of such isomers is possible within the specific chemical designation;

The esters and ethers, unless appearing in another Schedule, of the drugs in this Schedule whenever the existence of such esters or ethers is possible;

The salts of the drugs listed in this Schedule, including the salts of esters, ethers and isomers as provided above whenever the existence of such salts is possible.

Acetyldihydrocodeine

Codeine (3-methylmorphine)

Dextropropoxyphene (x-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-butanol propionate)

Dihydrocodeine

Ethylmorphine (3-ethylmorphine)

Nicocodine (6-nicotinocodeine)

Nicodicodine (6-nicotinylidihydrocodeine)

Norcodeine (N-demethylcodeine)

Pholcodine (morpholinylethylmorphine)

Propiram (N-(1-methyl-2-piperidinoethyl)-N-2-pyridylpropionamide)

The isomers, unless specifically excepted, of the drugs in this Schedule whenever the existence of such isomers is possible within the specific chemical designation.

The salts of the drugs listed in this Schedule, including the salts of the isomers as provided above whenever the existence of such salts is possible.

SECOND SCHEDULE

[Section 2.]

LIST OF PSYCHOTROPIC SUBSTANCES

NOTE: The names printed in capitals in the left-hand column are the International Non-proprietary Names (INN). Other non-proprietary or trivial names also are given where INN has yet been recommended or when such names are commonly applied to the substances. Also under international control are the salts of the substances listed in this Schedule, whenever the existence of such salts is possible.

<i>INN</i>	<i>Other Non-Proprietary or Trivial Names</i>	<i>Chemical Name</i>
BROLAMFETAMINE	DOB	(±)-4-bromo-2, 5-dimethoxy-amethylphenethyamine
CATHINONE	DET	(-)-(S)-2-aminopropiophenone 3-[2-(diethylamino) ethyl] indole

SECOND SCHEDULE—*continued*

<i>INN</i>	<i>Other Non-Proprietary or Trivial Names</i>	<i>Chemical Name</i>
	DMA	(±)-2,5-dimethoxy-amethylphenethylamine
	DMHP	3-(1,2-dimethylheptyl)-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6 <i>H</i> -dibenzo [<i>b, d</i>] pyran-1-ol
	DMT	3-[2-(dimethylamino) ethyl] indole
	DOET	(±)-4-ethyl-2, 5-dimethoxy-phenethylamine
ETICYCLIDINE	PCE	<i>N</i> -ethyl-1-phenylcyclohexylamine
+)-LYSERGIVE	LSD, LSD-25	9, 10-didehydro- <i>N, N</i> -diethyl-6-methylergoline-8-β-carboxamide
	MDMA	(±)- <i>N, α</i> -dimethyl-3, 4-(methylenedioxy) phenethylamine
	mescaline	3, 4, 5-trimethoxyphenethylamine
	4-methylaminorex	
	MMDA	2-methoxy- α -methyl-4, 5-(methylenedioxy) phenethylamine
	<i>N</i> -ethyl MDA	(±)- <i>N</i> -ethyl- α -methyl-3, 4-(methylenedioxy) phenethylamine
	<i>N</i> -hydroxy MDA	(±)- <i>N</i> -(α -methyl-3, 4-(methylenedioxy) phenethyl) hydroxylamine
	parahehyl	3-hexyl-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl 6 <i>H</i> -dibenzo [<i>b, d</i>] pyran-1-ol
	PMA	<i>p</i> -methoxy- α -methylphenethylamine
	psilocine, psilotsin	3-[2-(dimethylamino) ethyl] indol-4-ol
PSILOCYBINE		3-[2-(dimethylamino) ethyl] indol-4-yl dihydrogen phosphate
ROLICYCLIDINE	PHP, PCPY	1-(1-phenylcyclohexyl) pyrrolidine
	STP, DOM	2, 5-dimethoxy- α , 4-dimethylphenethylamin

SECOND SCHEDULE—*continued*

<i>INN</i>	<i>Other Non-Proprietary or Trivial Names</i>	<i>Chemical Name</i>
TENAMFETAMINE	MDA	α -methyl-3, 4-(methylenedioxy) phenethylamine
TENOCYCLIDINE	TCP	1-[1-(2-thienyl) cyclohexyl] piperidine
	tetrahydrocannabinol,	the following isomers and their stereo-chemical variants: 7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-3-pentyl 6 <i>H</i> -dibenzo [<i>b</i> , <i>d</i>] pyran-1-ol (9 <i>R</i> , 10 <i>aR</i>)-8, 9, 10, 10 <i>a</i> -tetrahydro-6, 6, 9-trimethyl-3-pentyl-6 <i>H</i> -dibenzo [<i>b</i> , <i>d</i>] pyran-1-ol (6 <i>aR</i> , 9 <i>R</i> 10 <i>aR</i>)-6 <i>a</i> , 9, 10, 10 <i>a</i> -tetrahydro-6, 6, 9-trimethyl-3-pentyl-6 <i>H</i> -dibenzo [<i>b</i> , <i>d</i>] pyran-1-ol (6 <i>aR</i> , 10 <i>aR</i>)-6 <i>a</i> , 7, 10, 10 <i>a</i> -tetrahydro-6, 6, 9-trimethyl-3-pentyl-6 <i>H</i> -dibenzo [<i>b</i> , <i>d</i>] pyran-1-ol (6 <i>aR</i> , 10 <i>aR</i>)-6 <i>a</i> , 7, 8, 10 <i>a</i> -tetrahydro-6, 6, 9-trimethyl-3-pentyl-6 <i>H</i> -dibenzo [<i>b</i> , <i>d</i>] pyran-1-ol 6 <i>a</i> , 7, 8, 9-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6 <i>H</i> -dibenzo [<i>b</i> , <i>d</i>] pyran-1-ol (6 <i>aR</i> , 10 <i>aR</i>)-6 <i>a</i> , 7, 8, 9, 10, 10 <i>a</i> -hexahydro-6,6-dimethyl-9-methylene-3-pentyl-6 <i>H</i> -dibenzo [<i>b</i> , <i>d</i>] pyran-1-ol
	TMA	(\pm)-3, 4, 5-trimethoxy-amethylphenethylamine
CLOBAZAM		7-chloro-1-methyl-5-phenyl-1 <i>H</i> -1, 5-benzodiazepine-2,4 (3 <i>H</i> , 5 <i>H</i>)dione

SECOND SCHEDULE—*continued*

<i>INN</i>	<i>Other Non-</i>	<i>Chemical Name</i>
CLONAZEPAM		5-(<i>o</i> -chlorophenyl)-1, 3-dihydro-7nitro-2 <i>H</i> 1, 4-benzodiazepine-2one
CLORAZEPATE		7-chloro-2,3-dihydro-2-oxo-5-phenyl-1 <i>H</i> -1,4-benzodiazepine-3carboxylic acid
CLOTIAZEPAM		5-(<i>o</i> -chlorophenyl)-7-ethyl-1, 3dihydro-1-methyl-2 <i>H</i> -thieno [2, 3 <i>e</i>]-1, 4-diazepine-2 one
	<i>Proprietary or Trivial Names</i>	
CLOXAZOLAM		10-chloro-11b-(<i>o</i> -chlorophenyl)-2, 3, 7, 11b-tetrahydrooxazolo-[3, 2 <i>d</i>] [1, 4] benzodiazepine-6 (5 <i>H</i>)one
DELORAZEPAM		7-chloro-5-(<i>o</i> -chlorophenyl)-1, 3dihydro-2 <i>H</i> -1, 4-benzodiazepine-2-one
DIAZEPAM		7-chloro-1, 3-dihydro-1-methyl-5phenyl-2 <i>H</i> -1, 4-benzodiazepine-2-one
ESTAZOLAM		8-chloro-6-phenyl-4 <i>H</i> - <i>s</i> -triazolo [4, 3- <i>a</i>] [1, 4] benzodiazepine
ETHCHLORVYNOL		1-chloro-3-ethyl-1-penten-4-yn-3-ol
ETHINAMATE		1-ethynylcyclohexanol carbamate
ETHYL		ethyl 7-chloro-5-(<i>o</i> -fluorophenyl)-2, 3-dihydro-
LOFLAZEPATE		2-oxo-1 <i>H</i> -1,4-benzodiazepine-3carboxylate
ETILAMFETAMINE	<i>N</i> -ethylamphetamine	<i>N</i> -ethyl- <i>a</i> -methylphenethylamine
FENCAMFAMIN		<i>N</i> -ethyl-3-phenyl-2-norbornanamine
FENPROPorex		(±)-3-[α -methylphenethyl) amino] propionitrile

SECOND SCHEDULE—*continued*

<i>INN</i>	<i>Other Non-</i>	<i>Chemical Name</i>
FLUDIAZEPAM		7-chloro-5-(<i>o</i> -fluorophenyl)-1, 3-dihydro-1-methyl-2 <i>H</i> -1, 4-benzodiazepine-2-one
FLUNITRAZEPAM		5-(<i>o</i> -fluorophenyl)-1, 3-dihydro-1-methyl-7-nitro-2 <i>H</i> -1, 4-benzodiazepine-2-one
FLURAZEPAM		7-chloro-1-[2-(diethylamino) ethyl]-5-(<i>o</i> -fluoro-phenyl)-1, 3-dihydro-2 <i>H</i> -1, 4-benzodiazepine-2-one
HALAZEPAM		7-chloro-1, 3-dihydro-5-phenyl-1-(2, 2, 2-trifluoroethyl)-2 <i>H</i> -1, 4-benzodiazepine-2-one
HALOXAZOLAM		10-bromo-11b-(<i>o</i> -fluorophenyl)-2, 3, 7, 11b-tetrahydrooxazolo [3, 2 <i>d</i>][1,4] benzodiazepine-6(5 <i>H</i>)-one
	<i>Proprietary or Trivial Names</i>	
KETAZOLAM		11-chloro-8, 12b-dihydro-2, 8dimethyl-12b-phenyl-4 <i>H</i> -[1, 3] oxazino [3, 2- <i>d</i>] [1, 4] benzodiazepine-4, 7 (6 <i>H</i>)-dione
LEFETAMINE	SPA	(-)- <i>N</i> , <i>N</i> -dimethyl-1, 2diphenylethylamine
LOPRAZOLAM		6-(<i>o</i> -chlorophenyl)-2, 4-dihydro-2 [(4methyl-1-piperazinyl) methylene]8-nitro-1 <i>H</i> -imidazo [1, 2- <i>a</i>] [1, 4] benzodiazepine-1-one
LORAZEPAM		7-chloro-5-(<i>o</i> -chlorophenyl)-1, 3dihydro-3-hydroxy-2 <i>H</i> -1, 4benzodiazepine-2-one
LORMETAZEPAM		7-chloro-5-(<i>o</i> -chlorophenyl)-1, 3dihydro-3-hydroxy-1-methyl-2 <i>H</i> -1, 4- benzodiazepine-2-one
MAZINDOL		5-(<i>p</i> -chlorophenyl)-2, 5-dihydro-3 <i>H</i> imidazo [2, 1- <i>a</i>] isoindol-5-ol

SECOND SCHEDULE—*continued*

<i>INN</i>	<i>Other Non-</i>	<i>Chemical Name</i>
MEDAZEPAM		7-chloro-2, 3-dihydro-1-methyl-5-phenyl-1 <i>H</i> -1, 4-benzodiazepine
MEFENOREX		N-(3-chloropropyl)- α methylphenethylamine
MEPROBAMATE		2-methyl-2-propyl-1-3-propanediol, dicarbamate
METHYLPHENO- BARBITAL		5-ethyl-1-methyl-5-phenylbarbituric acid
METHYPRYLON		3, 3-dithyl-5-methyl-2, 4-piperidinedione
MIDAZOLAM		8-chloro-6-(<i>o</i> -fluorophenyl)-1-methyl-4 <i>H</i> -imidazol [1, 5- <i>a</i>][1, 4] benzodiazepine
NIMETAZEPAM		1, 3-dihydro-1-methyl-7-nitro-5-phenyl-2 <i>H</i> -1, 4-benzodiazepine-2-one
NITRAZEPAM		1, 3-dihydro-7-nitro-5-phenyl-2 <i>H</i> -1, 4-benzodiazepine-2-one
NORDAZEPAM		7-chloro-1, 3-dihydro-5-phenyl-2 <i>H</i> -1, 4-benzodiazepine-2-one
OXAZEPAM		7-chloro-1, 3-dihydro-3-hydroxy-5-phenyl-2 <i>H</i> -1, 4-benzodiazepine-2-one

SECOND SCHEDULE—*continued*

INN Other Non-Proprietary or Trivial Names Chemical Name

OXAZOLAM	10-chloro-2, 3, 7, 11b-tetrahydro-2-methyl-11b-phenyloxazolo [3, 2-d] [1, 4] benzodiazepine-6 (5 <i>H</i>)-one
PERMOLINE**	2-amino-5-phenyl-2-oxazolin-4one (=2- <i>imino</i> -5-phenyl-4-oxazolidinone)
PHENDIMETRAZINE	(+)-(2 <i>S</i> , 3 <i>S</i>)-3, 4-dimethyl-2phenylmorpholine
PHENOBARBITAL	5-ethyl-5-phenylbarbituric acid
PHENTERMINE	α , α -dimethylphenethylamine
PINAZEPAM	7-chloro-1, 3-dihydro-5-phenyl-1-(2-propynyl)-2 <i>H</i> -1, 4-benzodiazepin-2-one
PIPRADROL	α , α -diphenyl-2piperidinemethanol
PRAZEPAM	7-chloro-1-(cyclopropylmethyl)-1, 3-dihydro-5-phenyl-2 <i>H</i> -1, 4benzodiazepin-2-one
PROPYLHEXEDRINE	<i>N</i> , α dimethylcyclohexaneethylamine
PYROVALERONE	4'-methyl-2-(1-pyrrolidinyl) valerophenone
SECBUTABARBITAL	5- <i>sec</i> -butyl-5-ethylbarbituric acid
TEMAZEPAM	7-chloro-1,3-dihydro-3-hydroxy-1methyl-5-phenyl-2 <i>H</i> -1, 4benzodiazepine-2-one
TETRAZEPAM	7-chloro-5-(1-cyclohexen-1-yl)-1, 3-dihydro-1-methyl-2 <i>H</i> -1, 4benzodiazepin-2-one
TRIAZOLAM	8-chloro-6-(<i>o</i> -chlorophenyl)-1methyl-4 <i>H</i> -s-triazolo [4, 3- <i>a</i>] [1, 4] benzodiazepine
VINYLBITAL	5-(1-methylbutyl)-5-vinylbarbituric acid
AMFETAMINE	(\pm)-2-amino-1-phenylpropane
DEXAMFETAMINE	(\pm)-2-amino-1-phenylpropane

SECOND SCHEDULE—*continued**INN Other Non-Proprietary or Trivial Names Chemical Name*

FENETYLLINE		<i>dl</i> -3, 7-dihydro-1, 3-dimethyl-7-(2((1-methyl-2-phenylethyl) amino) (ethyl)-1H-purine-2, 6dione
LEVAMFETAMINE	<i>l</i> - α -methylphenethylamine	levomethamphetamine
<i>l</i> -N, α -dimethylphenethylamine		
MECLOQUALONE		3-(<i>o</i> -chlorophenyl)-2-methyl-4(3 <i>H</i>)-quinazolinone
METHAMFETAMINE		(+)-2-methylamino-1phenylpropane
METHAQUALONE		2-methyl-3- <i>o</i> -tolyl-4(3 <i>H</i>)-quinazolinone
METHYLPHENIDATE		2-phenyl-2-(2-piperidyl) acetic acid, methyl ester
PHENCYCLIDINE	PCP	1-(1-phenylcyclohexyl) piperidine
PHENMETRAZINE		3-methyl-2-phenylmorpholine
ALLOBARBITAL		5, 5-diallylbarbituric acid
ALPRAZOLAM		8-chloro-1-methyl-6-phenyl-4 <i>H</i> - β -triazolo [4, 3- <i>a</i>] [1, 4] benzodiazepine
AMFEPRAMONE		2-(diethylamino) Propiophenone
BARBITAL		5, 5-diethylbarbituric acid

SECOND SCHEDULE—*continued*

INN Other Non-Proprietary or Trivial Names Chemical Name

BENZPHETAMINE	<i>N</i> -benzyl- <i>N</i> , adimethylphenethylamine
The salts of the substances listed in this Schedule whenever the existence of such salts is possible.	
AMOBARBITAL	5-ethyl-5-(3-methylbutyl) barbituric acid
BUTALBITAL	5-allyl-5-isobutylbarbituric acid
CATHINE	<i>d</i> - <i>threo</i> -2-amino-1-hydroxy-1-phenylpropane
CYCLOBARBITAL	5-(1-cyclohexen-1-yl)-5ethylbarbituric acid
GLUTETHIMIDE	2-ethyl-2-phenylglutarimide
PENTAZOCINE	1, 2, 3, 4, 5, 6-hexahydro-6, 11dimethyl-3-(3-methyl-2-butenyl)2, 6-methano-3-benzazocin-801
PENTOBARBITAL	5-ethyl-5-(1-methylbutyl) barbituric acid
SECOBARBITAL	5-allyl-5-(1-methylbutyl) barbituric acid
The salts of the substances listed in this schedule whenever the existence of such salts is possible.	
BROMAZEPAM	7-bromo-1, 3-dihydro-5-(2-pyridyl)-2 <i>H</i> -1, 4benzodiazepine-2-one
BUTOBARBITAL	5-butyl-5-ethylbarbituric acid
CAMAZEPAM	7-chloro-1, 3,-dihydro-3-hydroxy-1-methyl-5-phenyl-2 <i>H</i> -1, 4benzodiazepine-2-one dimethylcarbamate (ester)
CHLORDIAZEPOXIDE	7-chloro-2-(methylamino)-5-phenyl-3 <i>H</i> -1, 4benzodiazepine-4-oxide

THIRD SCHEDULE

[Section 2.]

SECOND SCHEDULE—*continued*

INN Other Non-Proprietary or Trivial Names Chemical Name

PROHIBITED PLANTS

1. Cannabis.
 2. Coca bush.
 3. *Papaver somniferum* (opium poppy).
 4. *Papaver setigerum*.
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NO. 4 OF 1994

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL) ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

Page 1. Narcotic Drugs and Psychotropic Substances (Control) Restraint and Forfeiture) Regulations, 1997	63
2. Narcotic Drugs And Psychotropic Substances(Control) (Seizure, Analysis And Disposal) Regulations, 2006	65

**NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL)
RESTRAINT AND FORFEITURE) REGULATIONS, 1997**

[L.N. 547/1997.]

1. These Regulations may be cited as the Narcotic Drugs and Psychotropic Substances (Control) (Restraint and Forfeiture) Regulations, 1997.
2. (1) Where the Attorney-General has reasonable grounds to believe that a person has committed a specified offence and investigations into the offence have commenced, the Attorney-General may apply to the court for a restraint order in respect of any or all of the property of the person.
(2) A copy of the application under paragraph (1) shall be served upon the respondent thereto and published for general information in the *Gazette* and in at least two daily newspapers circulating in the area in which the property is situated.
(3) Any person with an interest in property which the subject matter of an application for a restraint order under the regulation may, at any stage of the proceedings, apply to the court to be made a party to such proceedings.
3. Where the court is satisfied as to the matters averred in the application for a restraint order, the court may make the order and shall cause it to be published for general information in the *Gazette* and in at least one newspaper circulating in the area in which the property is situated.
4. A restraint order made under the provisions of these Regulations shall remain in force until it is revoked by the court or the property in respect of which it is made is forfeited to the Government, whichever is the earlier.
5. Any person who handles any property which is subject to a restraint order in any manner contrary to the terms of such order shall be guilty of an offence and liable to a fine not exceeding two hundred and fifty thousand shillings, or to both imprisonment for a term not exceeding five years, or to both.
6. Where a person is convicted of a specified offence and the court makes a final decision in which such a person is found guilty, the court shall cause a notice to that effect to be published in the *Gazette* and in at least one newspaper circulating in the area in which the property is situated.
7. A notice published under regulation 6 shall state the fact of the conviction and the liability of the person's property to forfeiture.
8. Any person with an interest in property which is subject to an order for forfeiture may, within thirty days of the publication of a notice under regulation 6, apply to the court for any relief to which he is entitled under the Act.
9. Where a final order for forfeiture has been made in respect of any property, all interests in that property prior to such order shall be void.

**NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL)
(SEIZURE, ANALYSIS AND DISPOSAL) REGULATIONS, 2006**

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

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PART II – GENERAL PROCEDURES AT AND IMMEDIATELY AFTER SEIZURE

3. Collection and processing of evidence after seizure.
4. Procedure immediately after seizure.

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5. Analysis of seized substances.
6. Procedure after analysis.
7. Storage, security and transportation of seized substances.
8. Destruction of seized substance.
9. Safe custody of seized substance.
10. Tampering with seized Substance.
11. Maintenance of records of custody of seized substance.
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PART IV – SPECIAL PROCEDURES TO BE APPLIED WHERE SEIZED
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13. Application by the Attorney-General for a destruction order.
14. Destruction order by a magistrate.
15. Procedure following the grant of destruction order by a magistrate.
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17. Penalty for contravening these Regulations.

SCHEDULES

- FIRST SCHEDULE – CERTIFICATE OF PROOF OF COMPLETE
DESTRUCTION OF SEIZED SUBSTANCE
- SECOND SCHEDULE – GUIDELINES ON INCINERATION
-

[Subsidiary]

**NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL)
(SEIZURE, ANALYSIS AND DISPOSAL) REGULATIONS, 2006**

[L.N. 16/2006.]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Narcotic Drugs and Psychotropic Substances (Control) (Seizure, Analysis and Disposal) Regulations, 2006

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**Act**” means the Narcotic Drugs and Psychotropic Substances (Control) Act, 1994, (No. 4 of 1994);

“**authorized officer**” has the meaning assigned to it in section 74A of the Act;

“**designated analyst**” means a duly qualified analyst designated as such under section 67(1) of the Act;

“**minimum amount**”, in reference to seized substance, means 10% or as near as practicable thereto, by weight or volume, of the seized substance that is kept in custody by the Seizures Registrar for the purpose of analysis, as and when an accused person is arrested and arraigned in court;

“**Seizures Registrar**” means a police officer, not below the rank of Assistant Commissioner, designated as such in writing by the Commissioner of Police for the purposes of these Regulations; and

“**seized substance**” means anything that is or contains a narcotic drug, psychotropic substance or prohibited plant seized under the Act.

PART II – GENERAL PROCEDURES AT AND IMMEDIATELY AFTER SEIZURE

3. Collection and processing of evidence after seizure

(1) Immediately following the seizure of a substance, the police officer in charge of the seized substance shall take all reasonable steps to ensure that—

- (a) all material evidence relating to the seizure is collected and processed;
- (b) the original condition of the whole amount of the seized substance at the scene is documented;
- (c) the seized substance is marked for identification and inventory thereof made; and
- (d) the seized substance is weighed, displayed and photographed, videotaped or otherwise recorded to depict it as originally packaged.

(2) Where it is physically possible to count and weigh the seized substance as a complete unit, the officer in charge of the seized substance shall cause the substance to be

[Subsidiary]

counted and weighed and where appropriate, cause the gross or net weight of the seized substance to be estimated.

(3) In cases where it is not physically possible to store the seized substance as a single unit, wherever practicable—

- (a) the seized substance shall be placed in sturdy containers carrying about 15 to 20 kilogrammes of the seized substance;
- (b) each container shall be completely encircled with a fibre tape and an evidence sticker placed where the ends of the fibre tape meet; and
- (c) the evidence sticker shall contain all relevant information relating to the case, including the case name and number, exhibit number, place and date of seizure and signatures of witnesses and shall accompany the evidence throughout the process of storage, analysis, transportation and ultimate disposal of the seized substance.

(4) The officer in charge of the seized substance shall ensure that all items of evidentiary value relating to the seized substance are stored in secure and appropriate conditions for the prevention of loss, theft or any other form of misappropriation, as well as accidental or accelerated deterioration.

4. Procedure immediately after seizure

(1) As soon as practicable but in any case not later than 24 hours after the seizure, the officer in charge of the seized substance shall—

- (a) cause a report of the seized substance to be prepared and a copy thereof to be delivered to the Seizures Registrar; and
- (b) cause the whole amount of the seized substance to be delivered or transferred into the custody of the Seizures Registrar at such locations and places as the Seizures Registrar may arrange.

(2) A report prepared pursuant to paragraph (1)(a) shall contain— (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 each vehicle, vessel, place or person searched and each location where the seized substance was;
- (e) a description of the seized substance found;
- (f) a description of all packaging, seals, and other identifying features of the seized substance;
- (g) a description of the quantity, volume and units of the seized substance found and the measurement method employed in determining the quantity of the seized substance;
- (h) a description of any preliminary identification test used on the seized substance and the results thereof; and
- (i) all subsequent movements of the seized substance until its delivery in accordance with paragraph (1)(b).

[Subsidiary]

(3) Upon receipt of the seized substance, the Seizures Registrar shall immediately notify the Attorney-General in writing of the seizure and provide the Attorney-General with a copy of the seizure report.

(4) Nothing in paragraph (3) shall permit or require the Attorney-General to be called as a witness.

PART III – SUBSEQUENT GENERAL PROCEDURES**5. Analysis of seized substances**

(1) When, for the purposes of the Act or these Regulations, a designated analyst takes away for analysis or receives for analysis any seized substance, the designated analyst shall—

- (a) give each container and package a unique laboratory number;
- (b) enter or cause particulars of the seized substance, including all markings and evidence labels placed on the seized substance pursuant to the Act or these Regulations, to be entered into the designated analyst's laboratory records; and
- (c) in the case of a seized substance received for analysis, verify the contents of each container or package so received

(2) The designated analyst shall, as soon as practicable thereafter, carry out an analysis of the seized substance to determine its—

- (a) identity;
- (b) quantity or mass; and
- (c) purity.

(3) If the seized substance is cannabis leaf, the designated analyst shall, after identifying the seized substance, only determine the quantity or mass of the cannabis leaf.

(4) Any seized substance in the custody of a designated analyst, shall be kept in a secure place as shall be determined by the Seizures Registrar.

6. Procedure after analysis

Subject to the Act and these Regulations after carrying out any analysis of any seized substance, the designated analyst shall—

- (a) prepare the certificate referred to in section 67(2) of the Act; and
- (b) cause the certificate and each sealed package to be delivered to the Seizures Registrar.

7. Storage, security and transportation of seized substances

The Seizures Registrar shall ensure that—

- (a) all seized substances in his custody are kept in secure storage and released from secure storage only for the purposes of the Act and these Regulations;
- (b) when transported, all seized substances are—
 - (i) locked within secure transport vehicles;
 - (ii) accompanied by armed police officers; and
 - (iii) never left unattended from the time they first leave secure storage until their receipt into the next place of secure storage, and ultimately into the place of final disposal;

[Subsidiary]

- (c) when ordered to be destroyed—
- (i) each container or package of the seized substance is inspected and an inventory of the substance made;
 - (ii) the substance is verified, in such respects and by such persons, as Attorney-General may direct; and
 - (iii) the substance is secured so that it is accounted for from the time it first leaves the place of secure storage until it is finally physically destroyed.

8. Destruction of seized substance

(1) The destruction of any seized substance shall be carried out by authorised officers in the presence of a magistrate and the Seizures Registrar.

(2) Wherever practicable, and unless otherwise directed in writing by the Director of Medical Services, destruction of any seized substance shall be at such place and subject to such conditions as may be specified in writing from time to time by the Director of Medical Services and in particular—

- (a) in the case of a prohibited plant, by uprooting and burning such plants; and
- (b) in the case of narcotic drug or psychotropic substance, by incineration or such other method as shall ensure safe and complete physical destruction of such drugs.

(3) After destruction of the seized substance, in accordance with paragraph (2) is complete, the magistrate in attendance shall, if satisfied that the physical destruction of all the seized substance is complete, sign a certificate in the prescribed prescribed form set out in the First Schedule.

(4) The guidelines set out in the Second Schedule shall apply during incineration of a seized substance.

9. Safe custody of seized substance

Any person who has lawful custody of any seized substance shall ensure that all containers, packages and samples of the substance in his custody are stored in such secure location as may be determined by the Seizures Registrar, in order to prevent any tampering or diversion of the substance.

10. Tampering with seized Substance

(1) Immediately after a police officer—

- (a) opens a container or package of seized substance that has been sealed in accordance with these Regulations; or
- (b) becomes aware that a package or container sealed in accordance with these Regulations has been opened or tampered with,

the whole of the contents of the package or container shall be given to a designated analyst for analysis.

(2) If a difference occurs between the findings recorded in two or more certificates by designated analysts concerning the same seized substance and the designated analyst who provides the later or latest certificate is of the opinion that the difference is significant, the designated analyst who performs the analysis last shall promptly forward a copy of all relevant certificates relating to the seized substance to the Attorney-General.

[Subsidiary]

(3) Nothing in paragraph (2) shall permit or require the Attorney-General to be called as a witness.

11. Maintenance of records of custody of seized substance

(1) Every person who has lawful possession or custody of, or who handles or transports, or analyses any seized substance shall keep a record of the custody and movement of such seized substance.

(2) For the purposes of these Regulations, a record of custody of a seized substance shall include:

- (a) upon seizure—
 - (i) the date, time and place of seizure;
 - (ii) the circumstances of seizure;
 - (iii) the total quantity of the seized substance; and
 - (iv) the identification number placed on the seized substance;
- (b) in all other cases—
 - (i) any new identification number or mark placed on the seized substance by the person having custody;
 - (ii) the place, date, time and the name of the person from whom the seized substance was received;
 - (iii) the place, date, time and name of the person to whom the seized substance was passed;
 - (iv) wherever possible, the nature and quantity of the seized substance;
 - (v) the purpose for which the seized substance was received; and
- (c) upon sampling, if samples are taken—
 - (i) the place, date and time of sampling;
 - (ii) the size of packaging placed on each sample taken;
 - (iii) the identification number placed on the package containing any samples taken;
 - (iv) the size and packaging placed on the bulk remaining after sampling; and
 - (v) the identification number placed on any bulk remaining after sampling.
- (d) if any portion of the seized substance is ordered to be disposed of before trial, a record shall be kept of—
 - (i) the place, time, date and quantity of the seized substance to be disposed of; and
 - (ii) the method of disposal.

(3) Any person who fails to comply with the provisions of paragraph (1), or wilfully makes a false or misleading entry in the record shall be guilty of an offence.

12. Admission into evidence of records of custody of seized substances

(1) Subject to paragraph (2), any record purporting to show proper custody and movement of any seized substance shall, in criminal proceedings, be admissible in evidence as proof of the matters stated in the record if it is shown to the satisfaction of the court that

[Subsidiary]

such record had been kept prior to the commencement of such proceedings in accordance with the provisions of regulation 11.

(2) No record of custody of any seized substance shall be admissible in evidence unless a copy of such record together with a notice of intention to tender such record in evidence has been served on the accused person not less than 14 days before the trial.

(3) The accused person may, not less than 7 days before trial, serve a notice on the Attorney-General requiring the attendance at the trial of any person who signed the record referred to in paragraph (2) and where such notice is given by the accused person, the Attorney General shall produce the person named in the notice to give evidence at the trial.

**PART IV – SPECIAL PROCEDURES TO BE APPLIED WHERE SEIZED
SUBSTANCES ARE TO BE USED IN EVIDENCE, BUT SECTION 74A OF THE ACT
CANNOT BE APPLIED**

13. Application by the Attorney-General for a destruction order

Notwithstanding the provisions of section 74A of the Act and Part III of these Regulations, where a seized substance is to be used in evidence against an accused person who has not been identified or located or if the accused person is not in Kenya, the Attorney-General may apply to a magistrate for a destruction order under regulation 14, if he is satisfied that—

- (a) Criminal proceedings may lie against such accused person in relation to the seized substance;
- (b) The seized substance may be used as evidence in the proceedings referred to in paragraph (a);
- (c) Weighing, sampling, analysis and destruction of the whole of the seized substance cannot be carried out in the presence of an accused person pursuant to section 74A of the Act, because the accused person has not yet been identified or located or if the accused person has been identified and located, the accused person is not in Kenya or cannot for good reason be present; and
- (d) having regard to any views communicated by the Seizures Registrar and the Government Chemist, the size of the seized substance is such that retention, storage and control of the whole of the seized substance pending any trial against the accused person poses unreasonable security risks.

(2) An application made by the Attorney-General pursuant to paragraph (1) may be granted by a magistrate notwithstanding the absence of the accused person, the other analyst or the accused person's advocate at the hearing of such an application, including the fact that the accused person, the other analyst or the accused person's advocate may not be present at the destruction of the seized substance.

14. Destruction order by a magistrate

(1) Where the Attorney-General applies to a magistrate under regulation 13 for a destruction order, the magistrate shall grant the order in respect of the whole amount of the seized substance, less a minimum amount or an amount required for the purpose of sampling and analysis, unless the magistrate decides that the whole of the seized substance should be retained.

(2) In determining whether to order that a seized substance should be retained, a magistrate shall consider—

- (a) the amount of the seized substance;
- (b) whether the seized substance can reasonably be securely retained;

[Subsidiary]

- (c) the period and purpose of the retention;
- (d) the amount of the seized substance required for the purpose of sampling and analysis;
- (e) a report, if any, of a designated analyst relating to the seized substance;
- (f) the number of persons who have already been, or may in future be, identified, located, arrested or charged in relation to the seized substance;
- (g) whether the arrest of any person in relation to the seized substance is imminent;
- (h) when the hearing of any charge relating to the seized substance is likely to be concluded;
- (i) the inability of the accused person, the other analyst or the accused person's advocate to be present at the hearing of the application and the destruction of the seized substance;
- (j) any other order under the Act relating to the seized substance; (k) any claim of any person to be lawfully entitled to the seized substance; and (l) any other matter which, in the opinion of the magistrate, is relevant.

(3) Where a magistrate determines that a seized substance be retained, the magistrate shall fix a date, not later than one month after the determination, in order to make further determination whether the seized substance should be retained.

15. Procedure following the grant of destruction order by a magistrate

(1) Where a magistrate has granted a destruction order under regulation 14, the authorized officers shall, in the presence of a designated analyst, weigh the whole amount of the seized substance.

(2) Thereafter, the designated analyst shall—

- (a) isolate from the whole amount seized, the minimum amount of the seized substance;
- (b) isolate, from the remainder of the seized substance, one or more samples in duplicate that provide a true representation of the nature of the seized substance;
- (c) in respect of the minimum amount, the samples, and the remainder of the seized substance respectively, place each into one or more packages, securely seal each package and mark each package with a unique identifying number; and
- (d) take away all samples isolated, for the purpose of analysis in accordance with Part III of these Regulations.

16. Persons to be charged entitled to have sample analysed

(1) Where—

- (a) a person is or is intended to be charged with an offence in relation to a seized substance;
- (b) evidence of that substance is to be used in proceedings against that person in respect of that offence;

[Subsidiary]

- (c) the seized substance, less any minimum amount and any samples, has been destroyed pursuant to the Act or these Regulations;
- (d) weighing, sampling, analysis and destruction of the whole of the seized substance cannot be carried out in relation to that person under section 74A of the Act, because at the time, that person has not yet been identified or located, or if so identified and located the person is not in Kenya,

that person shall, when ultimately arrested and charged, be entitled to have a sample or samples that provide a true representation of the nature of the substance taken and analysed, at his own cost, by an analyst chosen by him, if there is a sufficient quantity of the seized substance remaining in the custody of the Seizures Registrar to enable the sample or samples to be analysed.

(2) A police officer shall make all reasonable attempts to serve on each person referred to in paragraph (1), notice of his entitlement under paragraph (1) to have a sample or samples of the seized substance taken and analysed at that person's own cost.

(3) A person referred to in this regulation may apply in writing to the Seizures Registrar for the release, into the custody of an analyst appointed by him of a sample or samples of the seized substance.

(4) The Seizures Registrar may authorise the release into the custody of a person specified in an application under paragraph (3), or taking of a sample or samples of a seized substance by a person specified in an application under paragraph (3), if the Seizures Registrar is satisfied that—

- (a) it is for the purpose of conducting an analysis or examination to determine the nature of the seized substance; and
- (b) the person to whom the sample of the seized substance is to be released is authorised under the Pharmacy and Poisons Act (Cap. 244) to have possession of the seized substance.

(5) A notice under this regulation may be served on a person by—

- (a) handing it to the person;
- (b) posting it to the person at the person's last known postal address or place of residence or business; or
- (c) leaving it for the person at the person's last known place of residence or place of business with a person either resident or employed at the said premises and such person shall be a person above the age of sixteen years.

17. Penalty for contravening these Regulations

Any person who contravenes these Regulations shall, upon conviction, be liable to imprisonment for a term not exceeding five years, or to a fine not exceeding two hundred and fifty thousand shillings, or to both and in the case of a continuing offence, to a further penalty of twenty thousand shillings for each day or part thereof during which the offence continues.

FIRST SCHEDULE

[Rule 8(3).]

[Subsidiary]

REPUBLIC OF KENYA

CERTIFICATE OF PROOF OF COMPLETE DESTRUCTION OF SEIZED SUBSTANCE

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1994, (No. 4 of 1994)

I certify that the (type, nature and quantity of seized substance) that was seized on the (date of seizure) at (place of seizure/and (where applicable) which has been subject to criminal proceedings in (particulars of case number and parties thereto) has been completely destroyed to my satisfaction.

Dated this day of 20.....

(Signature of Magistrate)

(Name & designation of Magistrate)

SECOND SCHEDULE

[Rule 8(4).]

GUIDELINES ON INCINERATION

- 1. Only incineration facilities that prevent retrieval before incineration of seized substance placed into the incinerator facilities shall be used during incineration.
2. During incineration, the following standards shall be observed—
(a) 300 pounds per hour throughout;
(b) STC temperature up to 2,200 degrees Fahrenheit;
(c) 2.5 seconds residence time in STC; (d) particulate levels at output of less than— (i) 4 parts per million of carbon monoxide;
(ii) 250 parts per million of nitrous oxide;
(iii) 30 parts per million of mercury;
(iv) 15 parts per million of hydrochloric acid; and
(e) residual drug particulate of less than 90 parts per million.