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ENGLISH ONLY*

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 text.*

MALTA

Communicated by the Government of Malta

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 [...].

DANGEROUS DRUGS ORDINANCE CHAPTER 101

[AS AMENDED UP TO 21 JUNE 1996]

*Note by the Secretariat: This document is a direct reproduction of the text communicated to the Secretariat by the Government of Malta.

CHAPTER 101

DANGEROUS DRUGS ORDINANCE

To amend and consolidate the law relating to the importation, exportation, manufacture, sale and use of opium and other dangerous drugs.

(1st September, 1939)

Enacted by ORDINANCE XXXI of 1939, as amended by Legal Notice 4 of 1963; Acts: XLVIII of 1975, XI of 1977, XXIII of 1980, XLIX of 1981 and XIII of 1983; Legal Notice 32 of 1984; Act VIII of 1986 and Legal Notices 58 of 1988 and 49 and 93 of 1990; Act VI of 1994;^{1/} Act XVI of 1996.

1. This Ordinance may be cited as the Dangerous Drugs Ordinance. Short title
2. (1) In this Ordinance unless the context otherwise requires - Interpretation.
 "coca leaves" means the leaves of the *Erythroxylum Coca Lamarek* and the *Erythroxylum Novogranatense* (Morris) *Hieronymus* and their varieties belonging to the family of *Erythroxylaceae* and the leaves of other species of this genus from which cocaine can be extracted either directly or by chemical transformation; Amended by
XXIII. 1980.2
VI. 1994.2
- "export", with its grammatical variations and cognate expressions, in relation to Malta, means to take or cause to be taken out of Malta in any manner whatsoever;
- "import", with its grammatical variations and cognate expressions, in relation to Malta, means to bring or cause to be brought into Malta in any manner whatsoever;
- "Indian Hemp" means any plant of the genus *Cannabis* or any part of any such plant, but does not include fibre or seed which has been rendered not capable of developing into another such plant;
- "medicinal opium" means raw opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopoeia, whether it is in the form of powder or is granulated or is in any other form and whether it is or is not mixed with neutral materials;
- "prepared opium" means opium prepared for smoking and includes dross and any other residues remaining after opium has been smoked;
- "raw opium" means the spontaneously coagulated juice obtained from the capsules of the *Papaver Somniferum* L., which has only been submitted to the necessary manipulations for packing and transport, whatever its content of morphine;
- "the Single Convention" means the Single Convention on Narcotic Drugs adopted at New York on the 30 March, 1961 as subsequently amended by the Protocol adopted in Geneva on the 25 March, 1972.
- (2) In this Ordinance, unless the context otherwise requires, any reference to this Ordinance shall be deemed to include a reference to rules made thereunder.

PART I

RAW OPIUM AND COCA LEAVES

3. (1) The Minister responsible for public health may make rules for controlling or restricting the production, possession, sale and distribution of raw opium or coca leaves, and in particular, but without prejudice to the generality of the foregoing power, for prohibiting the production, possession, sale or distribution of raw opium or coca leaves except by persons licensed or otherwise authorised in that behalf.
- (2) The Minister responsible for public health may fix such penalties for the breach or non-observance of any rule as he may think fit, not exceeding imprisonment for one month or a fine (*multa*) of one hundred and fifty liri.
4. No person shall cultivate the opium poppy (*papaver somniferum*) or the coca plant (*Erythroxylum Coca*).
- Power to regulate the production of and dealing in raw opium and coca leaves.
Amended by:
L.N. 4 of 1963;
XI. 1977.2;
XXIX. 1981.4;
XIII. 1983.5
- Prohibition of cultivation of opium or coca plant.

PART II

PREPARED OPIUM

5. No person shall import or bring into, or export from Malta any prepared opium.
6. If any person -
- (a) manufactures, sells or otherwise deals in prepared opium; or
- (b) has in his possession any prepared opium; or
- (c) being the occupier of any premises permits those premises to be used for the purpose of the preparation of opium for smoking or the sale or smoking of prepared opium; or
- (d) is concerned in the management of any premises used for any such purpose as aforesaid; or
- (e) has in his possession any pipes or other utensils for use in connection with the smoking of opium, or any utensils for use in connection with the preparation of opium for smoking; or
- Prohibition of exportation of prepared opium.
- Penalty for manufacturing, selling, using, etc., prepared opium.

(f) smokes or otherwise uses prepared opium, or frequents any place used for the purposes of opium smoking,

he shall be guilty of an offence against this Ordinance.

PART III

INDIAN HEMP

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| <p>7. No person shall import or bring into, or export from, Malta any resin obtained from the plant <i>Cannabis</i>.</p> | <p>Prohibition of importation and exportation of the resin from the plant <i>Cannabis</i>.
Amended by: XXIII. 1980.6</p> |
| <p>8. If any person -</p> <p>(a) has in his possession (otherwise than in the course of transit through Malta or the territorial waters thereof) the resin obtained from the plant <i>Cannabis</i> or any preparations of which such resin formed the base; or</p> <p>(b) produces, sells or otherwise deals in the resin obtained from the plant <i>Cannabis</i> or any preparations of which such resin formed the base; or</p> <p>(c) cultivates the plant <i>Cannabis</i>; or</p> <p>(d) has in his possession (otherwise than in the course of transit through Malta or the territorial waters thereof) the whole or any portion of the plant <i>Cannabis</i> (excluding its medicinal preparations); or</p> <p>(e) sells or otherwise deals in the whole or any portion of the plant <i>Cannabis</i> (excluding its medicinal preparations),</p> <p>he shall be guilty of an offence against this Ordinance.</p> | <p>Penalty for dealing in, etc., the plant <i>Cannabis</i>.
Substituted by: XXIII. 1980.3</p> |

PART IV

COCAINE, MORPHINE, ETC.

9. (1) For the purpose of preventing the improper use of the drugs to which this Part of this Ordinance applies, the Minister responsible for public health may make rules for controlling the manufacture, sale, possession and distribution of those drugs, and in particular, but without prejudice to the generality of the foregoing L.N. power, for -

Control of
manufacture and
sale of cocaine.

*Amended by:
L.N. 4 of 1963;
XI. 1977.2*

(a) prohibiting the manufacture of any drug to which this Part of this Ordinance applies except on premises licensed for the purpose and subject to any conditions specified in the licence; and

(b) prohibiting the manufacture, sale or distribution of any such drug except by persons licensed or otherwise authorised under the rules and subject to any conditions specified in the licence or authority; and

(c) regulating the issue by medical practitioners of prescriptions containing any such drug and the dispensing of any such prescriptions; and

(d) requiring persons engaged in the manufacture, sale or distribution of any such drug to keep such books and furnish such information either in writing or otherwise as may be prescribed; and

(e) controlling or restricting the possession of or dealing in any such drug while in transit through Malta.

(2) The rules under this section shall provide for authorising any person who lawfully keeps open a shop for the retailing of poisons in accordance with the provisions of the Medical and Kindred Professions Ordinance -

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(a) to manufacture at the shop in the ordinary course of his retail business any preparation, admixture, or extract of any drug to which this Part of this Ordinance applies; or

(b) to carry on at the shop the business of retailing, dispensing or compounding any such drug,

subject to the power of the Minister responsible for public health to withdraw the authorisation in the case of a person who has been convicted of an offence against this Ordinance or of an offence under the Customs Ordinance as applied by this Ordinance, and who cannot, in the opinion of the Minister responsible for public health

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properly be allowed to carry on the business of manufacturing or selling or distributing, as the case may be, any such drug.

(3) Nothing in any rules made under this section shall be taken -

(a) to authorise 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 provision of the Medical and Kindred Professions Ordinance; 2/

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(b) to be in derogation of the provisions of the Medical and Kindred Professions Ordinance, for prohibiting, restricting or regulating the sale of poisons.

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10. (1) The drugs to which this Part of this Ordinance applies are those mentioned in the First Schedule hereto.

Drugs to which Part IV applies.

Amended by:
L.N. 4 of 1963;
XI. 1977.2
XXIII. 1980.7;
XLIX. 1981.6;
VI. 1994.3

(2) For the purpose of this section, percentages in the case of liquid preparations shall, unless other provision in that behalf is made by rules under this Ordinance, be calculated on the basis that a preparation containing one per centum of any substance means a preparation in which one gramme of the substance, if a solid, or one millilitre of the substance, if a liquid, is contained in every one hundred millilitres of the preparation, and so in proportion for any greater or less percentage.

Calculations of percentage in case of liquid preparations.

(3) Where it appears to the Minister responsible for public health that any other drug of whatever kind is or is likely to be productive, if improperly used, or is capable of being converted into a substance which is, or is likely to be productive, if improperly used, of ill-effects substantially of the same character or nature as or analogous to those produced by the drugs mentioned in the First Schedule hereto, the said Minister may by order in the Gazette make any addition, variations or alterations to such schedule.

(4) If the Minister responsible for public health thinks fit to declare by order that a finding with respect to any preparation containing any of the drugs to which this Part of this Ordinance applies has been communicated by the Secretary-General of the United Nations Organisation to the parties to the Single Convention, the provisions of this Part of this Ordinance shall as from such date as may be specified in the order cease to apply to the preparation specified therein.

11. (1) It shall not be lawful for any person to trade in or manufacture for the purpose of trade any products obtained from any of the phenanthrene alkaloids of opium or from the ecgonine alkaloids of the coca leaf, not being a product which was on the 13th July, 1931, being used for medical or scientific purposes:

Provided that if the Minister responsible for public health is at any time satisfied as respects any such products that it is of medical or scientific value, he may by order direct that this subsection shall cease to apply to that product.

Prohibition of trade, etc., in new drugs, and power to apply Part IV with or without modification, to certain drugs.

Amended by:
L.N. 4 of 1963;
XI. 1977.2;
XLIX. 1981.6;
VI. 1994. 4.

(2) If any person acts in contravention of subsection (1) of this section, he shall be guilty of an offence against this Ordinance.

(3) If it is made to appear to the Minister responsible for public health that a decision with respect to any such product as is mentioned in subsection (1) of this section has been communicated by the Secretary-General of the United Nations Organisation to the parties to the Single Convention, the Minister responsible for public health, by order, may, as the case requires, either declare that the provision of this Part of this Ordinance shall apply to that product in the same manner as they apply to the drugs mentioned in subsection (1) of section 10 of this Ordinance or apply the said part to that product with such modification as may be specified in the order.

(4) The Minister responsible for public health may, by order, apply this Part of this Ordinance with such modifications as may be specified in the order, to any of the following drugs, that is to say methylmorphine (commonly known as codeine), ethylmorphine (commonly known as dionin) and their respective salts.

PART V

CONTROL OF EXTERNAL TRADE

12. In this Part, unless the context otherwise requires -

"conveyance" includes ship, aircraft, and any other means of transport by which goods may be brought into or taken from Malta;

"dangerous drug" means any drug to which Part IV of this Ordinance applies, and includes raw opium, coca leaves, Indian hemp, and all preparations of which resins obtained from Indian hemp form the

Interpretation of Part V.

Amended by:
XXIII. 1980.8

base, and, for the purposes of sections 15 to 18 both inclusive, includes also the resins obtained from the Indian hemp;

"diversion certificate" means a certificate issued by the competent authority of a country through which a dangerous drug passes in transit, authorising the diversion of such drug to a country other than that specified as the country of ultimate destination in the export authorisation, and containing all the particulars required to be included in an export authorisation, together with the name of the country from which the consignment was originally exported;

"export", with its grammatical variations and cognate expressions, in relation to Malta, means to take or cause to be taken out of Malta by air or water, otherwise than in transit;

"export authorisation" means an authorisation issued by a competent authority in a country from which a dangerous drug is exported, containing full particulars of such drug, and the quantity authorised to be exported, together with the names and addresses of the exporter and the person to whom it is to be sent, and stating the country to which, and the period within which, it is to be exported;

"import", with its grammatical variations and cognate expressions, in relation to Malta, means to bring or cause to be brought into Malta by air or water, otherwise than in transit;

"import authorisation" means a licence, issued by a competent authority, authorising the importation of a specified quantity of a dangerous drug and containing full particulars of the drug, together with the name and address of the person authorised to import the drug, the name and address of the person from whom the drug is to be obtained, and specifying the period within which the importation must be effected;

"import certificate" means a certificate substantially in the Form A set out in the Second Schedule hereto, issued by a competent authority in a country into which it is intended to import dangerous drugs;

"in transit" means taken or sent from any country and brought into Malta by air or water (whether or not landed or transhipped in Malta) for the sole purpose of being carried to another country either by the same or another conveyance.

13. (1) Upon the production of an import certificate duly issued by the competent authority in any country, it shall be lawful for the Chief Government Medical Officer to issue an export authorisation in the Form B set out in the Second Schedule hereto in respect of any drug referred to in the import certificate to any person who is named as the exporter in such certificate, and is, under the provisions of this

Exportation of
dangerous drugs.
Amended by:
XVI. 1960.3;
XXIII. 1980.8;
VI. 1994.5

Ordinance, otherwise lawfully entitled to export such drug from Malta. The export authorisation shall be prepared in triplicate and two copies shall be issued to the exporter who shall send one copy with the drug to which it refers when such drug is exported. The Chief Government Medical Officer shall send the third copy direct to the appropriate authority of the country of ultimate destination. Subject to the provisions of subsection (2) of this section, it shall be in the absolute discretion of the Chief Government Medical Officer in all cases to issue or refuse an export authorisation, as he may see fit.

(2) No dangerous drugs shall be exported from Malta unless the consignor is in possession of a valid and subsisting export authorisation relating to such drug granted under the Ordinance.

(3) At the time of exportation of any dangerous drug the exporter shall produce to the Comptroller of Customs the dangerous drug, the export authorisation relating thereto, and such other evidence as the Comptroller of Customs may require to satisfy him that the drug is being lawfully exported to the place and person named in the authorisation which refers to it.

14. (1) An import authorisation in the Form C set out in the Second Schedule hereto permitting the importation into Malta of any dangerous drug specified therein may be granted by the Chief Government Medical Officer, subject to such conditions as he shall deem fit, to any person who may lawfully import such drug.

Importation of
dangerous drugs.
Amended by:
XXIII. 1980.8;
VI. 1994.6

(2) Where an import authorisation is issued in pursuance of subsection (1) of this section, the Chief Government Medical Officer shall also issue, in relation to the dangerous drug intended to be imported, an import certificate (Form A) which shall be forwarded by the intending importer to the person from whom the drug is to be obtained. When the importer to whom an import authorisation is issued under this section intends to import the drug or drugs to which such authorisation relates, in more than one consignment, a separate import certificate shall be issued to him in respect of each such consignment.

(3) No dangerous drug shall be imported into Malta unless the person to whom the drug is consigned is in possession of a valid and subsisting import authorisation granted in pursuance of this section.

(4) Every dangerous drug imported into Malta shall be accompanied by a valid and subsisting export authorisation or diversion certificate.

15. (1) No person shall bring any dangerous drug to Malta in transit unless:

(a) the drug is in course of transit from a country from which it may

Dangerous
drugs, in transit.
Amended by:
XVI. 1960.3

lawfully be exported, to another country into which such drug may lawfully be imported; and

17. 1994.7

(b) it is accompanied by a valid and subsisting export authorisation or diversion certificate, as the case may be.

(2) Where any dangerous drug in transit is accompanied by an export authorisation or diversion certificate and the Comptroller of Customs has reasonable ground for believing that such authorisation or certificate is false, or that it has been obtained by fraud or wilful misrepresentation of a material particular, it shall be lawful for the Comptroller of Customs to seize and detain the drug to which such authorisation or certificate relates. Upon being satisfied that such authorisation or certificate is valid or has not been obtained by fraud or misrepresentation as aforesaid the Comptroller of Customs shall release the drug.

(3) Where any dangerous drug brought into Malta in transit is landed, or transhipped in Malta, it shall remain under the control of the Comptroller of Customs and shall be moved only under and in accordance with a removal licence granted in pursuance of section 16 of this Ordinance.

(4) Nothing in this section contained shall be deemed to apply to any dangerous drug in transit by air if the aircraft passes over Malta without landing, or to such quantities of dangerous drugs as may, *bona fide*, reasonably form part of the medical stores of any ship or aircraft.

15A. (1) No person shall import or export, or cause to be imported or exported, or take any steps preparatory to importing or exporting, any dangerous drug into or from Malta except in pursuance of and in accordance with the provisions of this Ordinance.

General prohibition on importation and exportation of dangerous drugs.
Added by:
17. 1994.8

(2) For the purposes of this section the words "import" and "export" and their grammatical variations and cognate expressions shall have the meaning assigned to them in subsection (1) of section 2 of this Ordinance.

16. (1) No person shall -

Removal licences.
Amended by:
XVII. 1960.3
XXIII. 1980.8;
17. 1994.9

(a) remove any dangerous drug from the conveyance by which it is brought into Malta in transit; or

(b) in any way move any such drug in Malta at any time after removal from such conveyance,

except under and in accordance with a licence (in the Form D set out in the Second Schedule hereto and in this Ordinance referred to as a "removal licence") issued by the Comptroller of Customs. In all cases it shall be in the absolute discretion of the Comptroller of Customs to issue or refuse a removal licence as he shall deem fit.

(2) No removal licence for the transfer of any such drug to any conveyance for removal out of Malta shall be issued unless and until a valid and subsisting export authorisation or diversion certificate relating to it is produced to the Comptroller of Customs.

17. It shall be unlawful for any person to cause any dangerous drug in transit to be subjected to any process which would alter its nature, or wilfully to open or break any package containing a dangerous drug in transit except under the instructions of the Comptroller of Customs and in such manner as he may direct.

Drugs not to be tampered with.
Amended by:
XVI. 1960.3

18. (1) No person shall, except under the authority of a diversion certificate in the Form E set out in the Second Schedule hereto, cause or procure any dangerous drug brought into Malta in transit to be diverted to any destination other than that to which it was originally consigned. In the case of any drug in transit accompanied by an export authorisation or a diversion certificate issued by a competent authority of some other country, the country, the country to which the drug was originally consigned shall be deemed to be the country stated in such export authorisation or diversion certificate to be the country of destination.

Diversion of dangerous drugs
Amended by:
XXIII. 1980.8
VI. 1994.10

(2) The Chief Government Medical Officer may in his absolute discretion issue a diversion certificate in respect of any dangerous drug in transit upon production to him of a valid and subsisting import certificate issued by a competent authority in the country to which it is proposed to divert the drug, or upon such evidence as may satisfy him that the drug is to be sent in a lawful manner and for a proper purpose.

(3) A diversion certificate shall be issued in duplicate: one copy thereof shall accompany the drug when it is exported from Malta, and another copy shall be despatched by the Chief Government Medical Officer direct to the proper authority in the country to which the consignment has been diverted.

(4) Upon the issue of a diversion certificate the export authorisation or diversion certificate (if any) accompanying the drug on its arrival in Malta shall be detained by the Chief Government Medical Officer and returned to the authority issuing such export authorisation or diversion certificate together with a notification of the name of the country to which such drug has been diverted.

19. The powers and duties to be exercised and performed by the Chief Government Medical Officer under this Part of this Ordinance shall in the absence of the Chief Government Medical Officer be exercised and performed by the officer acting on his behalf. Powers of Chief Government Medical Officer.

PART VI

GENERAL

20. Licences, permits or authorities for the purposes of this Ordinance other than Part V thereof may be issued or granted by such person on such terms and subject to such conditions (including in the case of a licence the payment of a fee) as the Minister responsible for public health may by rule prescribe. Licences.
Amended by:
L.N. 4 of 1963;
XI. 1977.2.
21. (1) Any Police officer of a rank not inferior to that of sub-inspector shall, for the purposes of the execution of this Ordinance, have power to enter the premises of any person carrying on the business of a producer, manufacturer, seller or distributor of any drugs to which this Ordinance applies and to demand the production of and to inspect any books or documents relating to dealings in any such drugs and to inspect any stocks of any such drugs. Power of inspection and seizure.
Amended by:
XXIII. 1980.4
- (2) If any person wilfully delays or obstructs any person in the exercise of his powers under this section or fails to produce or conceals or attempts to conceal any such books, stocks, drugs or documents as aforesaid, he shall be guilty of an offence against this Ordinance.
22. (1) Any person - Offences and penalties.
Amended by:
XLVIII. 1975.2
XXIII. 1980.5;
XIII. 1983.5;
VIII. 1986.2;
VI. 1994.11
XVI. 1996.2
- (a) who acts in contravention of, or fails to comply with, any provision of this Ordinance; or
- (b) who acts in contravention of, or fails to comply with, the conditions of any licence or permit issued or authority granted under or in pursuance of this Ordinance; or
- (c) who for the purpose of obtaining, whether for himself or for any other person, the issue, grant or renewal of any such licence, permit or authority as aforesaid, makes any declaration, or statement which is false in any particular, or knowingly utters, produces or makes use of any such declaration or statement or any document containing the same; or

(d) who in Malta aids, abets, counsels or procures the commission in any place outside Malta of any offence punishable under the provisions of any corresponding law in force in that place, or who with another one or more persons conspires in Malta for the purpose of committing such an offence, or does any act preparatory to, or in furtherance of, any act which if committed in Malta would constitute an offence against this Ordinance; or

(e) being a citizen of Malta or a permanent resident in Malta, who in any place outside these Islands does any act which if committed in these Islands would constitute an offence of selling or dealing in a drug against this Ordinance or an offence under paragraph (f) of this subsection; or

(f) who with another one or more persons in these Islands or outside these Islands conspires for the purposes of selling or dealing in a drug in these Islands against the provisions of this Ordinance or who promotes, constitutes, organises or finances the conspiracy,

shall be guilty of an offence against this Ordinance.

For the purposes of paragraph (e) of this subsection the expression "permanent resident" means a person in favour of whom a permit of residence has been issued in accordance with the provisions contained in section 7 of the Immigration Act, 1970.

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(1A) The conspiracy referred to in paragraphs (d) and (f) of the preceding sub-section shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between such persons.

(1B) For the purposes of this Ordinance the word "dealing" (with its grammatical variations and cognate expressions) with reference to dealing in a drug, includes cultivation, importation, manufacture, exportation, distribution, production, administration, supply, the offer to do any of these acts, and the giving of information intended to lead to the purchase of such a drug contrary to the provisions of this Ordinance.

(1C) (a) A person shall also be guilty of an offence against this Ordinance who uses, transfers the possession of, sends or delivers to any person or place, acquires, receives, keeps, transports, transmits, alters, disposes of or otherwise deals with, in any manner or by any means, any money, property (whether movable or immovable) or any proceeds of any such money or property with intent to conceal or convert that money or property or those proceeds and knowing or suspecting that all or a part of that money or property, or of those proceeds, was obtained or received, directly or indirectly, as a result of -

(i) the commission of any of the offences mentioned in subsection (1) or paragraph (a) of subsection (1D) or in subsection (1E); or

(ii) any act of commission or omission in any place outside these Islands which if committed in these Islands would constitute an offence under subsection (1) or paragraph (a) of subsection (1D).

(b) In proceedings for an offence under paragraph (a) of this subsection, where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that such money, property or proceeds was not money, property or proceeds described in the said paragraph, the burden of showing the lawful origin of such money, property or proceeds shall lie with the person charged or accused.

(1D) (a) A person shall also be guilty of an offence against this Ordinance who sells or otherwise deals in a substance mentioned in the Third Schedule hereto knowing or suspecting that the substance is to be used in or for the production of a drug contrary to the provisions of this Ordinance; and the definition of "dealing" in subsection (1B) shall apply, *mutatis mutandis*, to this subsection.

(b) The Minister responsible for public health may make rules for controlling the manufacture, sale, possession, distribution, importation and exportation of any of the substances mentioned in the Third Schedule hereto and in particular, but without prejudice to the generality of the foregoing, for any of the purposes mentioned in paragraphs (a) to (e) of subsection (1) of section 9, in so far as applicable, the reference to drugs in those paragraphs being construed as a reference to the said substances.

(1E) A person shall also be guilty of an offence against this Ordinance who manufactures, transports or distributes any equipment or materials knowing that they are to be used in or for the cultivation, production or manufacture of any drug contrary to the provisions of this Ordinance and any such conduct as is prohibited under this subsection shall be deemed for the purposes of this Ordinance as constituting an offence of selling or dealing in a drug against this Ordinance.

(2) Every person charged with an offence against this Ordinance shall be tried in the Criminal Court or before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the Attorney General may direct, and if he is found guilty shall, in respect of each offence, be liable -

(a) on conviction by the Criminal Court -

(3) This certificate is valid only for the consignment and for the period specified above, and may be revoked at any time.

(4) If the consignment of drugs is not carried from Malta within the period specified above, this certificate shall be surrendered to the Chief Government Medical Officer.

(5) This certificate shall be produced at any time when required by a duly authorised person.

Date

.....
Signature and stamp of the
Chief Government Medical Officer

Note:

(1) If any alteration is desired in this authorisation, it must be returned with a request for amendment and a statement of the reason therefor. No unauthorised alteration is permissible.

(2) This document is to be produced to the competent authorities of any country through which the consignment passes, whether it is transhipped or not. Failure to comply with the condition may lead to delay or confiscation of the consignment.

(i) where the offence is one under section 4 or under paragraph (c) of section 8 or consists in selling or dealing in a drug contrary to the provisions of this Ordinance or in an offence under paragraph (f) of subsection (1), or of the offence of possession of a drug, contrary to the provisions of this Ordinance, under such circumstances that the court is satisfied that such possession was not for the exclusive use of the offender, or of the offences mentioned in subsections (1C) or (1D) or (1E), to imprisonment for life:

Provided that:

(aa) where the Court is of the opinion that, when it takes into account the age of the offender, the previous conduct of the offender, the quantity of the drug and the nature and quantity of the equipment or materials, if any, involved in the offence and all other circumstances of the offence, the punishment of imprisonment for life would not be appropriate; or

(bb) where the verdict of the jury is not unanimous,

then the Court may sentence the person convicted to the punishment of imprisonment for a term of not less than four years but not exceeding thirty years and to a fine (*multa*) of not less than one thousand Maltese liri but not exceeding fifty thousand Maltese liri; and

(ii) for any other offence to imprisonment for a term of not less than twelve months but not exceeding ten years and to a fine (*multa*) of not less than two thousand Maltese liri but not exceeding ten thousand Maltese liri; or

(b) on conviction by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) -

(i) where the offence is one under section 4 or under paragraph (c) of section 8 or consists in selling or dealing in a drug contrary to the provisions of this Ordinance or in an offence under paragraph (f) of subsection (1), or of the offence of possession of a drug, contrary to the provisions of this Ordinance, under such circumstances that the court is satisfied that such possession was not for the exclusive use of the offender, or of the offences mentioned in subsection (1C) or (1D) or (1E), to imprisonment for a term of not less than six months but not exceeding ten years and to a fine (*multa*) of not less than two hundred Maltese liri but not exceeding five thousand Maltese liri; and

(ii) for any other offence to imprisonment for a term of not less than three months but not exceeding twelve months or to a fine (*multa*) of not less than two hundred Maltese liri but not exceeding one thousand Maltese liri or to both such imprisonment and fine,

and in every case of conviction for an offence against this Ordinance, all articles in respect of which the offence was committed shall be forfeited to the Government, and any such forfeited article shall, if the court so orders, be destroyed or otherwise disposed of as may be provided in the order:

Provided that, for the purposes of this subsection, when the person charged has not attained the age of sixteen years and unless he is charged jointly with any other person who has attained the age of sixteen years, any reference to the Court of Magistrates (Malta) or to the Court of Magistrates (Gozo) shall be construed as a reference to the Juvenile Court:

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Provided further that where a person is convicted as provided in subparagraph (i) of paragraph (a) of subparagraph (i) of paragraph (b) and the offence has taken place in, or within 100 metres of the perimeter of, a school, youth club or centre, or such other place where young people habitually meet, or the offence consists in the sale, supply, administration or offer to do any of these acts, to a minor, to a woman with child or to a person who is following a programme for cure or rehabilitation from drug dependence, the punishment shall be increased by one degree.

(3) Where an offence against this Ordinance in respect of which a person has been found guilty consists in or refers to the cultivation of a plant in a field, garden or similar tenement, the court shall, in addition to any other punishment order the forfeiture in favour of the Government of the entire immovable property in which the offence took place as described in the bill of indictment or in the charges:

Provided that where none of the persons found guilty as aforesaid is an absolute owner or co-owner or bare-owner of the immovable property, and the offender holds it on any other title, whether real or otherwise, the court shall order the forfeiture of such title in favour of the Government.

(3A) Where an offence against this Ordinance in respect of which a person has been found guilty consists in any of the offences referred to in subsection (1) of section 24A the Court shall, in addition to any other punishment, in its sentence or at any time thereafter, at the request of the prosecution -

(a) where any immovable property, in Malta or in any place outside Malta, has been used for the keeping or storing, or for the selling or dealing in such drug, as described in the bill of indictment or in the charge, order the forfeiture in favour of the Government of any real title which the offender holds on such immovable property;

(b) where the offender is not the absolute owner but holds any other real title on the immovable property, or has a title, other than a real title, in virtue of which he has the control of or a right of access to such property, the Court shall order the offender to pay a fine (*multa*) of not less than five thousand Maltese liri but not exceeding thirty thousand Maltese liri as the Court shall determine after taking into account the value of the immovable property and the value of the real title thereon, if any, forfeited as aforesaid;

(c) saving the provision of the Criminal Code and of the Customs Code and of the Customs Ordinance, make an order whereby the provisions of paragraphs (a) and (b) of this subsection shall be applied *mutatis mutandis* to or in respect of any vessel or vehicle, in Malta or in any place outside Malta, used for the keeping or storing, or for the selling or dealing in such drug; and

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(d) order the forfeiture in favour of the Government of all moneys or other movable property, and of the entire immovable property of the person so found guilty even if the immovable property has since the offender was charged passed into the hands of third parties, and even if the said moneys, movable property or immovable property are situated in any place outside Malta.

(4) No person shall, on conviction for any offence of contravening or failing to comply with any rule under this Ordinance relating to the keeping of books or the issuing or dispensing of prescriptions containing drugs to which this Ordinance applies, be sentenced to imprisonment without the option of a fine or to pay a fine exceeding fifty liri, if the court dealing with the case is satisfied that the offence was committed in the course of or in connection with the commission or intended commission of any other offence against this Ordinance.

(5) If any person attempts to commit an offence against this Ordinance, or solicits or incites another person to commit such an offence, he shall, without prejudice to any other liability, be liable on conviction to the same punishment and forfeiture as if he had committed an offence under this Ordinance.

(6) Where the offence in respect of which a person is found guilty under this Ordinance consists in the production, selling or otherwise dealing in a drug mentioned in this Ordinance, and such person is either licensed under this Ordinance or under the Medical and Kindred Professionals Ordinance, or is in possession of a warrant issued under that Ordinance to practise a profession, or a calling or a trade, or the offence is committed in a place licensed under the Ordinance or the Ordinance aforesaid, the court shall, at the request of the prosecution and in addition to any other punishment, order the revocation of such licence or warrant, and upon such order being made any such licence or warrant shall cease to have effect for all

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purposes of law and in particular for the purposes of this Ordinance and of the Ordinance aforesaid.

(7) Any decision as is mentioned in subsections (3) and (3A) ordering the forfeiture of immovable property or of any title to such property shall be deemed to be and shall be enforceable as a civil judgement transferring that title in favour of the Government, and the Attorney General shall, for the purposes of section 239 of the Code of Organisation and Civil Procedure, be considered as the interested party that may obtain the registration of such transfer.

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(8) Where it results to the court that the offender, other than an offender convicted of an offence as is referred to in subparagraph (i) of paragraph (a) or subparagraph (i) of paragraph (b) of subsection (2), is in need of care and assistance for his rehabilitation from dependence on any dangerous drug (as defined in section 12), the court may, instead of applying any of the punishments provided for in the foregoing subsection, place the offender, who has attained the age of fourteen years, has not expressed his willingness to comply with the requirements thereof as provided in subsection (5) of section 5 of that Act.

(9) The provisions of sections 21 and 28A of the Criminal Code and the provisions of the Probation of Offenders Act shall not be applicable in respect of any person convicted of an offence as is referred to in subparagraph (i) or paragraph (a) or subparagraph (i) of paragraph (b) of subsection (2).

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(10) Where, in the case of a person convicted of an offence referred to in subsection (9), the court is satisfied that such person is in need of treatment for his rehabilitation from dependence on any dangerous drug (as defined in section 12) and -

(a) the Minister responsible for public health certifies in writing that such treatment may be given in prison, and

(b) the person so convicted agrees to submit to that treatment,

the court may, in passing sentence, order that he be given such treatment in prison (hereinafter referred to as the "treatment period") as may be specified in the order (being not more than the period of time, as reduced in accordance with this subsection, which the person convicted is to serve in prison) and the punishment of imprisonment which would, but for the provisions of this subsection, have been awarded (hereinafter referred to as the "original punishment"), and which shall be expressly mentioned in the sentence, shall be reduced by the court by not more than one third.

(11) If during the treatment period, the court which made the order for treatment is satisfied, on an application by the Attorney General, that the person to whom the order refers has, without valid reason (the proof whereof shall lie on such person), refused the treatment or has conducted himself in a manner as to make his treatment, or that of other prisoners, difficult or ineffective, it shall revoke such order and shall direct that the original punishment be served.

(12) The court which made the order for treatment shall, on an application made at any time during the treatment period by the person to whom the order refers requesting the revocation of that order, revoke such order and shall direct that the original punishment be served.

(13) The court which made the order for treatment may, on an application made at any time during the treatment period by the person to whom the order refers or by the Attorney General, discharge such order if it is satisfied that the treatment is no longer appropriate.

(14) For the purposes of subsections (10) to (13) -

(a) any decision of the court which revokes an order for treatment and directs that the original punishment be served shall not be subject to appeal;

(b) where an order for treatment is confirmed or varied by the Court of Criminal Appeal, the order shall be deemed to have been made by the said court;

(c) an order for treatment shall, unless it has been revoked or discharged or has ceased to have effect earlier, cease to have effect upon the expiration or remission of the punishment of imprisonment for the offence in respect of which the order was made.

22A. (1) Where a person is charged under section 22 of this Ordinance, with selling or dealing in a drug, or with promoting, constituting, organising or financing a conspiracy under paragraph (f) of subsection (1) of that section, the Court shall at the request of the prosecution make an order -

(a) attaching in the hands of third parties in general all moneys and other movable property due or pertaining or belonging to the accused, and

(b) prohibiting the accused from transferring or otherwise disposing of any movable or immovable property;

Freezing of
property of
person
accused.

*Added by:
VIII. 1986.3*

Provided that the Court shall in such an order determine what moneys may be paid to or received by the accused during the subsistence of such order, specifying the sources, manner and other modalities of payment, including salary, wages, pension and social security benefits payable to the accused, to allow him and his family a decent living in the amount, where the means permit, of six thousand Maltese liri every year:

Provided further that the Court may also -

(a) authorise the payment of debts which are due by the accused to *bona fide* creditors and which were contracted before such order was made, and

(b) on good ground authorise the accused to transfer movable or immovable property.

(2) Such order shall -

(a) become operative and binding on all third parties immediately it is made, and the Registrar of the Court shall cause a notice thereof to be published without delay in the Gazette, and shall also cause a copy thereof to be registered in the Public Registry in respect of immovable property, and

(b) remain in force until the final determination of the proceedings, and in the case of a conviction until the sentence has been executed.

(3) The Court may for particular circumstances vary such order, and the provisions of the foregoing subsection shall apply to such order as so varied.

(4) Every such order shall contain the name and surname of the accused, his profession, trade or other status, father's name, mother's name and maiden surname, place of birth and place of residence and his Identity Card number.

(5) Where any money is or becomes due to the accused from any person while such order is in force such money shall, unless otherwise directed in that order, be deposited in a bank to the credit of the accused.

(6) When such order ceases to be in force as provided in paragraph (b) of subsection (2) of this section the Registrar of the Court shall cause a notice to that effect to be published in the Gazette, and shall enter in the Public Registry a note of cancellation of the registration of that order.

- 22B.** Any person who acts in contravention of a court order mentioned in section 22A of this Ordinance shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) not exceeding five thousand Maltese liri, or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment and the Court may order the person so found guilty to deposit in a bank to the credit off the accused the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.
- Penalty for contravening Court order.
Added by:
VIII. 1986.3;
VI. 1994. 12
- 22C.** (1) Where an order of forfeiture is made under paragraph (d) of subsection (3A) of section 22 of this Ordinance, the person found guilty, or the third party therein mentioned, may bring an action for a declaration that any or all of the movable or immovable property so forfeited is not profits or proceeds from the commission of any offence under this Ordinance (whether or not so adjudged by a court of criminal justice) nor property acquired or obtained, directly or indirectly, by or through any such profits or proceeds.
- Special Court proceedings.
Added by:
VIII. 1986.3;
VI. 1994.13
- (2) Such action shall be brought not later than three months from the date on which the sentence ordering the forfeiture shall have become definite, by an application in the Civil Court, First Hall.
- (3) The applicant shall attach to the application all such documents in support of his claim as it may be in his power to produce and shall indicate in his application the names of all the witnesses he intends to produce, stating in respect of each the proof which he intends to make.
- (4) The Court shall, without delay, set down the application for hearing at an early date, which date shall in no case be later than thirty days from the date of the filing of the application.
- (5) The application and the notice of the date fixed for hearing shall be served on the Commissioner of Police without delay, and the said Commissioner shall file his reply thereto within fifteen days after the date of the service of the application.
- (6) The Court shall hear the application to a conclusion within twenty working days from the date fixed for the original hearing of the application, and no adjournment shall be granted except either with the consent of both parties or for an exceptional reason to be recorded by the Court, and such adjourned date shall not be later than that justified by any such reason.
- (7) Saving the preceding provisions of this section, the provisions of the Code of Organisation and Civil Procedure relating to proceedings before the Civil Court, First Hall, shall apply in relation to any such application.
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(8) Any judgement revoking the forfeiture of immovable property shall be deemed to transfer the title of such property back from the Government to the party in favour of whom it is given, and such party may obtain the registration of such transfer in the Public Registry.

22D. When the Court allows the demand for a declaration as provided in subsection (1) of section 22C in respect of any property forfeited, such property shall cease to be forfeited and shall revert to the applicant in virtue of the judgement upon its becoming definite, and the applicant shall thereupon be entitled to the recovery of the income received by the Government from such property during the period of its forfeiture.

Reversion of property ceasing to be forfeited.

Added by:
VIII. 1986.3

22E. (1) At the commencement of proceedings under section 22 of this Ordinance, the drug in respect of which a person is charged shall be exhibited materially in Court, as far as possible, and the following procedure shall be followed.

Destruction of drugs after drawing up a *proces-verbal*.

Added by:
VIII. 1986.3;
VI. 1994.14

(2) The Court shall appoint a photographic expert to take pictures, as shall be indicated by the Court, of the drug in its containers, wrappings, packages or receptacles, and shall also appoint an expert to analyse and establish the exact quantity, kind and form and give the most accurate description of the drug, and to take samples thereof for preservation as evidence.

(3) The experts shall, as early as possible, file in Court and confirm on oath a written report of their findings, together with the photographs and samples aforementioned.

(4) The Court, upon being satisfied with such report or reports shall proceed to have the drug, other than the samples, destroyed under its supervision and draw up a *proces-verbal*.

(5) The *proces-verbal* shall be deemed to have been regularly, drawn up if it contains a short description of the drug, the experts' report or reports are attached thereto and it is signed by the Court.

(6) The *proces-verbal* drawn up as aforesaid shall be evidence of its contents in any criminal proceedings.

(7) The provisions of subsection (2) shall not apply where the drug has already been photographed and analysed by experts appointed in the course of the inquiry relating to the *in genere*, unless the court, in the particular circumstances of the case, shall deem it necessary to have the drug photographed and analysed again.

(8) The omission of any of the precautions or formalities referred to in this section shall be no bar to proving, in any manner allowed by law, the facts to which such precaution or formality relates.

23. For the purposes of sections 22 and 30B the expression "corresponding law" means any law stated in a certificate purporting to be issued by or on behalf of the Government of any country outside Malta to be a law providing, whether exclusively or otherwise, for the control or regulation in that country of the manufacture, sale, use, possession, transfer, export or import of, or dealing in, dangerous drugs, narcotics or psychotropic substances; and any statement in any such certificate as to the effect of the law mentioned in the certificate, or any statement in any such certificate that any facts constitute an offence against that law, shall be conclusive.
- Definition of expression corresponding law.
Substituted by: VI. 1994.15
24. Any Police officer may arrest without warrant any person who has committed, or attempted to commit, or is reasonably suspected by the officer of having committed or attempted to commit, an offence against this Ordinance, if he has reasonable ground for believing that that person will abscond unless arrested, or if the name and address of that person are unknown to and cannot be ascertained by him.
- Power of arrest.
- 24A. (1) Where, upon information received, the Attorney General has reasonable cause to suspect that a person (hereinafter referred to as "the suspect"):
- Additional powers of investigation.
Added by: VI. 1994.16
Amended by XVI. 1996.3
- (a) is guilty of selling or dealing in a drug contrary to the provisions of this Ordinance, or
- (b) is guilty of any of the offences mentioned in paragraphs (e) or (f) of subsection (1) of section 22, or
- (c) is guilty of an offence mentioned in paragraph (d) of subsection (1) of section 22 with reference to any of the offences referred to in the foregoing paragraphs of this subsection, or
- (d) is guilty of the offence mentioned in subsection (1C) of section 22,
- he may apply to the Criminal Court for an order (hereinafter referred to as an "investigation order") that a person (including a body or association of persons, whether corporate or unincorporate) named in the order who appears to be in possession of particular material or material of a particular description which is likely to be of substantial value (whether by itself or together with other material) to the investigation of, or in connection with, the suspect, shall produce or grant access to such material to the person or persons indicated in the

grant access to such material to the person or persons indicated in the order; and the person or persons so indicated shall, by virtue of the investigation order, have the power to enter any house, building or other enclosure for the purpose of searching for and seizing such material.

(2) Where an investigation order has been made or applied for, whosoever, knowing or suspecting that the investigation is taking place, makes any disclosure likely to prejudice the said investigation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding five thousand Maltese liri or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subsection, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the investigation.

(3) An investigation order:

(a) shall not confer any right to production of, access to, or search for communications between an advocate or legal procurator and his client which would in legal proceedings be protected from disclosure by subsection (1) or section 642 of the Criminal Code or by subsection (1) of section 588 of the Code of Organisation and Civil Procedure;

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(b) shall, without prejudice to the provisions of the foregoing paragraph, have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise; and

(c) may be made in relation to material in the possession of any government department.

(4) Where the material to which an application under subsection (1) relates consists of information contained in a computer, the investigation order shall have effect as an order to produce the material or give access to such material in a form in which it can be taken away and in which it is visible and legible.

(5) Any person who, having been ordered to produce or grant access to material as provided in subsection (1) shall, without lawful excuse (the proof whereof shall lie on him) wilfully hinder or obstruct any search for such material, shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding five thousand Maltese liri or to imprisonment not exceeding twelve months, or to both such fine and imprisonment.

(6) Together with or separately from an application for an investigation order, the Attorney General may, in the circumstances mentioned in paragraphs (a) to (d) of subsection (1), apply to the Criminal Court for an order (hereinafter referred to as an "attachment order") -

(a) attaching in the hands of such persons (hereinafter referred to as "the garnishees") as are mentioned in the application all moneys and other movable property due or pertaining or belonging to the suspect,

(b) requiring the garnishee to declare in writing to the Attorney General, not later than twenty-four hours from the time of service of the order, the nature and source of all money and other moveable property so attached, and

(c) prohibiting the suspect from transferring or otherwise disposing of any moveable or immovable property;

(6A) Where an attachment order has been made or applied for, whosoever, knowing or suspecting that the attachment order has been so made or applied for, makes any disclosure likely to prejudice the effectiveness of the said order or any investigation connected with it shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding five thousand Maltese liri or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this subsection, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the investigation or the effectiveness of the attachment order.

(7) Before making an investigation order or an attachment order the court may require to hear the Attorney General in chambers and shall not make such order -

(a) unless it concurs with the Attorney General that there is reasonable cause as provided in subsection (1); and

(b) in the case of an investigation order, unless the court is satisfied that there are reasonable grounds for suspecting that the material to which the application relates

(i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and

(ii) does not consist of communications referred to in paragraph (a) of subsection (3).

(8) The provisions of paragraphs (a), (b) and (e) of subsection (1) of section 381 and of subsection (1) of section 382 of the Code of Organisation and Civil Procedure shall, *mutatis mutandis*, apply to the attachment order.

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(9) An attachment order shall be served on the garnishee and on the suspect by an officer of the Executive Police not below the rank of inspector.

(10) Any person who acts in contravention of an attachment order shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding five thousand Maltese liri or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment:

Provided that where the offence consists in the payment or delivery to any person by the garnishee of any moneys or other moveable property attached as provided in paragraph (a) of subsection (6) or in the transfer or disposal by the suspect of any moveable or immovable property in contravention of paragraph (c) of subsection (6), the fine shall always be at least twice the value of the money or property in question.

(11) An attachment order shall, unless it is revoked earlier by the Attorney General by notice in writing served on the suspect and on the garnishee in the manner provided for in subsection (9), cease to be operative on the expiration of thirty days from the date on which it is made; and the court shall not make another attachment order with respect to that suspect unless it is satisfied that substantially new information with regards to any of the acts mentioned in paragraphs (a) to (d) of subsection (1) is available:

Provided that the said period of thirty days shall be held in abeyance for such time as the suspect is away from these Islands and the Attorney General informs of this fact the garnishee by notice in writing served in the manner provided for in subsection (9).

(12) In the course of any investigation of an offence against this Ordinance, the Executive Police may request a magistrate to hear on oath any person who they believe may have information regarding such offence; and the magistrate shall forthwith hear that person on oath.

(13) For the purpose of hearing on oath a person as provided in subsection (12) the magistrate shall have the same powers as are by law vested in the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) as a Court of Criminal Inquiry as well as the powers mentioned in section 554 of the Criminal Code; provided that such hearing shall always take place behind closed doors.

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(14) It shall not be lawful for any court to issue a warrant of prohibitory injunction to stop the execution of an investigation order.

24B. (1) Where the Attorney General receives a request made by a judicial or prosecuting authority of any place outside Malta for investigations to take place in Malta in respect of a person (hereinafter referred to as "the suspect") suspected by that authority of an act or omission which if committed in these Islands, or in corresponding circumstances, would constitute any of the offences mentioned in paragraphs (a), (b), (c) and (d) of subsection (1) of section 24A, the Attorney General may apply to the Criminal Court for an investigation order or an attachment order or for both and the provisions of section 24A shall *mutatis mutandis* apply to that application and to the suspect and to any investigation or attachment order made by the Court as a result of that application.

Powers of investigation in connection with offences cognizable by Courts outside Malta.

Added by XVI.1996.4

(2) The words "investigation order" in subsections (2) and (5) of the same section 24A shall be read and construed as including an investigation order made under the provisions of this section.

24C. (1) Where the Attorney General receives a request made by a judicial or prosecuting authority of any place outside Malta for the temporary seizure of all or any of the moneys or property, movable or immovable, of a person (hereinafter in this section referred to as "the accused") charged or accused in proceedings before the courts of that place of an offence consisting in an act or an omission which if committed in these Islands, or in corresponding circumstances, would constitute any of the offences mentioned in paragraphs (a), (b), (c) and (d) of subsection (1) of section 24A, the Attorney General may apply to the Criminal Court for an order (hereinafter referred to as a "freezing order") having the same effect as an order as is referred to in subsection (1) of section 22A and the provisions of the said section 22A shall, subject to the following provisions of this section, apply *mutatis mutandis* to that order.

Freezing of property of person accused with offences cognizable by Courts outside Malta.

Added by XVI.1996.4

(2) The first proviso of subsection (1) of section 22A shall not apply to a freezing order made under this section unless:

(a) the accused is present in Malta on the date the order is made;
or

(b) the Attorney General or any other interested person present in Malta applies to the Court, before or after the order is made, for the application of that proviso in which case the Court shall only apply the proviso to the extent that it is satisfied that the application of the proviso is necessary to allow the accused and his family a decent living.

(3) In the case of a freezing order under this section it shall be sufficient that the order contains at least four of the particulars referred to in subsection (4) of section 22A and may also contain any other particulars, including the passport number, of the accused as may be useful to identify the accused.

(4) Subject to the provisions of subsection (5), a freezing order under this section shall remain in force for a period of six months from the date on which it is made but shall be renewed by the Court for further periods of six months upon an application for that purpose by the Attorney General and upon the Court being satisfied that:

(a) the conditions which led to the making of the order still exist;
or

(b) that the accused has been convicted of an offence as is referred to in subsection (1) of this section in the proceedings referred to in the same subsection and the sentence in regard to the accused in those proceedings or any confiscation order consequential or accessory thereto, whether made in civil or criminal proceedings, has not been executed:

Provided that where the accused has been convicted as aforesaid but no confiscation order has been made in the sentence in respect of that conviction the freezing order shall nevertheless be renewed as requested by the Attorney General where the Court is satisfied that civil or criminal proceedings for the making of such an order are pending or are imminent.

(5) Any freezing order under this section may be revoked by the Court before the expiration of the period laid down in subsection (4) of this section:

(a) at the request of the Attorney General; or

(b) at the request of any interested person and after hearing the Attorney General upon the Court being satisfied:

(i) that the conditions which led to the making of the order no longer exist; or

(ii) that there has been a final decision in the proceedings referred to in subsection (1) of this section by virtue of which the accused has not been found guilty of any offence as is referred to in the same subsection.

(6) Section 22B shall also apply to any person who acts in contravention of a freezing order under this section.

24D. (1) A confiscation order made by a court outside Malta shall be enforceable in Malta in accordance with the following provisions of this section.

(2) Where the Attorney General receives a request made by a judicial or prosecuting authority of any place outside Malta for the enforcement in Malta of a confiscation order made by a competent court in that place (hereinafter referred to as a "foreign confiscation order") the Attorney General may bring an action in the First Hall of the Civil Court by an application containing a demand that the enforcement in Malta of the foreign confiscation order be ordered.

(3) The Attorney General shall attach to the application a copy of the relevant foreign confiscation order together with all such documents in support of the demand as it may be in his power to produce and shall indicate in his application the names of all the witnesses he intends to produce, stating in respect of each the proof which he intends to make.

(4) The application shall be served on the person whose property the foreign confiscation order purports to confiscate who shall file his reply within fifteen days after the date of the service of the application. The reply shall contain a list of the witnesses which the respondent intends to produce stating in respect of each the proof which he intends to make and the respondent shall attach to the reply all such documents he intends to produce in evidence as it may be in his power to produce.

(5) The Court shall without delay, set down the application for hearing at an early date, which date shall in no case be later than thirty days from the date of the filing of the application.

(6) The Court shall not order the enforcement in Malta of the foreign confiscation order if:

(a) the respondent had not been notified of the proceedings which led to the making of the relevant foreign confiscation order so as not to have had an adequate opportunity to contest the making of the same order;

(b) the foreign confiscation order was obtained by fraud on the part of any person to the prejudice of the respondent;

(c) the foreign confiscation order contains any disposition contrary to the public policy, or the internal public law in force in Malta;

Enforcement
of confiscation
orders made
by Courts
outside Malta
following
conviction
for offences
cognizable
by those
Courts.
*Added by
XVI.1996.4.*

(d) the foreign confiscation order contains contradictory dispositions.

(7) A decision by the court ordering the enforcement of a foreign confiscation order shall have the effect of forfeiting in favour of the Government of Malta all things and property whatsoever situated in Malta the confiscation of which had been ordered in the foreign confiscation order subject to any directions which the Government of Malta may give providing for the further disposal of the same things and property so forfeited.

(8) The decision ordering the enforcement of a foreign confiscation order which provides for the forfeiture of immovable property or of any title to such property shall have the effect of transferring that immovable property or that title to the Government of Malta and for the purposes of section 239 of the Code of Organisation and Civil Procedure the Attorney General shall be considered as the interested party that may obtain the registration of such transfer.

Cap.12

(9) The decision ordering the enforcement of a foreign confiscation order which provides for the forfeiture of unspecified property the value of which corresponds to proceeds shall, upon being registered in the Public Registry Office, create as from the day of registration a hypothec in regard to the debt amounting to the said value.

(10) Where the Attorney General receives a request as is referred to in subsection (2) of this section the Attorney General may, for the purpose of securing any or all of the property which the foreign confiscation order purports to confiscate or forfeit, apply to the Civil Court, First Hall, for the issue of all or any of the precautionary acts referred to in section 830 of the Code of Organisation and Civil Procedure:

Provided that subsection (2) of the aforesaid section 830 and paragraphs (c), (d) and (e) of subsection (1) of section 836 and of the Code of Organisation and Civil Procedure shall not apply to any precautionary act issued by virtue of this section.

(11) Saving the preceding provisions of this section, the provisions of the Code of Organisation and Civil Procedure relating to proceedings before the Civil Court, First Hall, shall apply in relation to any application under this section.

(12) For the purposes of this section:

"confiscation order" includes any judgement, decision, declaration, or other order made by a court whether of criminal or

civil jurisdiction providing or purporting to provide for the confiscation or forfeiture of:

- (i) proceeds;
- (ii) property into which proceeds have been transformed or converted;
- (iii) property with which proceeds have been intermingled;
- (iv) income or other benefits derived from (i), (ii), and (iii) above;
- (v) property the value of which corresponds to proceeds; or
- (vi) dangerous drugs, materials and equipment or other instrumentalities used in or intended for use in any manner in a relevant offence.

"proceeds" means any economic advantage and any property derived from or obtained, directly or indirectly, through the commission of a relevant offence and includes any income or other benefits derived from such property;

"property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

"relevant offence" means any offence consisting in any act or omission which if committed in these Islands, or in corresponding circumstances, would constitute any of the offences mentioned in paragraphs (a), (b), (c) and (d) of subsection (1) of section 24A.

- | | |
|--|---|
| <p>25. For the purposes of this Ordinance, any article shall be deemed to be imported under licence or exported under licence if the importer or exporter, as the case may be, is the holder of a licence or authorisation issued under this Ordinance authorising the importation or exportation, as the case may be, of the article and complies with the conditions, if any, of the licence or authorisation, but not otherwise.</p> | <p>Meaning of importation and exportation under licence.</p> |
| <p>26. (1) In any proceedings against any person for an offence against this Ordinance, it shall not be necessary to negative by evidence any licence, authority or other matter of exception or defence, and the burden of proving any such matter shall lie on the person seeking to avail himself thereof.</p> | <p>Burden of proof.
<i>Amended by:</i>
<i>17. 1994.17</i></p> |

(2) When the offence charged is that of possession of, or of selling or dealing in, a drug contrary to the provisions of this Ordinance it shall not be a defence to such charge for the accused to prove that he believed that he was in possession of, or was selling or dealing in, some thing other than the drug mentioned in the charge if the possession of, or the selling or dealing in, that other thing would have been, in the circumstances, in breach of any other provision of this Ordinance or of any other law.

27. Notwithstanding the provisions of the Criminal Code, and saving the extensions by the President of the term of the inquiry as provided in subsection (1) of section 401 of that Code, where the Attorney General has directed that a person charged with selling or dealing in a drug against this Ordinance or charged with promoting, constituting, organising or financing a conspiracy under paragraph (f) of subsection (1) of section 22 or with the offence mentioned in subsection (1C) of the said section 22 is to be tried in the Criminal Court, such person shall be arraigned under arrest and the Court of Judicial Police as a Court of Criminal Inquiry shall conclude the inquiry within the term of twenty days from the arraignment, and until the expiration of that term or, if the inquiry is concluded at an earlier date, until such day, the person accused shall not be granted temporary release from custody, but at the end of those twenty days or such earlier date as aforesaid, the Court may grant temporary release from custody in accordance with the provisions of that Code:

Detention
during
inquiry.

Added by:
VIII. 1986.5
Cap. 9

Amended by:
VI. 1994.18

Provided that if the term of the inquiry is held in abeyance for the reason specified in paragraph (c) of subsection (1) of section 402 of the Criminal Code, the court may nonetheless grant temporary release from custody after the lapse of twenty days from the arraignment.

28. (1) On a conviction for an offence against this Ordinance, the pecuniary penalty shall, at the request of the prosecution, be deemed to be a civil debt and shall be declared by the competent Court in passing judgement as being so owed and payable to Government and shall be executable in the same court pronouncing judgement in the same manner as if it had been given in a civil action duly instituted between the Government and the person convicted.

Pecuniary
penalty
recoverable
in a civil debt.

Added by:
VIII. 1986.5

(2) Where however the prosecution informs the competent Court that the pecuniary penalty has not been recovered by the Government as provided for in the preceding subsection, such penalty or any part thereof not recovered, shall be treated as a fine (*multi* or *ammenda*) as inflicted by the Court and shall be converted into imprisonment, without the benefit of time for payment, in accordance with the provisions of the Criminal Code.

Cap. 9

29. Where in respect of a person found guilty of an offence against this Ordinance, the prosecution declares in the records of the proceedings that such person has helped the Police to apprehend the person or persons who supplied him with the drug, or the person found guilty as aforesaid proves to the satisfaction of the Court that he has so helped the Police, the punishment shall be diminished, as regards imprisonment by one or two degrees, and as regards any pecuniary penalty by one-third or one-half.
- Diminution of punishment.
Added by:
VIII. 1986.5
30. Notwithstanding the provisions of subsection (3) of section 639 of the Criminal Code where a person has purchased or otherwise obtained or acquired a drug contrary to the provisions of this Ordinance, the evidence of such person in proceedings against the person from whom he shall have purchased, obtained or acquired the drug, shall not require to be corroborated by other circumstances.
- Evidence by accomplice.
Added by:
VIII. 1986.5
Cap. 9
- 30A. Notwithstanding the provisions of section 661 of the Criminal Code, where a person is involved in any offence against this Ordinance, any statement made by such person and confirmed on oath before a magistrate and any evidence given by such person before any court may be received in evidence against any other person charged with an offence against the said Ordinance, provided it appears that such statement or evidence was made or given voluntarily, and not extorted or obtained by means of threats or intimidation, or of any promise or suggestion of favour.
- Statement may be admitted as evidence.
Cap. 9
- 30B. (1) Notwithstanding anything contained in any other law, it shall be lawful for the Executive Police and, where appropriate, the Customs Authorities to allow, with the consent of the Attorney General or of a magistrate, a controlled delivery to take place.
- Controlled delivery and purchase.
Added by:
VI. 1994.19
- (2) For the purposes of this section a controlled delivery means the technique of allowing an illicit or suspect consignment of a dangerous drug (as defined in section 12) to pass out of, through or into Malta, or from one place or person in Malta to another place or person in Malta, or into the territory of another country, with the knowledge and under the supervision of the Executive Police and, where appropriate, of the Customs Authorities and of the competent authorities of such other country, with a view to identifying persons involved in commission of offences under this Ordinance or under the corresponding law in force in the territory of such other country.
- (3) It shall also be lawful for the Executive Police, with a view to identify persons involved in the commission of offences under this Ordinance, and with the consent of the Attorney General or of a magistrate, to acquire or procure a dangerous drug (as defined in section 12) from any person or place.

30C. (1) Subject to the provisions of subsection (2), where a witness, expert or other person in a foreign country consents, in respect of an offence contrary to the provisions of this Ordinance, to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in Malta following a request for assistance to that effect made by the competent authority in Malta to the competent authority in that foreign country that witness, expert or other person shall not, while in Malta, be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in respect of acts, omissions or convictions prior to his departure from the foreign country.

Persons transferred to Malta from abroad for the purposes of giving evidence or assisting in an investigation etc.
Added by XVI.1996.5

(2) The provisions of subsection (1) shall cease to apply when the witness, expert or other person:

(a) fails to leave Malta, after having had the opportunity to do so, within a period of fifteen consecutive days from the date on which he has been served by the Attorney General with a notice informing him that his presence in Malta is no longer required; or

(b) having left Malta, has returned of his own free will.

30D. (1) Where the Attorney General receives a request made by a judicial or prosecuting authority of any place outside Malta (hereinafter in this section referred to as the "requesting authority") seeking authorisation for the competent authorities of that place to take appropriate measures in regard to a relevant vessel reasonably suspected to be engaged in the commission of a relevant offence the Attorney General may, with the concurrence of the Prime Minister, authorise the taking of the said measures by the aforesaid competent authorities subject to such conditions as may be agreed between the requesting authority and the Attorney General, with the concurrence of the Prime Minister.

Co-operation in the suppression of relevant offences at sea.
Added by XVI.1996.5

(2) Where authorisation has been given by the Attorney General as foresaid the competent authorities referred to in the subsection (1), subject to the conditions as may have been agreed upon as provided in the same subsection, shall be authorised to take the appropriate measures and to exercise on board the vessel in regard to which appropriate measures have been authorised under this section all such powers of arrest, entry, search and seizure as are vested in the executive police of Malta.

(3) For the purposes of this section:

"relevant offence" shall have the same meaning assigned to it by subsection (12) of section 24D;

"relevant vessel" means a ship or any other floating craft of any description, including hovercrafts and submersible crafts, flying the flag of Malta or displaying the marks of registry of Malta and exercising freedom of navigation in accordance with international law; and

"appropriate measures" with regard to a vessel include the boarding of and carrying a search on such vessel as well as such other appropriate action with respect to the vessel, persons and cargo on board such vessel if evidence of involvement of the vessel in a relevant offence is found.

31. Notwithstanding that the Attorney General has directed in accordance with the provisions of subsection (2) of section 22 of this Ordinance, that a person be tried in the Criminal Court, he may, at any time before the filing of the bill of indictment, direct that that person be tried before the Court of Magistrates of Judicial Police, and upon such direction the Court of Magistrates of Judicial Police as a Court of Criminal Judicature shall become competent to try that person as if no previous direction had been given.
32. Notwithstanding the provisions of section 370 of the Criminal Code and without prejudice to the provisions of section 31 of this Ordinance, the Court of Magistrates of Judicial Police shall be competent to try all offences against this Ordinance as directed by the Attorney General in accordance with the provisions of subsection (2) of section 22 of this Ordinance.
33. Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of Criminal Appeal from any judgement given by the Court of Magistrates of Judicial Police in respect of criminal proceedings arising out of the provisions of this Ordinance.
- Direction for trial by the Court of Judicial Police as a Court of Criminal Judicature.
Added by: VIII. 1986.5. Cap. 9
- Offences recognizable by the Court of Judicial Police as a Court of Criminal Judicature.
Added by: VIII. 1986.5 Cap. 9
- Right of appeal.
Added by: VIII. 1986.6 Cap. 9

FORM A

Section 14(2)

DANGEROUS DRUGS ORDINANCE
(CHAPTER 101)

Import Certificate issued by the
Government of Malta

Serial No.
File No.

CERTIFICATE OF OFFICIAL APPROVAL OF IMPORT

I, being the person charged with the administration of the law relating to dangerous drugs to which the Single Convention 1961 applies, hereby certify that I have approved the importation by*

of#

from+

subject to the conditions that -

- (i) the consignment shall be imported before the
- (ii) the consignment shall be imported in one consignment; and
- (iii) if the importation of all the drugs specified above is not effected before the date specified in condition No. (i) this authorisation shall be surrendered forthwith to the Chief Government Medical Officer

and that I am satisfied that the consignment proposed to be imported is required -

- (1) | for legitimate purposes (*in the case of raw opium or the coca leaf*).
- (2) | solely for medicinal or scientific purposes (*in the case of dangerous drugs other than raw opium and coca leaf*).

(Date)

(Signature and stamp of the
Chief Government Medical Officer)

This document is solely for production to the government of the country from which the drug is proposed to be obtained.

-
- * Insert name, address and business of importer
 - # Insert exact description and amount of drugs to be imported
 - + Insert name and address of firm in exporting country from which the drug is to be obtained
 - | Strike out words not applicable

FORM B

Section 13(1)

DANGEROUS DRUGS ORDINANCE
(CHAPTER 101)

File No.
 Applicant's
 Reference No.
 Serial No.

EXPORT AUTHORISATION

In pursuance of the Dangerous Drugs Ordinance (Chapter 101), the Chief Government Medical Officer hereby authorises

(hereinafter called "the exporter")

to export from -

(1) *the port of by s.s.
 (2) * Malta by Parcel Post in parcels from the
 to
 in virtue of import Certificate No. dated
 issued by
 the following drugs, namely:

This authorisation is issued subject to the following conditions:

1. This authorisation is not a licence to obtain or to be in possession of the drugs named herein.
2. This authorisation is available only for drugs of the exact quantity, kind and form specified above.
3. This authorisation does not relieve the exporter from compliance with any customs regulations in force for the time being relating to the exportation of goods from Malta nor from any provision of the Post Office Act (Chapter 254) or of any post office regulations for the time being in force, nor from any rules or regulations respecting the transmission of articles by post which may for the time being be in force, whether within Malta or elsewhere.
4. If the drugs are authorised to be exported by ship the duplicate copy, which is attached, shall accompany the consignment to the place of destination and for this purpose the exporter shall cause it to be delivered to the master of the vessel by which the consignment is despatched.

5. If the drugs are authorised to be exported by post the attached duplicate copy shall be placed inside the outer wrapper of the parcel containing the drugs. If the drugs are contained in more than one parcel, the duplicate copy shall be placed inside the outer wrapper of one of them; the parcels shall be consecutively numbered on the outer wrapper, and on each parcel there shall be legibly stated the number of the parcel in which the duplicate copy is to be found. [See footnote (2)]

6. The exporter, if so required by the Comptroller of Customs, shall produce to him, within such time as he may allow, proof to his satisfaction that the said drugs were duly delivered at the destination named in this authorisation and in the event of non-compliance with this condition the authorisation shall be deemed void and of no effect.

7. The exporter shall furnish to the Chief Government Medical Officer such returns of the goods exported by him in pursuance of this authorisation as may from time to time be required.

8. This authorisation is valid only for the exporter named above and may be revoked at any time by the Chief Government Medical Officer. It shall be produced for inspection when required by any duly authorised person.

9. This authorisation, unless sooner revoked, shall continue in force for three calendar months from the date hereof. It must be produced at the time of export, to an officer of -

(1) * the Customs Department,

(2) * the Post Office,

who will retain it. If not used it shall be surrendered to the Chief Government Medical Officer within seven days of the date of its expiry.

Date

.....
(Signature and stamp of the
Chief Government Medical Officer)

* Strike out words not applicable.

Note:

(1) If any alteration is desired in this authorisation it must be returned with a request for amendment and a statement of the reasons therefore. No unauthorised alteration is permissible.

(2) In the case of drugs exported by post failure to comply with this condition may lead to delay or confiscation of the parcels in the country of destination.

FORM E

Section 18(1)

DANGEROUS DRUGS ORDINANCE
(CHAPTER 101)

DIVERSION CERTIFICATE

I, hereby certify that I have authorised the diversion of the consignment of drugs, of which particulars are given below, to the destination stated below:

Description and quantities of drugs

Name of vessel on which the consignment was brought to Malta

Name and address of the exporter

Number and date of export authorisation and authority by whom issued

Name and address of original consignee named in the export authorisation

Name and address of consignee to whom the consignment is authorised to be diverted

Number and date of import certificate (and authority by whom issued) by virtue of which this diversion is authorised

Name of vessel on which the consignment is authorised to be carried from Malta

Period within which the consignment is to be carried from Malta

This certificate is issued subject to the following conditions:

(1) The duplicate copy of this certificate shall accompany the consignment to the place of destination, and for this purpose shall be delivered to the master of the vessel by which the consignment is despatched.

(2) This certificate does not relieve any person who may be concerned with the carriage of the consignment of drugs specified above from compliance with any customs regulations in force for the time being relating to the exportation of goods from Malta.

(3) This certificate is valid only for the consignment and for the period specified above, and may be revoked at any time.

(4) If the consignment of drugs is not carried from Malta within the period specified above, this certificate shall be surrendered to the Chief Government Medical Officer.

(5) This certificate shall be produced at any time when required by a duly authorised person.

Date

.....
Signature and stamp of the
Chief Government Medical Officer

Note:

(1) If any alteration is desired in this authorisation, it must be returned with a request for amendment and a statement of the reason therefor. No unauthorised alteration is permissible.

(2) This document is to be produced to the competent authorities of any country through which the consignment passes, whether it is transhipped or not. Failure to comply with the condition may lead to delay or confiscation of the consignment.