



LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

NEW ZEALAND

Communicated by the Government of New Zealand

NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

MISUSE OF DRUGS AMENDMENT 1985

* Note by the Secretariat: The present document is a direct reproduction of the text received by the Secretariat.

MISUSE OF DRUGS AMENDMENT 1985**1. Introduction**

1.1 The Misuse of Drugs Amendment 1985 came into force on 1 October 1985. The Amendment Act:

- (a) Defines the circumstances in which persons may be detained (without arrest) on belief of concealing Class A or Class B controlled drugs within their bodies for unlawful purposes;
- (b) Defines the rights of persons detained pursuant to para (a);
- (c) Defines the powers and duties of Police and Customs Officers in respect of persons detained.

1.2 The powers contained in the Amendment are a significant step in the detection of drug importers. However, there are also clearly expressed rights which are given to those detained.

1.3 It is essential that the provisions of the Amendment be strictly adhered to. If they are not then evidence is likely to be ruled inadmissible, and the Amendment itself will be brought into disrepute.

1.4 A copy of the Amendment will be inserted in the sets of 3 volumes when these are annotated. In the meantime these notes are designed to serve as a guide.

1.5 The contents of these notes are as follows:

Paragraph

- 1: Introduction
- 2: Shoulder Headings of Sections
- 3: Detailed Analysis of Sections
- 4: Summary of steps to be taken when applying for Detention Warrant or Renewal of Detention Warrant
- 5: Statement of Rights (Form of)
- 6: Detention Warrant and Renewal (Forms for)
- 7: Conclusion

2. Shoulder Headings

2.1 These are as follows:

- "Section 1 Short Title and commencement
Section 2 New heading and sections (relating to detention on belief of internal concealment):

Internal Concealment

- S.13A Power to detain on belief of internal concealment
S.13B Duties of Officer in ordering detention
S.13C Internal examination of detained person
S.13D Certificate by person conducting examination
S.13E Detention warrant
S.13F On grant of warrant, Judge to appoint barrister or solicitor and medical practitioner
S.13G Rights of access to person in detention
S.13H Expiry of detention
S.13J Powers of officers of Customs
S.13K Inadmissibility of certain confessions or admissions by detained person
S.13L Appeal against grant or renewal of detention warrant, etc.
S.13M Commissioner of Police and Comptroller of Customs to report to Parliament

Section 3 Internal search of person under arrest

Section 4 Second Schedule added to Misuse of Drugs Amendment Act 1978"

3. Detailed Analysis of Sections

3.1 The provisions of the Act are as follows:

"1. **Short Title and commencement**—(1) This Act may be cited as the Misuse of Drugs Amendment Act 1985, and shall be read together with and deemed part of the Misuse of Drugs Act 1975 (hereinafter referred to as the principal Act) 1/

(2) This Act shall come into force on the 1st day of October 1985.

"2. **New heading and sections (relating to detention on belief of internal concealment) inserted**—The Misuse of Drugs Amendment Act 1978 is hereby amended by inserting, after section 13, the following heading and sections:

Internal Concealment**"13A. Power to detain on belief of internal concealment—**

(1) If any member of the Police or officer of Customs has reasonable cause to believe that any person has any Class A controlled drug or Class B controlled drug secreted within that person's body for any unlawful purpose, the member of the Police or officer of Customs may cause that person to be detained under this section.

(2) For the purposes of subsection (1) of this section, a person has any Class A controlled drug or Class B controlled drug secreted within that person's body if—

- (a) The drug is within any of that person's body cavities; or
- (b) That person has swallowed the drug in such a manner that it may pass through the body, or be regurgitated, intact, but the drug is still within the body at the material time.

(3) In subsection (1) of this section, 'unlawful purpose' means the commission of an offence against the principal Act, and the concealment of the commission of any such offence."

Comment:

Subsection (1) refers to the test of "reasonable cause to believe" that a Class A or Class B controlled drug is secreted within a person's body. The power of causing a person to be detained permits the use of reasonable force.

Subsections (2) and (3) are straightforward.

"13B. **Duties of officer in ordering detention**—On causing any person to be detained under section 13A of this Act, a member of the Police or an officer of Customs shall as soon as possible, unless the detention sooner ceases in accordance with paragraph (a) or paragraph (b) or paragraph (c) of section 13H of this Act—

- (a) Inform the detained person of the reason for the detention, in words sufficient to give the detained person notice of the true reason for the detention; and
- (b) Hand to the detained person a Statement of Rights in the form set out in the Second Schedule to this Act; and
- (c) Arrange for the attendance of a medical practitioner (who shall be nominated or approved for the purpose by the Commissioner of Police or the Comptroller of Customs, either generally or in any particular case or class of case), and, in the presence of that medical practitioner, ask the detained person if he or she wishes to undergo an examination of one or more of the kinds specified in section 13C (1) of this Act; and
- (d) Apply to a District Court Judge, in accordance with section 13E of this Act, for a warrant authorising the continued detention of the detained person under section 13A of this Act."

Comment:

This section prescribes 4 steps which the Police (or Customs) officer must take once a person has been detained under s. 13A. The only exception to this is when the detention ceases (before the steps can be taken)—in accordance with s. 13H (a), (b), or (c). (Note: The last mentioned section is set out below).

"13C. **Internal examination of detained person**—(1) The kinds of examination that a person who is detained under section 13A of this Act may undergo are as follows:

- (a) A physical examination (whether or not facilitated by an instrument or device) to be conducted by a medical practitioner nominated or approved for the purpose by the Commissioner of Police or the Comptroller of Customs, either generally or in any particular case or class of case;
- (b) An X-ray examination with or without a contrast agent;
- (c) An ultrasound scan.

(2) Except in a case where the detained person immediately makes it clear that he or she does not wish to undergo any examination, the medical practitioner called under section 13B (c) of this Act shall explain to the detained person what is involved in each kind of examination.

(3) If the detained person wishes to undergo an examination of a kind described in subsection (1) of this section, the detained

person shall sign a written statement to the effect that he or she consents to the examination, and the medical practitioner shall endorse on the written consent a certificate to the effect that the medical practitioner has advised the detained person of what is involved in the examination and is satisfied that the detained person, when giving consent, understood what is involved in that examination.

(4) Notwithstanding that any such detained person states that he or she does not wish to undergo any examination of a kind described in subsection (1) of this section, the detained person may subsequently, at any time while the detention is continuing, advise any member of the Police or officer of Customs that he or she now wishes to undergo such an examination, in which case the provisions of subsections (2) and (3) of this section shall apply with any necessary modifications.

(5) As soon as practicable after any such detained person has consented to undergo any such examination, a member of the Police or an officer of Customs shall make all necessary arrangements for that examination to take place.

(6) Notwithstanding any of the foregoing provisions of this section, no such detained person shall be entitled to insist on undergoing an examination of a particular kind if the necessary equipment is not reasonably available for the purpose.

(7) Nothing in the foregoing provisions of this section shall preclude the detained person from requesting or consenting to the administration to him or her of a laxative or any other similar substance; and, where the detained person makes any such request or gives any such consent, a member of the Police or an officer of Customs shall record the particulars of the case, and those particulars shall be supplied to the Judge whenever an application for the grant or renewal of a detention warrant is made."

Comment:

This section prescribes the rules concerning the internal examination of the detained person. Details of medical practitioners nominated or approved by the Commissioner will be inserted in the *Police Gazette*, or may be obtained from NDIB.

Subsection (1) sets out the 3 kinds of examination.

Subsection (2) requires the medical practitioner to explain to the detained person the different kinds of examinations.

Subsection (3) provides that a detained person must sign a written statement of consent (which is to be endorsed by the medical practitioner).

Subsection (4) provides that a detained person may change his mind after initially refusing to undergo an examination. This may be done at any time while the detention is in force.

Subsection (5) imposes a duty on the Police (or Customs) to arrange the medical examination once the consent has been given by the detained person.

Subsection (6) limits a detained person's choice of examination under certain circumstances.

Subsection (7) contains specific requirements as to a request for a laxative.

"13D. Certificate by person conducting examination—

(1) The medical practitioner or other person who conducts an examination of any person detained under section 13A of this Act shall, on concluding the examination, certify the results of the examination in whichever of the following forms is appropriate:

(a) That, in his or her professional judgment, the detained person has nothing secreted within that person's body, or within that part of the body to which the examination related, that could be or contain a Class A controlled drug or a Class B controlled drug;

(b) That, in his or her professional judgment, the detained person has something secreted within that person's body that could be or contain a Class A controlled drug or a Class B controlled drug;

(c) That the results of the examination are inconclusive.

(2) A copy of every certificate given under subsection (1) of this section shall be given to—

(a) The detained person; and

(b) The barrister or solicitor appointed under section 13F of this Act; and

(c) The medical practitioner appointed under that section."

Comment:

This section sets out the duties of a medical practitioner or other person conducting an examination of a detained person. Although the obligations are not imposed on the Police, members should be alert to ensure that the section is complied with.

"13E. **Detention warrant—**(1) Subject to subsection (2) of this section, every application for a warrant authorising the continued detention of any person under section 13A of this Act shall be made by a member of the Police or an officer of Customs in writing and on oath, and shall set out, or be accompanied by, the following particulars:

(a) The facts relied upon to show that there is reasonable cause to believe that the detained person has any Class A controlled drug or Class B controlled drug secreted within that person's body for any unlawful purpose;

(b) The time at which, the date on which, and the place at which the detention commenced under section 13A of this Act;

(c) The address, and a description of the nature, of the premises in which the detained person is being detained, and, if it is proposed that the detained person be moved to any other premises for the purposes of the detention, the address, and a description of the nature, of those other premises;

(d) The time or times at which, and the date or dates on which, the detained person was asked if he or she wished to undergo any examination of a kind described in section 13C (1) of this Act, and the detained person's response to any such question, including the reasons given by the detained person for any negative response;

(e) If any such examination has been conducted, the results of that examination as set out in the certificate given under section 13D (1) of this Act.

(2) In any case where, because of the urgency of the matter or for any other sufficient cause, it seems proper to do so, a District Court Judge may permit an application under this section to be made on oath orally, but in that event the Judge shall make a note in writing of the particulars referred to in paragraphs (a) to (e) of subsection (1) of this section.

(3) In considering an application made under this section, the Judge may take into account any oral or documentary material that the Judge considers relevant, whether or not it would be admissible in a court of law.

(4) If, on an application made under this section, a Judge is satisfied—

(a) That there has been reasonable compliance with the requirements of section 13B of this Act; and

(b) That there is reasonable cause to believe that the detained person has secreted within that person's body any Class A controlled drug or Class B controlled drug for any unlawful purpose; and

(c) That the premises in which the detained person is being detained, or any other premises in which it is proposed to detain that person, are suitable for the purpose,— the Judge may grant a detention warrant in the prescribed form authorising the continued detention of the person to whom it relates under section 13A of this Act.

(5) A detention warrant issued under subsection (4) of this section shall authorise the continued detention of the person named in it until—

(a) The expiry of the period of 7 days commencing with the date on which the detention under section 13A of this Act commenced, or such shorter period as the Judge may specify in the warrant; or

(b) The detention is sooner brought to an end in any of the circumstances described in section 13H of this Act.

(6) On granting a detention warrant under this section, a Judge—

(a) Shall record in writing his or her reasons for granting the warrant; and

(b) May impose all such conditions relating to the circumstances and conduct of the detention as the Judge thinks fit."

Comment:

This important section sets out procedures relating to the detention warrant. An application for a detention warrant is one of the 4 steps prescribed in s. 13B, which must be carried out "as soon as possible".

Subsection (1) provides that applications for detention

warrants are to be made in writing and on oath (to a District Court Judge)—and are to contain the particulars referred to in paras (a)–(e) of the subsection. There is no prescribed form for the application—therefore it can be prepared on plain paper and in a style similar to that used for applications under s. 198 of the Summary Proceedings Act 1957.

Subsection (2) authorises a District Court Judge to accept an oral application on special occasions. (Note: oral applications should be avoided wherever possible).

Subsection (3) enables a District Court Judge, when dealing with an application, to take into account oral or documentary evidence which would ordinarily be inadmissible.

Subsection (4) provides the criteria which a Judge must be satisfied before he is issued a warrant.

Subsection (5) sets out the period for which a warrant may last.

Subsection (6) requires the Judge to record his reasons for granting a warrant, and authorises the imposition of conditions concerning the detention.

“13F. On grant of warrant, Judge to appoint barrister or solicitor and medical practitioner—(1) On granting a detention warrant under section 13E of this Act, a District Court Judge shall appoint, or arrange for the appointment of, a barrister or solicitor and a medical practitioner to report to the Court on the matters referred to in subsections (2) and (3) of this section.

(2) The functions of the barrister or solicitor appointed under this section shall be to satisfy himself or herself—

- (a) That the detention is being conducted in accordance with the provisions of this Act, the terms of the detention warrant, and any directions given by the Judge; and
- (b) That the detained person is aware of his or her rights in relation to the detention, and that the exercise of any of those rights by that person is not being interfered with unreasonably,—

and to report to the Judge if the barrister or solicitor is not so satisfied in any particular respect.

(3) The function of the medical practitioner appointed under this section shall be to satisfy himself or herself—

- (a) That the detained person is being accommodated, fed, and generally cared for in a reasonable and proper manner; and
- (b) That the detained person is being offered all such medical care (if any) as may seem to the medical practitioner to be necessary or desirable in the interests of that person,—

and to report to the Judge if the medical practitioner is not so satisfied in any particular respect.

(4) Notwithstanding anything in subsection (2) or subsection (3) of this section, where—

- (a) The detained person consults a barrister or solicitor of that person's choosing and that barrister or solicitor agrees to act for that person, the barrister or solicitor appointed under subsection (1) of this section shall not be responsible for any matter falling within the normal responsibilities of a barrister or solicitor acting for a client; or
- (b) The detained person consults a medical practitioner of that person's choosing and that medical practitioner agrees to attend that person as a patient, the medical practitioner appointed under subsection (1) of this section shall not be responsible for any matter falling within the normal responsibilities of a medical practitioner attending a patient.

(5) On appointing a barrister or solicitor or a medical practitioner under this section, or at any time thereafter while the detention continues, a District Court Judge may give to the barrister or solicitor or medical practitioner all such directions relating to the functions of the barrister or solicitor or medical practitioner as the Judge thinks fit.”

Comment:

Subsections (1) to (3) are designed to ensure that a detained person's welfare is safeguarded. To this end the District Court Judge, on granting a detention warrant, is required to appoint (or arrange for the appointment of) a barrister or solicitor, and a medical practitioner. The functions of the latter are set out in subsections (2) and (3).

Subsection (4) preserves the right of a detained person to

consult a barrister or solicitor, or a medical practitioner; and makes it clear that the responsibilities of any barrister or solicitor or medical practitioner appointed under the section are limited to the functions in subsections (2) and (3).

Subsection (5) authorises the District Court Judge to give such directions as the Judge thinks fit concerning the functions of the barrister or solicitor, or medical practitioner.

“13G. Rights of access to person in detention—(1) The following persons shall at all times have the right of access to any person who is being detained under section 13A of this Act:

(a) The barrister or solicitor appointed under section 13F of this Act:

(b) The medical practitioner appointed under that section.

(2) The following persons shall at all reasonable times have the right of access to any person who is being detained under section 13A of this Act:

(a) Any barrister or solicitor who is acting for the detained person:

(b) Any medical practitioner who is attending the detained person as a patient:

(c) Any other person whom the detained person reasonably wishes to see.

(3) Nothing in subsection (2) of this section, or any other enactment or rule of law, shall entitle any person to have access to the detained person—

(a) In the absence of any member of the Police or officer of Customs who is for the time being guarding the detained person; or

(b) Otherwise than subject to such reasonable conditions as may be necessary to ensure the safety of the detained person or to avoid the frustration of the purpose of the detention.”

Comment:

Subsection (1) provides that the barrister or solicitor and medical practitioner, appointed under s. 13A, are to have a right to access at all times to any person detained under that section.

Subsection (2) provides that there is to be a right of access to a detained person, at all reasonable times, for certain persons; namely a barrister or solicitor acting for the detained person, a medical practitioner attending the detained person as a patient, and any other person whom the detained person reasonably wishes to see.

Subsection (3) provides for conditions relating to the access of persons referred to in subsection (2). It should be noted that these conditions do not apply to access by a person referred to in subsection (1).

“13H. Expiry of detention—The detention of any person under section 13A of this Act shall cease in each of the following circumstances:

(a) Where the detained person is arrested:

(b) Where a certificate is given under section 13D of this Act, following an examination, to the effect that, in the professional judgment of the person conducting the examination, the detained person has nothing secreted within that person's body that could be or contain a Class A controlled drug or a Class B controlled drug:

(c) Where the member of the Police or officer of Customs who is in charge of the case forms the view that there is no longer reasonable cause to believe that the detained person has any Class A controlled drug or Class B controlled drug secreted within that person's body for any unlawful purpose:

(d) Where an application to a District Court Judge for a detention warrant, or for the renewal of a detention warrant, in respect of the detained person is declined:

(e) Where the warrant is cancelled on appeal under section 13L of this Act.”

Comment:

This section (13H) sets out 5 sets of circumstances whereby a detention warrant will terminate.

“13I. Renewal of warrants—(1) Any District Court Judge may from time to time grant a renewal of a detention warrant upon application made at any time before the warrant (or any current renewal of the warrant) has expired.

(2) Every application for renewal of a detention warrant shall be made by a member of the Police or an officer of Customs

in writing and on oath, and shall set out, or be accompanied by, the following particulars:

- (a) The facts relied upon to show that there is still reasonable cause to believe that the detained person has any Class A controlled drug or Class B controlled drug secreted within that person's body for any unlawful purpose;
- (b) The date or dates on which the detained person was asked to consent to undergo any examination of a kind described in section 13C of this Act, and the detained person's response to that request, including any reasons given by the detained person for any negative response;
- (c) If any such examination has been conducted, the results of that examination as set out in the certificate given under section 13D (1) of this Act;
- (d) Any matters that the barrister or solicitor appointed under section 13F of this Act wishes to draw to the attention of the Judge who is to consider the application for renewal;
- (e) Any matters that the medical practitioner appointed under that section wishes to draw to the attention of that Judge;
- (f) Any matters that any barrister or solicitor who is acting for the detained person, or any medical practitioner who is attending the detained person as a patient wishes to draw to the attention of that Judge.

(3) Every such application shall be supported by such other information as the Judge may require.

(4) Notice of every such application shall be given to the barrister or solicitor appointed under section 13F of this Act and to any barrister or solicitor who is acting for the detained person.

(5) Notwithstanding any of the preceding provisions of this section or any enactment or rule of law to the contrary, neither the detained person nor any person referred to in any of paragraphs (d) to (f) of subsection (2) of this section shall be entitled to see or hear any evidence that was adduced in support of the original application for the grant of the detention warrant, or any evidence adduced in support of the application for the renewal of the warrant and relating to any matter other than one to which paragraph (b) or paragraph (c) of that subsection applies; and for the purposes of this subsection, every such person shall be excluded from the hearing while any such evidence is being given.

(6) In considering an application made under this section, the Judge may take into account any oral or documentary material that the Judge considers relevant, whether or not it would be admissible in a court of law.

(7) Without limiting subsection (3) of this section, before determining an application for the renewal of a detention warrant under this section, a District Court Judge may—

- (a) Call for a report from the barrister or solicitor referred to in paragraph (d) of subsection (2) of this section, or from the medical practitioner referred to in paragraph (e) of that subsection, on any matter relating to the detention or to the application for the renewal of the detention warrant; and
- (b) Hear any person referred to in any of paragraphs (d) to (f) of that subsection in respect of the application.

(8) A renewal of a detention warrant may be granted under this section if the Judge is satisfied that the circumstances described in section 13A of this Act still obtain.

(9) Every renewal of a detention warrant shall be valid for a period of 7 days commencing with the date on which it is granted, or such shorter period as the Judge may specify in the renewal.

(10) Where an application for the renewal of a detention warrant is duly made before the expiration of the warrant (or of any current renewal of the warrant), the warrant shall continue in force until the application is determined notwithstanding the expiration of the period for which the warrant was issued or last renewed.

(11) Nothing in this section shall prevent a Judge from granting a second or subsequent renewal of a detention warrant upon an application duly made under this section:

“Provided that no detention under section 13A of this Act shall continue for longer than 21 days.

(12) On granting a renewal of a detention warrant under this section, a Judge—

- (a) Shall record in writing his or her reasons for granting the renewal; and

(b) May impose all such conditions relating to the circumstances and conduct of the detention as the Judge thinks fit.”

Subsection (1) contains the general principle as to renewals.

Subsection (2) sets out the details which must be contained in any application for a renewal. There is no prescribed form so the application may be set out in a format similar to that used in an application for a warrant under s. 198 of the Summary Proceedings Act 1957.

Subsection (3) enables the Judge to require further information from an applicant.

Subsection (4) requires notice of any application to be given to certain persons. The applicant should ensure that this notice is given.

Subsection (5) means that neither the detained person, nor any barristers or solicitors or medical practitioners (whether appointed under s. 13E or engaged by the detained person), are entitled to see or hear:

- (i) any evidence adduced in support of the original application for the detention warrant; and
- (ii) any evidence adduced in support of an application for renewal—with the exception of the (basic) information set out in paras (b) and (c) of subsection (2).

Note: Nor can the barristers or solicitors or medical practitioners be present when the evidence referred to in (i) or (ii) is given.

Subsection (6) enables the Judge to take into account evidence not ordinarily admissible.

Subsection (7) authorises the Judge to call for reports or hear evidence from certain persons.

Subsection (8) authorises the renewal of a warrant if the Judge is satisfied that the circumstances in s. 13A still exist.

Subsection (9) specifies the period for which a renewal warrant may be granted (maximum 7 days).

Subsection (10) enables an existing warrant to continue in force pending the determination of an application for renewal (providing the renewal application has been made during the currency of the existing warrant).

Subsection (11) authorises a Judge to grant a second or subsequent renewal of a detention warrant.

Subsection (12) requires the Judge to record certain information when granting a renewal.

“13j. **Powers of officers of Customs**—The powers conferred by sections 13A to 13i of this Act may be exercised by any officer of Customs only in respect of offences against the principal Act involving the importation into or the exportation from New Zealand of any Class A controlled drug or Class B controlled drug.”

Comment:

This section specifically limits the powers of Customs officers in respect of the powers set out in sections 13A–i inclusive.

“13k. **Inadmissibility of certain confessions or admissions by detained person**—(1) Where any person who is being detained under section 13A of this Act makes any confession or admission in respect of any offence other than a relevant offence, no evidence of that confession or admission, or of its substance, meaning, or purport, shall be given in any court.

(2) For the purposes of this section, a relevant offence is one with which the detained person may be liable to be charged by virtue of having any controlled drug secreted within that person's body at any time during the detention.”

Comment:

Section 13k provides that where a person is detained under s. 13A, then the only confessions or admissions which can be admitted in evidence are those relating to a “relevant offence” (as described in subsection (2)).

“13L. **Appeal against grant or renewal of detention warrant, etc.**—(1) Where a District Court Judge grants a detention warrant under section 13E of this Act, or grants a renewal of a detention warrant under section 13i of this Act, or imposes any condition under either of those sections relating to the circumstances or conduct of the detention, the detained person may appeal to the High Court against that decision.

(2) Where a notice of appeal is filed in the High Court under

this section, the Registrar of the Court in which the decision under appeal was made shall forward the Court file to the High Court.

(3) The fact that an appeal is lodged or is pending under this section shall not affect the detention, which, subject to section 13H of this Act, shall continue pending the determination of the appeal.

(4) The detained person shall not have the right to attend or be heard personally in respect of the appeal, but may be represented by counsel.

(5) Notwithstanding any of the provisions of this section or any enactment or rule of law to the contrary, neither the detained person nor his or her counsel shall be entitled to see or hear any evidence that was adduced in support of the original application for the grant of the detention warrant, or any evidence adduced in opposition to the appeal and relating to any matter other than one referred to in paragraph (b) or paragraph (c) of section 13I (2) of this Act; and for the purposes of this subsection, any counsel representing the detained person shall be excluded from the hearing while any such evidence is being given.

(6) Every appeal under this section shall be by way of rehearing.

(7) On hearing any such appeal, the High Court may take into account any oral or documentary material that the Court considers relevant, whether or not it would otherwise be admissible.

(8) Without limiting subsection (7) of this section, before determining an appeal under this section, the Court may—

(a) Call for a report from the barrister or solicitor or the medical practitioner appointed under section 13F of this Act on any matter relating to the detention or to the appeal; and

(b) Hear any such barrister or solicitor or medical practitioner, or any other medical practitioner who is attending the detained person as a patient.

(9) On hearing any appeal under this section, the High Court may confirm, reverse, or modify the decision under appeal.

(10) Where the High Court reverses the decision to grant a detention warrant or the renewal of a detention warrant, it shall cancel the warrant.

(11) The decision of the High Court on an appeal under this section shall be final."

Comment:

This section gives a right of appeal to the High Court to any person who is the subject of a detention warrant or a renewal warrant. The Crown solicitor is to be engaged to represent the Police at any appeal but it is suggested that a copy of these notes be provided to him (at least until the new legislation becomes familiar).

It should be noted that under subsection (3) the fact that an appeal has been lodged does not affect the detention which (subject to s. 13H) is to continue pending the appeal's determination.

"13M. Commissioner of Police and Comptroller of Customs to report to Parliament—The Commissioner of Police shall include in every annual report prepared by the Commissioner for the purposes of section 65 of the Police Act 1958, and the Comptroller of Customs shall include in every annual report prepared by the Comptroller for submission to Parliament, the following information in respect of the period under review:

- (a) The number of applications for detention warrants made under section 13E of this Act by any member of the Police or (as the case may require) any officer of Customs;
- (b) The number of applications for renewals of detention warrants made under section 13I of this Act by any member of the Police or (as the case may require) any officer of Customs;
- (c) The number of such applications referred to in each of the preceding paragraphs of this section that were granted and the number that were refused;
- (d) The average duration of the detention warrants (including renewals) granted on applications by members of the Police or (as the case may require) officers of Customs;
- (e) The number of prosecutions that have been instituted in which has been adduced evidence obtained directly during the detention of any persons pursuant to

detention warrants granted on applications by members of the Police or (as the case may require) officers of Customs, and the results of those prosecutions."

Comment:

This section is straightforward.

It will be necessary for details relating to the provision of paras (a)–(c) of s. 13M to be forwarded to the Director: Drug Enforcement and Intelligence Analysis (Police National Headquarters) to enable the Commissioner to fulfil his statutory duty under the section.

4. Summary of Steps to be taken when applying for Detention Warrant and Renewal Warrant

4.1 The following represents the steps involved in obtaining the above:

- (i) Member has "reasonable cause to believe" in terms of s. 13A;
- (ii) Existence of (i) provides grounds for detention of suspect (pursuant to subsection (1) of s. 13A);
(Note: Detention can cease under s. 13H).
- (iii) Member detaining suspect required to carry out action set out in s. 13B (1) **as soon as possible**;
- (iv) Medical practitioner required to explain details of kinds of examination unless detained person makes it clear that he does not wish to undergo an examination (s. 13C (2));
- (v) Detained person to sign written statement of consent, and medical practitioner to endorse this (s. 13C (3));
- (vi) Police to make arrangements (as soon as practicable) for examination of detained person once consent given (s. 13C (5));
- (vii) Medical practitioner conducting examination to issue certificate in terms of s. 13D (1);
- (viii) Copies of certificate to be given to persons mentioned in s. 13D (2);
- (ix) Application to be made for renewal of warrant in appropriate case (pursuant to s. 13I);
- (x) Report to be made to Commissioner (s. 13M).

5. Statement of Rights

5.1 The Statement of Rights, which must be handed to every detained person as soon as possible under s. 13B, is set out in the Schedule to the Amendment.

5.2 The Statement of Rights is not a printed document. It is intended to attach a copy of the Statement to a Headquarters Circular. In the meantime, however, Districts should be ready to prepare one of their own if the powers under the Amendment are exercised.

5.3 The full text of the Statement of Rights is as follows:

STATEMENT OF RIGHTS

You have been detained under section 13A of the Misuse of Drugs Amendment Act 1978 because it is believed that you have secreted within your body any Class A controlled drugs or Class B controlled drugs for an unlawful purpose.

READ THIS NOTICE CAREFULLY. IT TELLS YOU WHAT RIGHTS YOU HAVE WHILE THE DETENTION CONTINUES.

MEDICAL EXAMINATIONS:

You will be asked if you wish to undergo certain types of medical examination that may help to determine whether or not you have any Class A controlled drugs or Class B drugs secreted within your body.

For this reason, a doctor will be asked to see you to explain just what is involved in each type of examination.

NO SUCH EXAMINATION MAY TAKE PLACE WITHOUT YOUR CONSENT

If you do wish to undergo an examination, you will be asked to put your consent to the examination in writing.

If you refuse your consent, you may change your mind later. Just tell one of the officers supervising your detention.

If you decide not to have an examination, that fact, and any reasons you give for it, may be put before the Judge in any further proceedings.

DETENTION WARRANT:

As soon as possible after detaining you, the officer must apply to a District Court Judge for a warrant to authorise your continued detention.

If the Judge grants the warrant, you may be detained for up to 7 days, or such shorter period as the Judge may order. However, a warrant may be renewed by a Judge for further periods of up to 7 days each, if the Judge is satisfied that there are still reasonable grounds for believing that you have any Class A controlled drugs or Class B controlled drugs secreted within your body. You may not be detained for longer than 21 days.

SUPERVISING LAWYER AND DOCTOR:

If the Judge issues a detention warrant, he or she must appoint a lawyer and a doctor to see that your rights are protected and that you are properly cared for while you are being detained. These people are NOT there as part of the team detaining you: they are there as agents of the Court to ensure fair play. You should consult them on any legal or medical matter that is worrying you.

However, you are also entitled to arrange for your own lawyer or doctor to visit and advise you.

RIGHT OF APPEAL:

You may appeal to the High Court against the issue or renewal of a detention warrant, or against any condition of detention imposed by the District Court Judge. If you wish to appeal, consult the Court lawyer or your own lawyer.

VISITING RIGHTS:

While you are detained, the Court lawyer and the Court doctor may visit you at any time. Your own lawyer, your own doctor, and any other person you may reasonably wish to see may call on you at any reasonable time.

END OF DETENTION:

You must be released if the Judge refuses to grant a detention warrant, or refuses to renew it, or the warrant is cancelled by the High Court on appeal.

You must also be released if a medical examination shows that you do not have any Class A controlled drugs or Class B controlled drugs secreted within your body, or if the officers detaining you cease to believe that you have any such drugs secreted within your body.

If you are arrested, your detention under section 13A of the Misuse of Drugs Amendment Act 1978 will cease, and you will then be detained under arrest. From then on, you will have all the rights of an arrested person.

COURT ACCESS:

You will not be entitled to appear in Court while you are in detention. However, the Court lawyer and your own lawyer will be entitled to address the Court on appeal against a detention warrant or a condition of detention, or where an application is made for a renewal of the warrant.

FURTHER ADVICE:

This is only a brief summary of your rights. If there is anything you do not understand, talk to the Court lawyer or your own lawyer."

Forms for Detention Warrants and Renewals

6.1 The Misuse of Drugs (Detention) Regulations 1985 came into force on 1 October 1985. The Schedule to the Regulations contains the forms for the "Detention Warrant" and the "Renewal of Detention Warrant" respectively.

6.2 The warrant and renewal forms will need to be typed on plain paper, and it is strongly recommended that these be prepared by the Police (in consultation with a Legal Adviser).

6.3 The Schedule indicates that a **Renewal** is to be typed on the **reverse** of the **Detention Warrant**. If this is not practical the **Renewal** can be prepared on a separate sheet of paper and attached to the back of the **Detention Warrant**. Section 5 (i) of the Acts Interpretation Act 1924 should serve to overcome any challenge to the **Renewal Warrant** on the ground that it is not actually typed on the back of the **Detention Warrant**.

6.4 The form for the Detention Warrant is as follows:

"DETENTION WARRANT

(Section 13E, Misuse of Drugs Amendment Act 1978)

To every member of the Police *and every officer of Customs:

WHEREAS [Full name], of [Address], [Occupation] (in this warrant called the detained person) was on the day of 19 at [Address of premises]; caused to be detained under section 13A of the Misuse of Drugs Amendment Act 1978 and is presently so detained in [Address of premises];

And whereas I am satisfied on an application in writing made on oath (or on application made on oath orally, the particulars of which I have noted in writing) by [Name of applicant], a member of the Police (or an officer of Customs) on the day of 19, that—

(a) There has been reasonable compliance with the requirements of section 13B of the Misuse of Drugs Amendment Act 1978; and

(b) There is reasonable cause to believe that the detained person has secreted within that person's body a Class A controlled drug or a Class B controlled drug for an unlawful purpose; and

(c) The said premises in which the detained person is presently being detained (or the premises at [Address] in which it is proposed to detain that person) are suitable for the purpose:

NOW THEREFORE the continued detention of the detained person in the said premises is hereby authorised for a period of commencing with the day of 19 †.

Dated at this day of 19 .

District Court Judge.

*Delete if inapplicable.

†The maximum period of detention that may be authorised (without a renewal of this warrant) is 7 days commencing with the day on which the detained person was first detained under section 13A of the Misuse of Drugs Amendment Act 1978."

6.5 The form for the Renewal of a Detention Warrant is as follows:

"RENEWAL OF DETENTION WARRANT

(Section 13I, Misuse of Drugs Amendment Act 1978)

To every member of the Police *and to every officer of Customs:

WHEREAS I am satisfied on an application in writing made on oath by [Name of applicant], a member of the Police (or an officer of Customs) on the day of 19 that there is still reasonable cause to believe that the detained person has secreted within that person's body a Class A controlled drug or a Class B controlled drug for an unlawful purpose:

NOW THEREFORE the continued detention of the detained person in the said premises is hereby authorised for a period† of commencing with the day of 19

Dated at this day of 19 .

District Court Judge.

*Delete if inapplicable.

†The maximum period of detention that may be authorised (without a further renewal of this warrant) is 7 days. The warrant may be renewed more than once, but not so that the total period of detention under section 13A of the Misuse of Drugs Amendment Act 1978 exceeds 21 days. Each subsequent renewal should be granted in this form."

7. Conclusion

7.1 These notes have been prepared by a Police Legal Adviser at National Headquarters. Any inquiries concerning legal aspects should be directed to the Chief Legal Adviser or to a District Legal Adviser. Inquiries concerning other aspects may be referred to the Director: Drug Enforcement and Intelligence at Police National Headquarters.