



LAWS AND REGULATIONS

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

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

New Zealand

Communicated by the Government of New Zealand

NOTE BY THE SECRETARIAT

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

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*Note by the Secretariat: This document is a direct reproduction of the texts communicated to the Secretariat by the Government of New Zealand.

E/NL.1998/56

ANALYSIS

THE MISUSE OF DRUGS ACT 1975

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THE MISUSE OF DRUGS ACT 1975**1975, No. 116**

**An Act to consolidate and amend the Narcotics Act 1965¹
and to make further provision for the prevention of
misuse of drugs** [10 October 1975]

1. Short Title and commencement—(1) This Act may be cited as the Misuse of Drugs Act 1975.

(2) This Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Order in Council.

This Act came into force on 1 June 1977; see S.R. 1977/36.

As to the relationship between this Act and the Medicines Act 1981, see s. 109 of that Act.

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

“Carrier” includes every person engaged in carrying goods for hire or reward by any means, and whether by land, water, or air:

“Controlled drug” means any substance, preparation, mixture or article specified or described in the First Schedule, the Second Schedule, or the Third Schedule to this Act, and “Class A controlled drug”, “Class B controlled drug”, and “Class C controlled drug” mean respectively the controlled drugs specified or described in the said First Schedule, the said Second Schedule, or the said Third Schedule:

¹ E/NL.1967/5

["Controlled drug analogue" means any substance, such as the substances specified or described in Part VII of the Third Schedule to this Act, that has a structure substantially similar to that of any controlled drug; but does not include—

(a) Any substance specified or described in the First Schedule or the Second Schedule or Parts I to VI of the Third Schedule to this Act; or

(b) Any pharmacy-only medicine or prescription medicine or restricted medicine within the meaning of the Medicines Act 1981:]

"Cultivate" includes sow or plant; and "cultivation" has a corresponding meaning:

"Dentist" means a person for the time being registered as a dentist under [the Dental Act 1988]:

"Dependent" means being in a state of periodic or chronic intoxication, produced by the repeated consumption, smoking, or other use of a controlled drug detrimental to the person in relation to whom the word is used, and involving a compulsive desire to continue consuming, smoking, or otherwise using the drug or a tendency to increase the dose of the drug; and "dependency" has a corresponding meaning:

"Medical Officer of Health" means a Medical Officer of Health within the meaning of the Health Act 1956; and includes the officers referred to in section 22 of that Act:

"Medical practitioner" means a person for the time being registered as a medical practitioner under the Medical Practitioners Act 1968 and, subject to the limitations imposed by that Act, includes a person conditionally registered, and a holder of a certificate of probationary registration, and a holder of a certificate of temporary registration, under that Act:

"Minister" means the Minister of Health:

"Pharmacist" means a person for the time being registered as a pharmacist under the Pharmacy Act 1970, who—

(a) Keeps, in accordance with the requirements of that Act and the regulations thereunder, an open shop or place of business for the compounding or dispensing of prescriptions, or is employed in any such shop or place of business so kept; or

(b) Is employed in a hospital or a licensed hospital within the meaning of the Hospitals Act 1957 or the Mental Health Act 1969:

“Produce” includes compound; and “production” has a corresponding meaning:

“Prohibited plant” means—

(a) Any plant of the genus *Cannabis*:

(b) Any plant of the species *Papaver somniferum*:

(c) *Erythroxylon coca* and *Erythroxylon novagranatense* (syn. *E. truxillense*) and every other species of the genus *Erythroxylon* from which a controlled drug can be produced:

(d) Any plant of the species *Lophophora williamsii* or *Lophophora lewinii*:

[(e) Any fungus of the genera *Conocybe*, *Panaeolus*, or *Psilocybe* from which a controlled drug can be produced or which contains a controlled drug:]

(f) Any other plant which is declared to be a prohibited plant by regulations made under this Act:

[“Registered midwife” means a person who is registered as a midwife under the Nurses Act 1977:]

“Supply” includes distribute, give, and sell:

“Veterinary surgeon” means a person for the time being registered as a veterinary surgeon under the Veterinary Surgeons Act 1956, and includes a person who uses the title or description of a “veterinary practitioner” under the authority of that Act.

(2) For the purposes of this Act, the things which a person has in his possession include any thing subject to his control which is in the custody of another.

(3) In calculating for the purposes of this Act the percentage of any substance present in a preparation, the percentage in the case of a liquid preparation shall, unless otherwise prescribed, be calculated on the basis that a preparation containing one part percent of any substance means a preparation in which one gram of the substance, if a solid, or one millilitre of the substance, if a liquid, is contained in every hundred millilitres of the preparation and so in proportion for any greater or less percentage.

(4) In calculating for the purposes of this Act the percentage of morphine present in a preparation it shall be calculated as in respect of anhydrous morphine.

[(5) For the purposes of this Act, a salt of any controlled drug shall be deemed to contain that drug.]

Cf. 1965, No. 45, s. 2; S.R. 1966/82², regs. 2, 2A, 15 (1), 25A (1); S.R. 1967/173, reg. 2; S.R. 1973/100, reg. 7; Misuse of Drugs Act 1971, s. 37 (3) (U.K.)³

In subs (1) the definition of the term "controlled drug analogue" was inserted by s. 2 (1) of the Misuse of Drugs Amendment Act (No. 2) 1987.

In subs. (1), in the definition of the term "dentist", the Dental Act 1988, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Dental Act 1968.

In subs. (1), in the definition of the term "prohibited plant", para. (e) was substituted for the original para. (e) by s. 2 (2) of the Misuse of Drugs Amendment Act (No. 2) 1987.

In subs. (1) the definition of the term "registered midwife" was inserted by s. 13 of the Nurses Amendment Act 1990.

Subs. (5) was added by s. 2 (3) of the Misuse of Drugs Amendment Act (No. 2) 1987.

3. Act to bind the Crown—(1) Subject to subsection (2) of this section, this Act shall bind the Crown.

(2) The Governor-General may, by Order in Council, exempt any instrument of the Executive Government of New Zealand, either absolutely or to such extent and subject to such conditions as may be specified in the Order in Council, from all or any of the provisions of this Act, and in that event, or to that extent and subject to compliance with any such conditions, this Act, or the provisions of this Act so specified, as the case may require, shall not bind the Crown in right of that instrument.

Cf. 1965, No. 45, s. 3

[4. Amendment of First, Second, and Third Schedules—(1) The Governor-General may from time to time, by Order in Council, amend the name or description of any substance, preparation, mixture, or article included in the First Schedule or the Second Schedule or the Third Schedule to this Act where such an amendment is necessary to render that name or description consistent with international scientific usage.

(2) The Governor-General may from time to time, by Order in Council made on the advice of the Minister,—

(a) Add the name or description of any substance, preparation, mixture or article to any Part of the Third Schedule to this Act:

(b) Remove the name or description of any substance, preparation, mixture, or article from any Part of that Schedule and add it to any other Part of that Schedule.

(3) In determining whether or not he should recommend the making of an Order under subsection (2) of this section in

²E/NL.1967/6

³E/NL.1971/42

respect of any particular substance, preparation, mixture, or article, the Minister shall have regard to the degree of need that exists, bearing in mind the chemical, biochemical, or other properties of the substance, preparation, mixture, or article, for controls to be imposed in accordance with this Act in respect of that substance, preparation, mixture, or article.]

This section was substituted for the original s. 4 by s. 2 of the Misuse of Drugs Amendment Act 1982.⁴

[4A. Functions of Minister—For the purposes of this Act the functions of the Minister, on behalf of the Crown, shall include the provision and publication of reports, information, and advice concerning the misuse of drugs and the treatment and rehabilitation of persons suffering from the misuse of drugs.]

This section was inserted by s. 2 of the Misuse of Drugs Amendment Act 1978.⁵

5. Advisory and technical committees—(1) The Minister may from time to time appoint such advisory or technical committees as he thinks fit to advise him for any of the purposes of this Act, and may from time to time determine the functions of any such committee.

(2) There may be paid out of money appropriated by Parliament for the purpose to the members of any committee appointed under this section remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the committee were a statutory Board within the meaning of that Act.

(3) Subject to the provisions of this Act and of any regulations made under this Act, every such committee may regulate its own procedure.

6. Dealing with controlled drugs—(1) Except as provided in section 8 of this Act, or pursuant to a licence under this Act, or as otherwise permitted by regulations made under this Act, no person shall—

[(a) Import into or export from New Zealand any controlled drug, other than a controlled drug specified or described in Part VI of the Third Schedule to this Act; or]

(b) Produce or manufacture any controlled drug; or

(c) Supply or administer, or offer to supply or administer, any Class A controlled drug or Class B controlled drug to

⁴E/NL.1982/30

⁵E/NL.1998/57

any other person, or otherwise deal in any such controlled drug; or

- (d) Supply or administer, or offer to supply or administer, any Class C controlled drug to a person under 18 years of age; or
- (e) Sell, or offer to sell, any Class C controlled drug to a person of or over 18 years of age; or
- (f) Have any controlled drug in his possession for any of the purposes set out in paragraphs (c), (d), or (e) of this subsection.

[(2) Every person who contravenes subsection (1) of this section commits an offence against this Act and is liable on conviction on indictment to—

- (a) Imprisonment for life where a Class A controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed;
- (b) Imprisonment for a term not exceeding 14 years where paragraph (a) of this subsection does not apply but a Class B controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed;
- (c) Imprisonment for a term not exceeding 8 years in any other case.]

[(2A) Every person who conspires with any other person to commit an offence against subsection (1) of this section commits an offence against this Act and is liable on conviction on indictment to imprisonment for a term—

- (a) Not exceeding 14 years where a Class A controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed;
- (b) Not exceeding 10 years where paragraph (a) of this subsection does not apply but a Class B controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed;
- (c) Not exceeding 7 years in any other case.]

[(3) Notwithstanding anything in section 7 of the Summary Proceedings Act 1957, where any person is summarily convicted of an offence against this section relating to a Class C controlled drug, the District Court may sentence him to imprisonment for a term not exceeding one year or to a fine not exceeding \$1,000.]

[(4) Notwithstanding anything in Part I, or section 26, or section 72 of the Criminal Justice Act 1985, where any person is convicted of an offence relating to a Class A controlled drug—

(a) Against paragraph (c) or paragraph (f) of subsection (1) of this section; or

(b) Against paragraph (a) or paragraph (b) of subsection (1) of this section committed in circumstances indicating to the Judge or Court an intention to offend against paragraph (c) of that subsection,—

the Judge or Court shall impose a full-time custodial sentence (within the meaning of that Act) unless, having regard to the particular circumstances of the offence or of the offender, including the age of the offender if he is under 20 years of age, the Judge or Court is of the opinion that the offender should not be so sentenced.

(4A) Without limiting anything in subsections (3) and (4) of this section or in Part I, section 26, or section 72 of the Criminal Justice Act 1985, where any person is convicted of an offence relating to a Class A controlled drug or a Class B controlled drug against any of paragraphs (a), (b), (c), and (f) of subsection (1) of this section, the Judge or Court, if he or it decides to impose a full-time custodial sentence, shall consider whether or not he or it should also impose a fine.]

(5) For the purposes of paragraph (e) of subsection (1) of this section, if it is proved that a person has supplied a controlled drug to another person he shall until the contrary is proved be deemed to have sold that controlled drug to that other person.

(6) For the purposes of paragraph (f) of subsection (1) of this section, a person shall until the contrary is proved be deemed to be in possession of a controlled drug for a purpose set out in paragraph (c), paragraph (d), or paragraph (e), as the case may require, of that subsection if he is in possession of any of the following:

(a) Five grams or more of morphine, whether contained in a substance, preparation, or mixture, or not:

(b) Half a gram or more of cocaine or heroin, whether contained in a substance, preparation, or mixture, or not:

(c) Two and a half milligrams or more of lysergide, or 25 or more flakes, tablets, capsules, or other drug forms each containing some quantity of lysergide:

[(ca) One hundred milligrams or more of 4-bromo-2, 5-dimethoxyamphetamine, or 25 or more flakes, tablets, capsules, or other drug forms each containing some quantity of 4-bromo-2, 5-dimethoxyamphetamine:]

- (d) Two hundred and fifty milligrams or more of a tetrahydrocannabinol, as described in the First Schedule to this Act, whether contained in a substance, preparation, or mixture, or not:
- [(e) Five grams or more of any cannabis preparation as described in the Second Schedule to this Act, or 28 grams or more of cannabis plant as described in the Third Schedule to this Act, or 100 or more cigarettes containing any cannabis preparation or cannabis plant as so described:]
- (f) Fifty-six grams or more of any other controlled drug.

Cf. 1965, No. 45, s. 5 (1) (a), (b), (d), (e), (2), (3), (6)

In subs. (1), para. (a) was substituted for the original para. (a) by s. 2 of the Misuse of Drugs Amendment Act 1986.

Subs. (2) was substituted for the original subs. (2) by s. 3 (1) of the Misuse of Drugs Amendment Act 1978.

Subs. (2A) was inserted by s. 4 (1) of the Misuse of Drugs Amendment Act 1978.

Subs. (3) was substituted for the original subs. (3) (as variously amended) by s. 3 (1) of the Misuse of Drugs Amendment Act 1982.

Subss. (4) and (4A) were substituted for the original subs. (4) and subs. (4A) (as inserted by s. 5 of the Misuse of Drugs Amendment Act 1978) by s. 150 (1) of the Criminal Justice Act 1985.

In subs. (6), para. (ca) was inserted by s. 3 (3) of the Misuse of Drugs Amendment Act 1982; and para. (c) was substituted for the original para. (c) by s. 3 (4) of that Act.

As to the exemption of the Reserve Bank of New Zealand from this section, see clause 2 of S.R. 1978/249. See generally, S.R. 1977/37⁶ and S.R. 1985/244.

7. Possession and use of controlled drugs—(1) Except as provided in section 8 of this Act, or pursuant to a licence under this Act, or as otherwise permitted by regulations made under this Act, no person shall—

- (a) Procure or have in his possession, or consume, smoke, or otherwise use, any controlled drug; or
- (b) Supply or administer, or offer to supply or administer, any Class C controlled drug to any other person, or otherwise deal in any such controlled drug.

(2) Subject to subsection (3) of this section, but without prejudice to any liability under section 6 of this Act, every person who contravenes subsection (1) of this section commits an offence against this Act and is liable on conviction—

- (a) To imprisonment for a term not exceeding 6 months or to a fine not exceeding \$1,000 or to both where a Class A controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed;
- (b) To imprisonment for a term not exceeding 3 months or to a fine not exceeding \$500 or to both in any other case:

⁶E/NL.1978/36

Provided that, where any person is convicted of an offence against subsection (1) of this section relating only to a Class C controlled drug and is liable to a penalty under paragraph (b) of this subsection, the Judge or [District Court Judge] shall not impose a custodial sentence (being a sentence under which a person is liable to be detained in a penal institution within the meaning of the Penal Institutions Act 1954) unless, by reason of the offender's previous convictions or of any exceptional circumstances relating to the offence or the offender, the Judge or [District Court Judge] is of the opinion that such a sentence should be imposed.

(3) In any proceedings for an offence against this section in respect of the possession of a controlled drug, in which it is proved that the defendant had a controlled drug in his possession, it shall be a defence for him to prove—

(a) That, knowing or suspecting it to be a controlled drug, he took possession of it for the purpose of preventing another from committing or continuing to commit an offence in connection with that drug and that as soon as possible after taking possession of it he took all reasonable steps to destroy the drug or to deliver it into the possession of a person lawfully entitled to have possession of it; or

(b) That, knowing or suspecting it to be a controlled drug, he took possession of it for the purpose of delivering it into the possession of a person lawfully entitled to have possession of it and that as soon as possible after taking possession of it he took all reasonable steps to deliver it into the possession of such a person.

(4) Nothing in subsection (3) of this section shall prejudice any defence which it is open to a person charged with an offence against this section to raise apart from that subsection.

Cf. 1965, No. 45, s. 6; Misuse of Drugs Act 1971, s. 5 (4),
(6) (U.K.)

As to the exemption of the Reserve Bank of New Zealand from this section, see clause 2 of S.R. 1978/249. See generally S.R. 1977/37 and S.R. 1985/244.

8. Exemptions from sections 6 and 7—(1) In subsection (2) of this section, references to a medical practitioner, dentist, veterinary surgeon, [registered midwife,] or pharmacist mean a medical practitioner, dentist, veterinary surgeon, [registered midwife,] or pharmacist, acting as such in the course of his [or her] practice or employment, and references to the supply of controlled drugs include an offer to supply controlled drugs.

(2) Notwithstanding anything in section 6 or section 7 of this Act, but subject to sections 22 to 25 of this Act and any prohibitions, limitations, restrictions, or conditions, imposed thereby or thereunder or by or pursuant to any regulations under this Act,—

(a) Any medical practitioner, dentist or veterinary surgeon may prescribe, produce, manufacture, supply, or administer controlled drugs:

[(aa) Any registered midwife may prescribe, supply, or administer the controlled drug pethidine (as described in the Second Schedule to this Act):]

(b) Any pharmacist may produce, manufacture, or supply controlled drugs for the purposes of pharmaceutical benefits within the meaning of the Social Security Act 1964 or of the hospital in which he is employed or pursuant to a prescription or order issued by a medical practitioner, dentist, or veterinary surgeon:

[(ba) Any pharmacist may produce, manufacture, or supply pethidine (as so described) pursuant to a prescription or order issued by a registered midwife:]

(c) Any person for whom a controlled drug is supplied by a medical practitioner or dentist, or prescribed by a medical practitioner or dentist and lawfully supplied, may administer that drug to himself in accordance with the advice of the medical practitioner or dentist who supplied or prescribed it:

(d) Any person having the care of a patient for whom a controlled drug is supplied by a medical practitioner or dentist, or prescribed by a medical practitioner or dentist and lawfully supplied, may administer that drug to that patient in accordance with the advice of the medical practitioner or dentist who supplied or prescribed it:

[(da) Any person having the care of a patient for whom pethidine (as so described) is supplied by a registered midwife, or prescribed by a registered midwife and lawfully supplied, may administer that drug to that patient in accordance with the advice of the registered midwife who supplied or prescribed it:]

(e) Any person having the care of an animal for which a controlled drug is supplied by a veterinary surgeon, or prescribed by a veterinary surgeon and lawfully supplied, may administer that drug to that animal in

accordance with the advice of the veterinary surgeon who supplied or prescribed it:

- (f) Any [area health board or] Hospital Board or other corporate body, and any individual person being the manager of or person licensed to carry on a private hospital or other institution, having the care of patients for whom controlled drugs are lawfully prescribed or supplied, may possess those drugs for the purposes of the treatment of those patients:
 - (g) Any person in the service of the Crown [, or any Medical Officer of Health or any pharmacist employed by an area health board,] may procure and possess a controlled drug for the purposes of and in connection with his official duties:
 - (h) Any carrier may possess a controlled drug in the course of carriage to such extent as is necessary or incidental to his business:
 - (i) Any person who is permitted by or under this Act to import, export, supply, or administer a controlled drug may procure that drug from a person lawfully entitled to supply it and may possess that drug in the manner and for the purposes expressed or implied in that authority:
 - (j) Any person who is licensed or otherwise permitted under this Act to cultivate a prohibited plant may possess any controlled drug derived from that plant in the manner and for the purposes expressed or implied in that authority:
 - (k) Any person who is permitted by or under this Act to possess a controlled drug may procure that drug from a person lawfully entitled to supply it, and may supply or use that drug in the manner and for the purposes expressed or implied in that authority.
- (3) Subject to section 22 of this Act and to any regulations under this Act and to any other enactment or rule of law prohibiting, restricting, or regulating the import, export, supply, or administration of drugs, any person may—
- (a) Import or export any controlled drug specified or described in Part IV, Part V, or Part VI of the Third Schedule to this Act:
 - (b) Supply or administer any controlled drug specified or described in the said Part VI.

Cf. 1965, No. 45, s. 6 (3); S.R. 1966/82, regs. 2 (2), 14, 15, 16 (1), (a), (b), (e), 17 (1), (2)

In subs. (1) the words in the first and second sets of square brackets were inserted by s. 14 (1) (a) of the Nurses Amendment Act 1990; and the words in the third set of square brackets were inserted by s. 14 (1) (b) of that Act.

In subs. (2), para. (aa) was inserted by s. 14 (2) of the Nurses Amendment Act 1990.

In subs. (2), para. (ba) was inserted by s. 14 (3) of the Nurses Amendment Act 1990.

In subs. (2), para. (da) was inserted by s. 14 (4) of the Nurses Amendment Act 1990.

In subs. (2) (f) the words in square brackets were inserted by s. 98 of the Area Health Boards Act 1983.

In subs. (2) (g) the words in square brackets were inserted by s. 98 of the Area Health Boards Act 1983.

See generally S.R. 1977/37, and S.R. 1985/244.

Nothing in this section is to authorise any dealing with any medicine under the Medicines Act 1981; see s. 109 of that Act.

9. Cultivation of prohibited plants—(1) Except pursuant to a licence under this Act, or as otherwise permitted by regulations made under this Act, no person shall cultivate any prohibited plant.

(2) Subject to subsection (4) of this section, every person who contravenes subsection (1) of this section commits an offence against this Act and is liable on conviction on indictment to imprisonment for a term not exceeding 7 years.

(3) Notwithstanding anything in section 7 of the Summary Proceedings Act 1957, where any person is summarily convicted of an offence against this section, the [District Court] may sentence him to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$2,000 or to both.

(4) It shall be a defence to a charge under subsection (1) of this section if the person charged proves that the prohibited plant to which the charge relates was of the species *Papaver somniferum*, and that it was not intended to be a source of any controlled drug or that it was not being developed as a strain from which a controlled drug could be produced.

Cf. 1965, No. 45, s. 5 (1) (c), (2), (5)

10. Aiding offences against corresponding law of another country—(1) Every person commits an offence against this Act who, in New Zealand, aids, incites, counsels, or procures the doing or omission in any place outside New Zealand of any act, if that act or omission—

(a) Is punishable under the provisions of any law corresponding to section 6 or section 9 of this Act and in force in that place; or

(b) Would if done or omitted in New Zealand constitute an offence against section 6 or section 9 of this Act.

(2) Every person who commits an offence against this section is liable on conviction on indictment to imprisonment for a term—

- (a) Not exceeding 14 years where the relevant act or omission is punishable under the provisions of any law corresponding to section 6 of this Act or would if done or omitted in New Zealand constitute an offence against that section:
 - (b) Not exceeding 7 years in any other case.
 - (3) Notwithstanding anything in section 7 of the Summary Proceedings Act 1957, where any person is summarily convicted of an offence against this section, the [District Court] may sentence him to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$2,000 or to both.
 - (4) It is a defence to a charge under paragraph (b) of subsection (1) of this section if the person charged proves that the doing or omission of the act to which the charge relates was not an offence under the law of the place where it was, or was to be, done or omitted.
 - (5) Nothing in subsection (1) or subsection (4) of this section shall derogate from any provision in the Crimes Act 1961.
 - (6) *This subsection amended Part II of the First Schedule to the Extradition Act 1965 (reprinted 1986, R.S. Vol. 18, p. 129).*
- Cf. 1965, No. 45, s. 5A; 1970, No. 27, s. 3⁷

11. Theft, etc., of controlled drugs—(1) Every person commits an offence against this Act and is liable on conviction on indictment to imprisonment for a term not exceeding 7 years who—

- (a) Steals a controlled drug; or
 - (b) With intent to defraud by any false pretence, either directly or through the medium of any contract obtained by the false pretence, obtains possession of or title to a controlled drug, or procures a controlled drug to be delivered to any person other than himself; or
 - (c) Receives a controlled drug obtained by any crime, or by any act wherever committed which, if committed in New Zealand, would constitute a crime, knowing that controlled drug to have been dishonestly obtained.
- (2) Subsections (2) and (3) of section 258 of the Crimes Act 1961 shall apply in respect of any proceedings for an offence against paragraph (c) of subsection (1) of this section.
- (3) The definition of “crime” in section 2, and sections 220, 222, 225, 226, 245, 259, 260, and 261 of the Crimes Act 1961,

shall apply, with such modifications as may be necessary, for the purpose of construing subsection (1) of this section.

Cf. 1965, No. 45, s. 6A; 1970, No. 27, s. 4 (1)

12. Use of premises or vehicle—(1) Every person commits an offence against this Act who knowingly permits any premises or [any vessel, aircraft, hovercraft, motor vehicle, or other mode of conveyance] to be used for the purpose of the commission of an offence against this Act.

(2) Every person who commits an offence against this section is liable on conviction on indictment to imprisonment for a term—

(a) Not exceeding 10 years where a Class A controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed:

(b) Not exceeding 7 years where paragraph (a) of this subsection does not apply but a Class B controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed:

(c) Not exceeding 3 years in any other case.

(3) Notwithstanding anything in section 7 of the Summary Proceedings Act 1957, where any person is summarily convicted of an offence against this section the [District Court] may sentence him—

(a) To imprisonment for a term not exceeding 2 years or to a fine not exceeding \$1,000 or to both where he could have been sentenced under paragraph (a) of subsection (2) of this section if he had been convicted on indictment:

(b) To imprisonment for a term not exceeding one year or to a fine not exceeding \$1,000 or to both where he could have been sentenced under paragraph (b) of subsection (2) of this section if he had been convicted on indictment:

(c) To imprisonment for a term not exceeding 6 months or to a fine not exceeding \$500 or to both in any other case.

Cf. 1965, No. 45, s. 7 (1) (a)

In subs. (1) the words in square brackets were substituted for the word “vehicle” by s. 6 of the Misuse of Drugs Amendment Act 1978.

13. Miscellaneous offences—(1) Every person commits an offence against this Act who—

- [(a) Has in that person's possession any pipe or other utensil (not being a needle or syringe) for the purpose of the commission of an offence against this Act; or
 - (aa) Except as may be provided by regulations made under this Act, has in that person's possession any needle or syringe for the purpose of the commission of an offence against this Act; or]
 - (b) Except as may be provided by regulations made under this Act, has in his possession the seed or fruit (not in either case being a controlled drug) of any prohibited plant which he is not authorised under this Act to cultivate.
- (2) Subsection (4) of section 9 of this Act shall apply in relation to a charge under paragraph (b) of subsection (1) of this section as if, in the said subsection (4), a reference to the seed or fruit of a prohibited plant were substituted for the reference to the prohibited plant.
- (3) Every person who commits an offence against this section is liable to imprisonment for a term not exceeding one year or to a fine not exceeding \$500 or to both.

Cf. 1965, No. 45, s. 7

In subs. (1), paras. (a) and (aa) were substituted for the original para. (a) by s. 3 of the Misuse of Drugs Amendment Act (No. 2) 1987.⁸

14. Licences—(1) Licences granted under this Act shall be in such form and be subject to such conditions as may be prescribed, or permitted to be designed or imposed, and shall be issued by such persons as may be prescribed, by regulations made under this Act.

(2) No licence to import into or export from New Zealand opium prepared for smoking shall be granted under this Act.

(3) Except in the case of a licence issued for the purpose of research or study, no licence granted under this Act shall authorise the consumption, injection, or smoking of any controlled drug.

(4) Except with the approval of the Minister, no licence shall be granted under this Act to any person who has been convicted of an offence against this Act or any Act repealed by this Act or by the Narcotics Act 1965 or whose licence under any such Act has been revoked by reason of his failure to comply with the conditions thereof or by reason of the breach of the provisions of any such Act or of any regulation made thereunder.

⁸E/NL.1988/45

(5) If at any time the laws of a country or territory prohibit or restrict the importation of a controlled drug into that country or territory, any licence to export that controlled drug from New Zealand may contain conditions calculated to prevent any contravention of those laws in relation to the controlled drug which is the subject of the licence.

(6) Without prejudice to his liability under any other provision of this Act, every person commits an offence against this Act who contravenes or fails to comply with any condition of a licence granted to him under this Act.

Cf. 1965, No. 45, s. 8; S.R. 1966/82, reg. 4 (8); S.R. 1973/100, reg. 3

In subs. (4) the Narcotics Act 1965 was repealed by s. 39 (1) of this Act.

15. False statements—Every person commits an offence against this Act and is liable to imprisonment for a term not exceeding one year or to a fine not exceeding \$1,000 or to both who, for the purpose of obtaining, whether for himself or any other person, the grant or renewal of any licence under this Act or for any other purpose in relation to this Act,—

- (a) Makes any declaration or statement which to his knowledge is false in any particular; or
- (b) Utters, produces, or makes use of any declaration or statement which to his knowledge is false in any particular; or
- (c) Knowingly utters, produces, or makes use of any document that is not genuine.

Cf. 1965, No. 45, s. 9

16. Obstruction of officers—Every person commits an offence against this Act who wilfully obstructs, hinders, resists, or deceives any other person in the execution of any powers conferred on that other person by or pursuant to this Act.

Cf. 1965, No. 45, s. 10

17. Liability of principal for acts of agent, etc.—

- (1) Where an offence is committed against this Act or against any regulation made under this Act by any person acting as the agent or servant of another person, or being otherwise subject to the supervision or instructions of another person for the purposes of any employment in the course of which the offence was committed, that other person shall, without prejudice to the liability of the first mentioned person, be liable under this Act in the same manner and to the same extent as if he had

personally committed the offence if it is proved that the act which constituted the offence was committed with his consent or connivance or that it was attributable to any neglect on his part.

(2) Where any body corporate is convicted of an offence against this Act or against any regulation made under this Act, every director and every person concerned in the management of the company shall be guilty of a like offence if it is proved that the act which constituted the offence was committed with his consent or connivance or that it was attributable to any neglect on his part.

Cf. 1965, No. 45, s. 11

18. Search and seizure—(1) Where a search warrant is issued under section 198 of the Summary Proceedings Act 1957 in respect of an offence which has been or is suspected to have been committed against this Act or which is believed to be intended to be so committed, any constable executing the warrant or any of his assistants may search any person found in or on the building, aircraft, ship, hovercraft, carriage, vehicle, premises, or place which may be entered and searched under the authority of the warrant.

(2) Where any member of the Police has reasonable ground for believing that there is in or on any building, aircraft, ship, hovercraft, carriage, vehicle, premises, or place any controlled drug specified or described in the First Schedule or in Part I of the Second Schedule or in Part I of the Third Schedule to this Act and that an offence against this Act has been or is suspected of having been committed in respect of that drug, he, and any assistants who accompany him, may enter and search the building, aircraft, ship, hovercraft, carriage, vehicle, premises, or place and any person found therein or thereon as if authorised to do so by a search warrant issued under section 198 of the Summary Proceedings Act 1957 and by subsection (1) of this section.

(3) Where any member of the Police has reasonable ground for believing that any person is in possession of any controlled drug specified or described in the First Schedule or in Part I of the Second Schedule or in Part I of the Third Schedule to this Act and that an offence against this Act has been or is suspected of having been committed in respect of that drug, he may search and detain that person for the purpose of search and may take possession of any controlled drug found. Nothing in this subsection shall limit the provisions of subsections (1) and

(2) of this section or authorise any member of the Police to enter and search any building, aircraft, ship, hovercraft, carriage, vehicle, premises, or place otherwise than in accordance with the provisions of those subsections.

(4) Every member of the Police exercising the power of entry and search conferred by subsection (2) of this section or the power conferred by subsection (3) of this section shall identify himself to every person searched, and also to any person in or on the building, aircraft, ship, hovercraft, carriage, vehicle, premises, or place who questions his right to enter and search the same, and shall also tell those persons that the search is being made pursuant to the authority of that subsection. He shall also, if not in uniform and if so required, produce evidence that he is a member of the Police.

(5) Any officer of Customs, or any officer of the Department of Health, [or any Medical Officer of Health or any pharmacist employed by an area health board,] or any member of the Police, with such assistants as he thinks necessary, may seize and destroy any prohibited plant except where it is being cultivated either in accordance with the conditions of a licence granted under this Act or in accordance with regulations made under this Act, and may also seize and destroy the seed of any prohibited plant except where that seed is in the possession of any person who is either authorised under this Act to cultivate the plant or who is permitted by regulations made under this Act to have the seed in his possession.

(6) Where any member of the Police exercises the power of entry and search conferred by subsection (2) of this section or the power conferred by subsection (3) of this section, he shall, within 3 days after the day on which he exercises the power, furnish to the Commissioner of Police a written report on the exercise of the power and the circumstances in which it came to be exercised.

Cf. 1965, No. 45, s. 12

In subs. (5) the words in square brackets were inserted by s. 98 of the Area Health Boards Act 1983.

[18A. Internal search of person under arrest—

(1) Notwithstanding anything in section 57A of the Police Act 1958 or any other enactment or rule of law to the contrary, no member of the Police shall conduct an internal search of any part of the body of any person nor, except in accordance with subsection (2) of this section, shall he cause any other person to conduct such a search:

Provided that, with the consent of the person concerned, a member of the Police may search that person's mouth.

(2) Where any person (in this **[[section]]** referred to as the suspect) is arrested for any offence against section 6 or section 7 or section 11 of this Act, a commissioned officer or non-commissioned officer of the Police who has reasonable ground for believing that the suspect has secreted within his body any property that may be evidence of the offence with which the suspect is charged, or any property the possession of which by the suspect constitutes any other offence against any of the said provisions, may require the suspect to permit a medical practitioner, nominated for the purpose by the officer, to conduct an internal examination of any part of the suspect's body by means of an X-ray machine or other similar device, or by means of a manual or visual examination (whether or not facilitated by any instrument or device) through any body orifice.

(3) Notwithstanding anything in subsection (2) of this section or the terms of any requirement made under that section, no medical practitioner shall conduct any such internal examination if he considers that to do so may be prejudicial to the suspect's health, or if he is satisfied that the suspect is not prepared to permit an internal examination to be conducted.

(4) Notwithstanding anything in the Summary Proceedings Act 1957 or this Act, where the suspect fails to permit an internal examination to be conducted under this section and subsequently applies for bail, the Court may (without limiting its discretion to refuse bail) decline to consider the application until the expiry of 2 days after the day on which the requirement to do so was made or until the suspect sooner permits such an examination to be conducted, if the Court is satisfied that the requirement was properly made on reasonable grounds; and, in any such case, the Court may order that the suspect shall continue to be detained in police custody until the expiry of that period or until the suspect sooner complies, as the case may be.

[[(5) Nothing in this section shall limit or affect the provisions of sections 13A to 13M of the Misuse of Drugs Amendment Act 1978.]]

This section was inserted by s. 2 of the Misuse of Drugs Amendment Act (No. 2) 1979.

In subs. (2) the word "section" was substituted for the word "subsection" by s. 4 of the Misuse of Drugs Amendment Act 1982.

Subs. (5) was added by s. 3 of the Misuse of Drugs Amendment Act 1985.

19. Power to demand production of records and to inspect stocks of controlled drugs—(1) Any member of the Police or any other person authorised by the Minister shall for the purposes of the enforcement of the provisions of this Act have power to enter the premises of any person who carries on the business of a producer, manufacturer, seller, or distributor of any controlled drug, or who otherwise undertakes the supply or administration of any controlled drug, and to demand the production of and to inspect any books or documents relating to dealings in any controlled drug, and to inspect, weigh, measure, and record the stocks of controlled drugs.

(2) If in the opinion of any Medical Officer of Health there is reasonable ground for suspecting that any person is in possession of any controlled drug for the purpose of sale, or for the purpose of manufacturing any preparation for sale, or for use in or in connection with his profession, trade, or calling, or any occupation whether paid or unpaid, in breach of this Act or of any regulations made under this Act, the Medical Officer of Health may require that person to produce for his inspection or to produce to any person specially authorised by the Medical Officer of Health in that behalf, any books or documents dealing with the reception, possession, purchase, sale, or delivery of the controlled drug.

(3) Any person acting under, or pursuant to an authority under, subsection (1) or subsection (2) of this section may make copies of or extracts from any such books or documents, and the copies or extracts, certified as such by that person, shall be deemed to be true and correct copies or extracts, unless the contrary is proved.

(4) Every person commits an offence against this Act who refuses or neglects to comply with any demand or requisition made pursuant to this section.

(5) *Repealed by s. 25 (1) of the Official Information Amendment Act 1987.*

Cf. 1965, No. 45, s. 13

20. Statements regarding drug dependent persons—

(1) If a Medical Officer of Health has reason to believe that any person is or is likely to become dependent on any controlled drug, he may, for the purpose of preventing or restricting the supply of controlled drugs to that person, or of assisting in the cure or mitigation or avoidance of the dependence of that person, publish statements relating to that person to all or any

of the members of all or any of the classes of persons set out in subsection (3) of this section.

(2) Every statement made under subsection (1) of this section shall be privileged unless the publication is proved to be made with malice.

(3) The classes of persons referred to in subsection (1) of this section are as follows:

[(a) Members, officers, and employees of area health boards constituted under the Area Health Boards Act 1983:

(aa) Members, officers, and employees of Hospital Boards constituted under the Hospitals Act 1957:]

(b) Licensees and managers of private hospitals licensed under the Hospitals Act 1957:

(c) Superintendents of penal institutions within the meaning of the Penal Institutions Act 1954:

(d) Managers and superintendents of institutions within the meaning of the Alcoholism and Drug Addiction Act 1966:⁹

(e) Medical practitioners:

(f) Dentists:

[(fa) Registered midwives:]

(g) Members of the Police:

(h) Persons who deal in controlled drugs in the course of business.

(4) Nothing in subsection (1) or subsection (2) of this section shall limit or affect any right or duty which a Medical Officer of Health may otherwise possess to publish a statement to any person.

(5) Every person commits an offence against this Act who, except in the course of duty as a member of a class set out in subsection (3) of this section or as an officer or servant of the Crown, publishes any information obtained, whether by him or any other person, from a statement made pursuant to subsection (1) of this section, or any comment on any such statement.

Cf. 1965, No. 45, s. 20

In subs. (3), paras. (a) and (aa) were substituted for the original para. (a) by s. 98 of the Area Health Boards Act 1983; and para. (fa) was inserted by s. 15 of the Nurses Amendment Act 1990.

21. Power of Court to restrict publication of name of controlled drug—(1) Where, in the course of proceedings in any Court or before a Coroner, reference is made to any controlled drug, the Court or Coroner may in its or his discretion order that the name of that drug shall not be

⁹E/NL.1970/59

published in relation to those proceedings at any time before the expiration of a period of 5 years from the date of the final disposal of those proceedings:

Provided that no order made under this subsection shall apply to the publication of that name to scientists or to members of the legal, medical, dental, veterinary, nursing, or pharmaceutical professions or to persons studying to become scientists or members of those professions or in any publication of a scientific or technical character solely or mainly intended for circulation among scientists or members of those professions or persons so studying or in any publication published by or on behalf of the Crown.

(2) Where the publication of the name of a controlled drug is prohibited under this section in relation to any proceedings every person commits an offence against this Act who, within the said period of 5 years, publishes the name of that drug or any name or particulars likely to lead to the identification of that drug as the controlled drug to which reference was made in those proceedings.

(3) Nothing in this section shall be construed to limit the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to any judicial proceedings.

Cf. 1965, No. 45, s. 20A; 1970, No. 27, s. 5

22. Powers of Minister to prohibit importation, etc., of controlled drugs—(1) The Minister may from time to time, by notice in the *Gazette*, prohibit the importation, manufacture, production, procuring, possession, supply, administration, or other use of any specified controlled drug, either absolutely or subject to such conditions as he thinks fit, for any specified period not exceeding one year:

Provided that this power shall not be exercised more than once in respect of any controlled drug so specified.

[(1A) The Minister may from time to time, by notice in the *Gazette*, prohibit the importation or supply of any class of pipe or other utensil, not being a needle or syringe, that may be used for administering any controlled drug or in the preparation of any controlled drug to be administered, either absolutely or subject to such conditions as the Minister thinks fit.]

(2) Every person commits an offence against this Act who, being a person permitted by or under this Act to import, manufacture, produce, procure, possess, supply, administer, or

otherwise use, as the case may require, a controlled drug specified in a notice under subsection (1) of this section [, or any pipe or other utensil of a class specified in a notice under subsection (1A) of this section,] unless prohibited from so doing by any such notice, contravenes or fails to comply with any such notice.

Cf. 1960, No. 97, s. 28

Subs. (1A) was inserted by s. 4 (1) of the Misuse of Drugs Amendment Act (No. 2) 1987.
In subs. (2) the words in square brackets were inserted by s. 4 (2) of the Misuse of Drugs Amendment Act (No. 2) 1987.

23. Powers of Minister to prohibit prescribing, etc.—

(1) Subject to subsection (2) of this section, the Minister may at any time, by notice in the *Gazette*,—

(a) Prohibit any specified medical practitioner, dentist, or veterinary surgeon from prescribing controlled drugs:

[(aa) Prohibit any specified registered midwife from prescribing pethidine (as described in the Second Schedule to this Act):]

(b) Prohibit any specified person from exercising all or any of the rights conferred by section 8 of this Act, whether those rights are so conferred on persons generally or on a particular class of person to which that person belongs.

(2) The Minister shall not exercise any power conferred on him by subsection (1) of this section—

(a) In the case of a medical practitioner, except on the recommendation of the Medical Council of New Zealand; or

(b) In the case of a dentist, except on the recommendation of the Dental Council of New Zealand; or

(c) In the case of a veterinary surgeon, except on the recommendation of the Veterinary Surgeons Board; or

[(ca) In the case of a registered midwife, except on the recommendation of the Nursing Council of New Zealand; or]

(d) In the case of a pharmacist, except on the recommendation of the Council of the Pharmaceutical Society of New Zealand.

(3) The Minister may at any time, by notice in the *Gazette*, revoke any notice given under subsection (1) of this section.

(4) Notwithstanding anything in any other Act, each Council and the Board referred to in subsection (2) of this section shall, for the purpose of considering and determining whether or not

to make a recommendation to the Minister under that subsection, have jurisdiction to inquire into any prescribing of or dealing in controlled drugs by a member of the profession with which it is concerned, and any matter incidental thereto, when such prescribing or dealing has been brought or otherwise comes to its attention.

(5) For the purposes of subsection (4) of this section each such Council and such Board shall have and may exercise any powers with respect to summoning witnesses, administering oaths, hearing evidence, and other matters of procedure, and with respect to the payment and receiving of costs and expenses conferred on it, in relation to disciplinary proceedings, by the enactment under which it is constituted, including, in the case of the Council of the Pharmaceutical Society of New Zealand, the powers conferred on the Disciplinary Committee of that Society, but it shall not be necessary, unless the Council or Board so requires, for any other body to conduct an investigation or inquiry or to be represented at the inquiry conducted by the Council or Board.

(6) Without prejudice to the liability of any person under any other provision of this Act, every medical practitioner, dentist, or veterinary surgeon who prescribes any controlled drug in contravention of a notice under subsection (1) of this section commits an offence against this Act and is liable—

- (a) To imprisonment for a term not exceeding 6 months or to a fine not exceeding \$1,000 or to both, where a Class A controlled drug or a Class B controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed:
- (b) To imprisonment for a term not exceeding 3 months or to a fine not exceeding \$200 or to both, in any other case.

[(7) Without prejudice to the liability of any registered midwife under any other provision of this Act, every registered midwife who prescribes pethidine (as so described in contravention of a notice under subsection (1) of this section commits an offence against this Act and is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$1,000, or to both.]

Cf. S.R. 1966/82, regs. 13 (2), 21, 35

In subs. (1), para. (aa) was inserted by s. 16 (1) of the Nurses Amendment Act 1990.

In subs. (2), para. (ca) was inserted by s. 16 (2) of the Nurses Amendment Act 1990.

Subs. (7) was added by s. 16 (3) of the Nurses Amendment Act 1990.

24. Treatment of persons dependent on controlled drugs—(1) Every medical practitioner commits an offence against this Act who, except as provided in subsection (2) of this section, prescribes, administers, or supplies any controlled drug for or to any person, whom the practitioner has reason to believe is dependent [on that or any other controlled drug], in the course, or for the purpose, of treatment for dependency.

(2) A medical practitioner may prescribe, administer, or supply any controlled drug for or to any such person if the medical practitioner—

- (a) Is for the time being a medical practitioner specified by the Minister under subsection (5) of this section; or
- (b) Is working in a hospital or health centre, within the meaning of [the Area Health Boards Act 1983 or] the Hospitals Act 1957, or clinic or other similar place, so specified, and is authorised in writing by a medical practitioner, so specified and working in that hospital, centre, clinic, or place, to prescribe controlled drugs; or
- (c) Is acting in his capacity as a medical officer employed in a hospital, so specified and carried on by [an area health board or] a Hospital Board, and is authorised in writing by the medical superintendent of that hospital, acting under the general or special directions of the principal medical officer of [the area health board or the hospital board] in any case where the medical superintendent is not such principal medical officer, to prescribe controlled drugs; or
- (d) Is acting, with the permission in writing of any such specified medical practitioner or authorised medical officer, in relation to a particular patient, and during such period and in accordance with such terms and conditions, as the medical practitioner or medical officer may in writing specify or impose.

(3) Except with the concurrence of the Medical Officer of Health, no permission given under paragraph (d) of subsection (2) of this section shall be expressed to apply for any period longer than 3 months, but any such permission may from time to time be renewed by the specified medical practitioner or by the authorised medical officer, or any other medical officer similarly authorised and employed in the same hospital, for a period not exceeding, except as aforesaid, 3 months at any one time.

(4) Any authority or permission given or renewed pursuant to subsection (2) or subsection (3) of this section may, by notice in writing to the person to whom the authority or permission was given, be withdrawn at any time by the person who gave or renewed the authority or permission, and shall be deemed to have been so withdrawn when the notice specifying the hospital, health centre, clinic, or place, in or from which the authority or permission was given or renewed, or specifying the medical practitioner by whom the authority or permission was given, as the case may require, is revoked, or, in the case of an authority under paragraph (b) of the said subsection (2), such medical practitioner dies or ceases to work in the hospital, health centre, clinic, or place to which the authority relates.

(5) The Minister may from time to time, by notice in the *Gazette*, specify—

- (a) By name, any medical practitioner as a medical practitioner who may prescribe, administer, or supply controlled drugs for the purposes of this section:
- (b) By name or description, any hospital carried on by [an area health board or] a Hospital Board, or any hospital, health centre, clinic, or other place in which a medical practitioner, for the time being specified by the Minister under paragraph (a) of this subsection, works, as a hospital, health centre, clinic, or place at which controlled drugs may be prescribed, administered, or supplied for the purposes of this section;—

and may in like manner revoke or amend any such notice.

(6) Nothing in the preceding provisions of this section shall apply to—

- (a) The treatment of a patient, within the meaning of the Alcoholism and Drug Addiction Act 1966, while he is in an institution, within the meaning of that Act:
- (b) The emergency treatment of a patient in any hospital within the meaning of the Hospitals Act 1957, for a period not exceeding 3 days:
- (c) The treatment of any restricted person within the meaning of section 25 of this Act.

Cf. S.R. 1966/82, regs. 13 (2), 25A; S.R. 1973/100, reg. 7

In subs. (1) the words in square brackets were inserted by s. 5 of the Misuse of Drugs Amendment Act 1982.

In subs. (2), in paras. (b) and (c), the words in the first sets of square brackets were inserted by s. 98 of the Area Health Boards Act 1983.

In subs. (2) (c) the words in the second set of square brackets were substituted for the words "the Board" by s. 98 of the Area Health Boards Act 1983.

In subs. (5) (b) the words in square brackets were inserted by s. 98 of the Area Health Boards Act 1983.

25. Restrictions on supply to particular persons—(1) In this section “restricted person” means a person who is the subject of a notice given under subsection (3) of this section and for the time being in force.

(2) Every person commits an offence against this Act who,—

(a) In contravention of a notice which has been served on him pursuant to subsection (3) or subsection (4) of this section, or which has otherwise come to his attention, prescribes for or supplies to a restricted person, knowing him to be a restricted person, any controlled drug; or

(b) Knowing himself to be a restricted person, procures or attempts to procure a prescription or a controlled drug from a person who is for the time being prohibited, by a notice under subsection (3) or subsection (4) of this section, from issuing the prescription or supplying the controlled drug to him.

(3) Where a Medical Officer of Health is satisfied that any person has been obtaining a controlled drug over a prolonged period and is likely to seek further supplies of a controlled drug, or prescriptions for the supply of a controlled drug, he may from time to time, by notice in such form as he thinks fit, given generally or to any person authorised by or under this Act to supply controlled drugs, prohibit every medical practitioner and dentist from issuing prescriptions for the supply of, and every person from supplying, any controlled drugs to the first-mentioned person, subject to such exceptions, relating to particular medical practitioners or dentists or sources of supply, or particular medical practitioners or dentists or sources of supply, or the frequency or quantity of prescriptions or supply, as may be specified in the notice.

(4) The Medical Officer of Health may at any time by a like notice revoke, or vary, or modify any prohibition, condition, or exception contained in a notice given by him under this section.

(5) A copy of any notice under subsection (3) or subsection (4) of this section shall be served, either personally or by registered post, on the restricted person, but failure to comply with this requirement shall not invalidate the notice.

(6) Any person who is aggrieved by the issue of a notice under this section, or by the refusal of the Medical Officer of Health to revoke, vary, or modify, any prohibition, condition,

or exception contained in any such notice, may appeal in writing to the Minister whose decision shall be final.

Cf. S.R. 1966/82, regs. 13 (2), 26

26. Arrest by Customs Officers—If any officer of Customs has reasonable cause to believe or suspect that any person, in contravention of this Act, has imported into or exported from New Zealand any controlled drug, or has been concerned in such import or export, he may arrest that person without a warrant.

Cf. 1965, No. 45, s. 14

27. General penalty—Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$500 or to both.

Cf. 1965, No. 45, s. 15

28. Legal proceedings—(1) Except where this Act otherwise provides, every offence against this Act or against any regulations made under this Act shall be punishable on summary conviction.

(2) Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information in respect of any offence against this Act or against any regulations made under this Act may be laid at any time within 4 years from the time when the matter of the information arose.

[(2A) Notwithstanding anything in section 14 of the Summary Proceedings Act 1957 or subsection (2) of this section, any information in respect of any offence against section 6 or section 9 or section 10 of this Act may be laid at any time.]

(3) *This subsection amended Part II of the First Schedule to the Summary Proceedings Act 1957 (reprinted 1982, R.S. Vol. 9, p. 734).*

Cf. 1965, No. 45, s. 16

Subs. (2A) was inserted by s. 2 of the Misuse of Drugs Amendment Act 1980.

29. Mistake as to nature of controlled drug—Where, in any proceedings for an offence against any of the provisions of section 6 or section 7 of this Act, it is necessary, if the defendant is to be convicted of the offence charged, for the prosecution to prove that some substance, preparation, mixture, or article involved in the alleged offence was the controlled drug which the prosecution alleges it to have been,

and it is proved that the substance, preparation, mixture, or article was that controlled drug, the defendant shall not be acquitted of the offence charged by reason only of the fact that he did not know or may not have known that the substance, preparation, mixture, or article in question was the particular controlled drug alleged.

[29A. Issue of usable quantity—(1) On the summary trial of any person charged with an offence against this Act in which it is alleged that the defendant had in his possession any controlled drug in contravention of this Act, it shall not be necessary for the prosecution to prove that the amount of the controlled drug in the defendant's possession was of a usable quantity, unless the defendant puts the matter in issue.

(2) Where, in the course of a summary trial, the defendant puts in issue the question of whether or not the amount of any controlled drug alleged to have been in his possession was of a usable quantity, the **[[District Court Judge]]** shall, if requested to do so by the prosecutor, adjourn the hearing for such period as he considers sufficient to enable the prosecutor to arrange for the attendance in Court of a witness or witnesses to adduce evidence that that amount was of a usable quantity; and, if the prosecutor has closed his case before the said question is put in issue, the **[[District Court Judge]]** shall also grant the prosecutor leave to re-open his case for the purpose of adducing evidence that the amount of the drug was of a usable quantity.]

This section was inserted by s. 7 of the Misuse of Drugs Amendment Act 1978.

[29B. Special provisions where offence relating to cannabis preparations alleged—For the purposes of any proceedings for an offence against any of the provisions of section 6 or section 7 of this Act in relation to any cannabis preparation the following provisions shall apply:

- (a) It shall be for the prosecution to prove that the preparation to which the charge relates contains any tetrahydrocannabinols:
- (b) Subject to paragraph (a) of this section, the preparation shall be deemed to have been produced by subjecting cannabis plant material to some kind of processing unless it is in a form that is clearly recognisable as plant material:
- (c) "Plant material" means the whole or any part of the leaf, flower, or stalk of any plant (of whatever species):

- (d) The question of whether or not any preparation is in a form that is clearly recognisable as plant material shall, in the event of dispute between the prosecutor and the defendant, be determined by the jury (or, if there is no jury, by the Judge as a question of fact) by means of a visual inspection unaided by any microscope or magnifying glass (other than spectacles ordinarily worn) or by any other device.]

This section was inserted by s. 6 of the Misuse of Drugs Amendment Act 1982.

[29c. Special provisions where offence relating to controlled drug analogues alleged]—It shall be a defence to a charge relating to the possession of any controlled drug analogue in contravention of any of the provisions of this Act if the defendant proves that he or she had the substance—

- (a) For some purpose other than—
- (i) Consuming, smoking, snorting, or injecting by any person, or using in any other manner intended to have a pharmacological effect on the user; and
 - (ii) Supplying or administering it to any other person; or
- (b) For the purpose of supplying it or administering it to any other person in accordance with any procedure approved by the Director-General of Health.]

This section was inserted by s. 5 of the Misuse of Drugs Amendment Act (No. 2) 1987.

30. Burden of proof—Without prejudice to subsection (8) of section 67 of the Summary Proceedings Act 1957, in any proceedings against any person in respect of any offence against this Act or against any regulations made under this Act in which it is proved that he had in his possession any controlled drug, or did any act in relation to a controlled drug which would have amounted to that offence if such act were not done pursuant to section 8 of this Act or to a licence under this Act or as otherwise permitted by regulations under this Act, the burden of proving that he had such controlled drug in his possession, or did such act, pursuant to the said section 8 or to any such licence or as so permitted shall lie on him.

Cf. 1965, No. 45, s. 17

31. Evidence of analysis—(1) For the purposes of this section the term “analyst” means the Dominion Analyst or a Government Analyst or an [employee] of the Department of Scientific and Industrial Research authorised in that behalf by

the Dominion Analyst or a Government Analyst, either generally or in any particular case.

[(2) Subject to subsections (3) and (4) of this section, in any proceedings for an offence against this Act, a certificate purporting to be signed by an analyst, and certifying that, on a date stated in the certificate, the substance, preparation, mixture, or article to which the certificate relates was received by the signatory personally in any case or (where the substance, preparation, mixture, or article was delivered in a sealed package or by registered post) by any other employee of the Department of Scientific and Industrial Research authorised by the Dominion Analyst to do so, from the member of the Police or employee of the Police Department or officer of Customs named in the certificate, and that upon analysis that substance, preparation, mixture, or article was found to be or to contain a particular controlled drug (whether of a specified or an unspecified weight) or a particular prohibited plant, or a particular part of a particular prohibited plant, or a seed or fruit of a particular prohibited plant, specified or described in the certificate, shall until the contrary is proved be sufficient evidence—

- (a) Of the qualifications and authority of the person by whom the analysis was carried out; and
- (b) Of the authority of the person who signed the certificate to sign that certificate; and
- (c) Of the facts stated in the certificate.

(2A) Where the substance, preparation, mixture, or article was delivered in a sealed package or by registered post and received by any employee of the Department of Scientific and Industrial Research (other than the person who signed the certificate) authorised by the Dominion Analyst to do so from any person referred to in subsection (2) of this section, the person who made the analysis may give evidence of receipt by that employee of the substance, preparation, mixture, or article that is the subject of that analysis. Such evidence shall, in the absence of evidence to the contrary, be admissible as sufficient proof of the proper receipt of the substance, preparation, mixture, or article by the person who made the analysis.]

(3) A certificate referred to in subsection (2) of this section shall be admissible in evidence only if—

- (a) At least 7 clear days before the hearing at which the certificate is tendered, a copy of that certificate is served, by or on behalf of the prosecutor, on the defendant, and the defendant is at the same time

informed in writing that the prosecutor does not propose to call the person who made the analysis as a witness at the hearing; and

- (b) The defendant does not, by notice in writing given to the prosecutor at least 3 clear days before the hearing, require the person who made the analysis to be called by the prosecutor as a witness at the hearing.

(4) Notwithstanding anything in subsection (3) of this section, a certificate referred to in subsection (2) of this section shall not be admissible in evidence if the Court, either of its own motion or on the application of the defendant made either before or after the commencement of the hearing, in its discretion directs that the result of the analysis shall be disregarded unless that result is proved by the oral evidence of the person who made the analysis.

[(5) In this section—

“Member of the Police” includes a member of the Regulating Branch of the New Zealand Naval Forces or of the New Zealand Army Military Police or of the Royal New Zealand Air Force Police:

“Served” means served in accordance with sections 24 to 29 of the Summary Proceedings Act 1957.]

In subs. (1) the word “employee” was substituted for the word “officer” by s. 3 of the Misuse of Drugs Amendment Act 1986.

Subss. (2) and (2A) were substituted for the original subs. (2) (as variously amended) by s. 6 (1) of the Misuse of Drugs Amendment Act (No. 2) 1987.

Subs. (5) was added by s. 3 (2) of the Misuse of Drugs Amendment Act 1980.

32. Forfeiture—(1) Every person convicted of an offence against this Act shall, in addition to any penalty imposed pursuant to this Act, forfeit to Her Majesty, by virtue of such conviction, all articles, if any, in respect of which the offence was committed and in the possession of such person.

(2) Articles forfeited under the provisions of subsection (1) of this section shall be sold, destroyed, or otherwise disposed of as the Minister directs.

(3) If, on the conviction of any person for an offence against section 6 of this Act, the Judge or [District Court Judge] is satisfied that money found in the possession of that person was received by that person in the course of or consequent upon the commission of that offence, or was in the possession of that person for the purpose of facilitating the commission of an offence against that section, the Judge or [District Court Judge] may, in addition to any other penalty imposed pursuant to this Act, order that that money be forfeited to the Crown.

[(4) If, on the conviction of any person for an offence against section 6 of this Act, the Court is satisfied that any motor vehicle, aircraft, or ship or boat or other vessel owned by the convicted person (whether solely or as joint tenant or tenant in common with any other person or persons) or in which he has any interest (whether pursuant to a hire purchase agreement, leasing agreement, or otherwise) at the time of his conviction was used by the convicted person in the commission of that offence (whether or not he was the driver or person in charge), the Court shall, unless in the circumstances of the case the Court considers that it would be unjust to do so, order, in addition to any other penalty imposed under this Act, that the motor vehicle, aircraft, or ship or boat or other vessel be forfeited to Her Majesty.

[(5) Where an order for forfeiture is made under subsection (4) of this section, section 84 (except subsection (2)), and sections 86 and 87 of the Criminal Justice Act 1985, so far as they are applicable and with any necessary modifications, shall apply as if the order for forfeiture were an order for confiscation made under the said section 84:

Provided that subsection (3) of the said section 87 shall apply as if for paragraphs (c) and (d) of that subsection there were substituted the following paragraph:

“(c) The balance (if any) shall be paid into the Public Account.”]]]

Cf. 1965, No. 45, s. 18

Subs. (4) and a former subs. (5) were added by s. 4 of the Misuse of Drugs Amendment Act 1980.

Subs. (5) was substituted for the former subs. (5) by s. 150 (1) of the Criminal Justice Act 1985.

33. Notification of conviction of medical practitioners, etc.—Where any person being a medical practitioner, pharmacist, dentist, [registered midwife,] or veterinary surgeon is convicted of any offence against this Act or against any regulations made under this Act, the Court shall cause particulars of the conviction to be sent to the person charged with the duty of keeping the register on which the name of the convicted person appears as a registered medical practitioner, pharmacist, dentist, [registered midwife,] or veterinary surgeon, as the case may be.

Cf. 1965, No. 45, s. 19

The words “registered midwife,” in both places where they occur, were inserted by s. 17 of the Nurses Amendment Act 1990.

34. Protection of persons acting under authority of Act—A person who does any act in pursuance or intended pursuance of any of the functions conferred on him by or under this Act shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction, or mistake of law or fact, or on any other ground, unless he has acted in bad faith or without reasonable care.

Cf. 1965, No. 45, s. 21

[34A. Protection of Police officers—(1) In this section the term “undercover officer” means a member of the Police whose identity is for the time being concealed for the purpose of a particular investigation of any suspected offence against this Act or of any person suspected of such an offence; and includes any other member of the Police who is for the time being directing or assisting that member in the course of that investigation.

(2) No prosecution for an offence against this Act, or against any regulations made under this Act, shall be commenced or continued against any member of the Police in respect of any act committed by him at a time or during a period when he was acting as an undercover officer, except with the leave of the Attorney-General.

(3) A certificate signed by the Commissioner of Police to the effect that, at any specified time or during any specified period, the member of the Police named in the certificate was acting as an undercover officer shall, for the purposes of subsection (2) of this section, be conclusive evidence of that fact.]

This section was inserted by s. 9 of the Misuse of Drugs Amendment Act 1978.

35. Crimes deemed to be included in extradition treaties—(1) For the purposes of the Extradition Act 1965 and every Order in Council made under section 3 of that Act or referred to in section 21 of that Act, every crime described in section 6 or section 9 of this Act (including attempting or conspiring to commit that crime, aiding, abetting, inciting, counselling, or procuring any person to commit that crime) and every crime described in section 10 of this Act shall, if not already described in the treaty, be deemed to be an offence described in any extradition treaty concluded before the commencement of this section and for the time being in force between New Zealand and any foreign country which is a party to the Single Convention on Narcotic Drugs 1961, as amended by the Protocol amending that Convention, done at Geneva on

25 March 1972, or to the Convention on Psychotropic Substances 1971. A certificate given under the hand of the Minister of Foreign Affairs that any foreign country is a party as aforesaid shall be sufficient evidence of that fact.

(2) Where, pursuant to the provisions of subsection (1) of this section, any crime is deemed to be an offence described in an extradition treaty, a person whose surrender is sought under the Extradition Act 1965 in respect of an act or omission which amounts to that crime shall be liable to be surrendered in accordance with the provisions of that Act, whether the act or omission occurred before or after the date on which the crime was deemed to be an offence described in the extradition treaty.

(3) For the purposes of this section, the expression "foreign country" includes any territory for whose international relations the Government of a foreign country is responsible and to which the extradition treaty and the Single Convention on Narcotic Drugs as amended by the Protocol amending that Convention or, as the case may be, the Convention on Psychotropic Substances, extends.

36. Application of Customs Act 1966—Sections 212 to 215, 270, 271, 274 to 282, and 285 to 287, of the Customs Act 1966 shall apply in relation to the importation and exportation of controlled drugs, except controlled drugs specified or described in Part IV, Part V, or Part VI of the Third Schedule to this Act, as if such controlled drugs were restricted goods within the meaning of that Act.

Cf. 1965, No. 45, s. 22

37. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Providing for the issue of licences for the import, export, possession, production, manufacture, procuring, supply, administration, or use of controlled drugs and the cultivation of prohibited plants:
- (b) Prescribing the form, duration, terms, and conditions of any licence under this Act and enabling additional conditions to be imposed:
- (c) Prescribing the fees payable for licences under this Act and providing for the cancellation and suspension of such licences:
- (d) Permitting the import, export, possession, production, manufacture, procuring, supply, administration, or

use of controlled drugs, and the cultivation of prohibited plants, otherwise than pursuant to a licence under this Act but subject to such conditions or restrictions as may be prescribed by or imposed under the regulations:

- (e) Prohibiting, limiting, restricting, and imposing conditions on, either generally or in relation to particular cases or classes of case or particular classes of person, the prescribing, production, manufacture, procuring, supply, use, or possession of controlled drugs pursuant to any provision of section 8 of this Act:
- (f) Requiring persons who are engaged in the import, export, production, manufacture, procuring, supply, or administration of any controlled drug, or who utilise any controlled drug in the course of or in connection with their profession, trade, or calling, or any occupation whether paid or unpaid, or who otherwise undertake the supply or administration of any controlled drug, to keep records in such form and manner and to furnish information with respect to such matters as may be prescribed:
- (g) Regulating the issue by medical practitioners, dentists, [registered midwives,] and veterinary surgeons of prescriptions for the supply of any controlled drug, and requiring persons issuing or dispensing prescriptions in respect of any such drug to furnish such information relating to those prescriptions as may be prescribed:
- [(ga) Prescribing the circumstances in which, and the conditions under which, any person or class of persons may possess needles or syringes notwithstanding that those needles or syringes may be intended to be used for the purpose of the commission of offences against this Act:
- (gb) Regulating the sale, exchange, or supply of needles or syringes—
 - (i) By medical practitioners or pharmacists generally, or by those approved for the purpose by the Director-General of Health; or
 - (ii) By authorised representatives of any agency, association, or body approved for the purpose by the Director-General of Health,—notwithstanding that those needles or syringes may be intended by the persons to whom they are sold or

- supplied, or with whom they are exchanged, to be used for the commission of offences against this Act:]
- (h) Requiring any medical practitioner who attends a person whom he considers, or has reasonable grounds to suspect, is dependent on controlled drugs of any description to furnish such particulars with respect to that person as may be prescribed:
 - (i) Prohibiting, regulating, or restricting the supply of controlled drugs to any person so dependent and the issue of prescriptions for such supply:
 - (j) Regulating the dispensing and compounding of controlled drugs:
 - (k) Regulating the packing, labelling, storage, carriage, and destruction of controlled drugs:
 - (l) Declaring plants to be prohibited plants:
 - (m) Controlling or restricting the cultivation and destruction of prohibited plants and the sale, distribution, possession, and destruction of the seeds or fruit of prohibited plants:
 - (n) Providing for the weighing, counting, measuring, sealing, seizing, and taking of samples of controlled drugs:
 - (o) Prohibiting, regulating, or restricting advertisements for controlled drugs, and statements made in any such advertisement:
 - (p) Providing for the waiver of fees in whole or in part in particular cases or classes of cases and for the total or partial refund of fees:
 - (q) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act, and the amounts of fines that may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$500 and, where the offence is a continuing one, a further amount not exceeding \$20 for every day or part of a day during which the offence has continued:
 - (r) Exempting, or providing for the exemption of, any persons or classes of persons, or excepting any controlled drugs, from any provision of any regulation made under this Act which imposes conditions or obligations:
 - (s) Generally for prohibiting, controlling, or restricting the import, export, possession, production, manufacture, procuring, supply, administration, and use of controlled drugs:

- (t) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (2) Any regulations made under subsection (1) of this section may—
 - (a) Be expressed to apply to controlled drugs generally, or to particular controlled drugs or classes of controlled drugs specified or described in the regulations, and may make different provision for different controlled drugs or classes of controlled drugs so specified or described;
 - (b) Provide for depriving persons of any rights, privileges, or exemptions, conferred on any class of person to which those persons belong, by any such regulations.

Cf. 1965, No. 45, s. 23; 1960, No. 97, s. 53 (2) (h), (o);
Misuse of Drugs Act 1971, s. 10 (2) (g), (h), (i) (U.K.)

In subs. (1) (g) the words in square brackets were inserted by s. 18 of the Nurses Amendment Act 1990.

In subs. (1), paras. (ga) and (gb) were inserted by s. 7 of the Misuse of Drugs Amendment Act (No. 2) 1987. See S.R. 1977/37 and S.R. 1985/244.

38. Effect on Poisons Act 1960—Notwithstanding anything in the Poisons Act 1960, no controlled drug shall be a poison, poisonous substance or toxic substance for the purposes of that Act.

The Poisons Act 1960 was renamed the Restricted Drugs Act 1960 by s. 2 (1) of the Restricted Drugs Amendment Act 1979. The Restricted Drugs Act 1960 was repealed by s. 115 of the Medicines Act 1981 from 1 August 1984 (see S.R. 1984/142).

39. Repeals—(1) The Narcotics Act 1965 and the Narcotics Amendment Act 1970 are hereby repealed.

(2) Any reference in any enactment or in any document to a narcotic within the meaning of the Narcotics Act 1965 shall hereafter, unless the context otherwise requires, be read as a reference to a controlled drug within the meaning of this Act.

40. Revocations—The following Orders in Council are hereby revoked, namely:

- (a) The Narcotics Order 1966;
- (b) The Narcotics Order 1967;
- (c) The Narcotics Order (No. 2) 1967;
- (d) The Narcotics Order 1968.

41. *This section inserted s. 689A in the Niue Act 1966 (Reprinted 1976, Vol. 5, p. 3957).*

This Act is in force in Niue; see s. 689A (1) of the Niue Act 1966.

SCHEDULES

FIRST SCHEDULE

Section 2 (1)

CLASS A CONTROLLED DRUGS

1. The following substances, namely:

- ACETORPHINE (*O*⁶-acetyl-7,8-dihydro-7 α -[1 (*R*)-hydroxy-1-methyl-butyl]-*O*⁶-methyl-6,14-*endo*ethenomorphone).
- [4-BROMO-2, 5-DIMETHOXYAMPHETAMINE (2-amino-1-(4-bromo-2, 5-dimethoxyphenyl) propane).]*
- BUFOTENINE (3-(2-dimethylaminoethyl)-5-hydroxyindole).
- CANTHARIDIN (hexahydro-3a,7a-dimethyl-4,7-epoxyisobenzofuran-1,3-dione).
- [COCAINE (methyl ester of benzoylecgonine), except when contained in a Class C controlled drug.]*†
- DESOMORPHINE (dihydrodeoxymorphone).
- DET (*N,N*-diethyltryptamine).
- [2, 5-DIMETHOXYAMPHETAMINE (2-amino-1-(2, 5-dimethoxyphenyl) propane).]*
- DMHP (3-(1,2-dimethylheptyl)-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6*H*-dibenzo[*b,d*] pyran).
- DMT (*N,N*-dimethyltryptamine).
- ETORPHINE (7,8-dihydro-7 α -[1 (*R*)-hydroxy-1-methylbutyl]-*O*⁶-methyl-6,14-*endo*ethenomorphone).
- HEROIN (diacetylmorphone).
- KETOBEMIDONE (4-*meta*-hydroxyphenyl-1-methyl-4-propionylpiperidine).
- LYSERGIDE (*N,N*-diethyllysergamide or lysergic acid diethylamide).
- MDA (2-amino-1-(3,4-methylenedioxyphenyl) propane).
- MESCALINE (3,4,5-trimethoxyphenethylamine).
- [4-METHOXYAMPHETAMINE (2-amino-1-(4-methoxyphenyl) propane).]*
- 5-METHOXYDIMETHYLTRYPTAMINE (5-methoxy-*N,N*-dimethyl-tryptamine).
- [3-METHOXY-4, 5-METHYLENEDIOXYAMPHETAMINE (2-amino-1-(3-methoxy-4, 5-methylenedioxyphenyl) propane).]*
- [MPTP (1-methyl-4-phenyl-1,2,5,6-tetrahydropyridine).]*†
- PARAHEXYL (3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6*H*-dibenzo [*b,d*] pyran).
- [PCE (*N*-ethyl-1-phenylcyclohexylamine).
- PCPY {1-(1-phenylcyclohexyl) pyrrolidine).}*‡
- PHP {1-(1-phenylcyclohexyl) piperidine).]*†
- [PEPTP (1-(2-phenylethyl)-4-phenyl-1,2,5,6-tetrahydropyridine).]*†
- PHENCYCLIDINE (1-(1-phenylcyclohexyl) piperidine).
- PIPERIDYL BENZILATES (*N*-methylpiperidyl benzilates and *N*-ethylpiperidyl benzilates but excluding the methobromide salts).
- PSILOCINE } (3-(2-dimethylaminoethyl)-4-hydroxyindole).
- PSILOTSIN }
- PSILOCYBINE (3-(2-dimethylaminoethyl) indol-4-yl dihydrogen phosphate).
- STP,DOM (2-amino-1-(2,5-dimethoxy-4-methyl) phenylpropane).
- [TCP (1-(1-(2-thienyl) cyclohexyl)piperidine).]*‡
- TETRAHYDROCANNABINOLS, except when contained in a Class B or a Class C controlled drug.
- THALIDOMIDE (α -phthalimidoglutarimide).
- [3, 4, 5-TRIMETHOXYAMPHETAMINE (2-amino-1-(3, 4, 5-trimethoxyphenyl) propane).]*

FIRST SCHEDULE—*continued*CLASS A CONTROLLED DRUGS—*continued*

2. The isomers of the substances mentioned in this Schedule whenever the existence of such isomers is possible within the specific chemical designation.

3. The esters and ethers of the substances mentioned in this Schedule and the esters and ethers of the isomers mentioned in clause 2 of this Schedule whenever the existence of such esters or ethers is possible.

4. The salts of the substances mentioned in this Schedule and the salts of the isomers, esters, and ethers mentioned in clause 2 or clause 3 of this Schedule.

5. Substances containing any proportion of a substance mentioned in clause 1, clause 2, clause 3, or clause 4 of this Schedule.

*These items were inserted by clause 3 of the Misuse of Drugs Order (No. 2) 1978 (S.R. 1978/249).

†These items were inserted by s. 8 of the Misuse of Drugs Amendment Act (No. 2) 1987.

‡These items were inserted by clause 2 of the Misuse of Drugs Order 1981 (S.R. 1981/114).

As to the import or export of drugs shown in this Schedule, see S.R. 1977/37/7 (2).

Section 2 (1)

SECOND SCHEDULE

CLASS B CONTROLLED DRUGS

Part I

1. The following substances, namely:

[CANNABIS preparations: that is, any preparation containing any tetrahydrocannabinols, including cannabis resin (commonly known as hashish) and cannabis oil (commonly known as hash oil), produced by subjecting cannabis plant material to any kind of processing.]

MORPHINE.

OPIUM.

2. The isomers of the substances mentioned in this Part of this Schedule whenever the existence of such isomers is possible within the specific chemical designation.

3. The esters and ethers of the substances mentioned in this Part of this Schedule and the esters and ethers of the isomers mentioned in clause 2 of this Part of this Schedule whenever the existence of such esters or ethers is possible.

4. The salts of the substances mentioned in this Part of this Schedule and the salts of the isomers, esters, and ethers mentioned in clause 2 or clause 3 of this Part of this Schedule.

5. Substances containing any proportion of a substance mentioned in clause 1, clause 2, clause 3, or clause 4 of this Part of this Schedule.

The item relating to "cannabis" was substituted for the original item by s. 7 of the Misuse of Drugs Amendment Act 1982.

In clause 1, an item relating to "Cocaine" was omitted by s. 9 (1) of the Misuse of Drugs Amendment Act (No. 2) 1987.

See S.R. 1977/37/7 (2).

SECOND SCHEDULE—*continued*CLASS B CONTROLLED DRUGS—*continued**Part II*

[1. The following substances, namely:

AMPHETAMINE (2-amino-1-phenylpropane).
 BENZPHETAMINE (2-benzylmethylamino-1-phenylpropane).
 CATHINONE (2-amino-1-phenylpropan-1-one).
 DOET (2-amino-1-(2,5-dimethoxy-4-ethylphenyl) propane).
 N-ETHYLAMPHETAMINE (2-ethylamino-1-phenylpropane).
 FENCAMFAMINE (N-ethyl-3-phenylbicyclo[2.2.1]heptan-2-amine).
 FENETHYLLINE (3,7-dihydro-1,3-dimethyl-7-[2-[(1-methyl-2-phenylethyl)-amino]ethyl]-1H-purine-2,6-dione).
 FENPROPorex (2-(2-cyanoethylamino)-1-phenylpropane).
 MDMA (2-methylamino-1-(3,4-methylenedioxyphenyl) propane).
 MEFENOREX (2-(3-chloropropylamino)-1-phenylpropane).
 METHAMPHETAMINE (2-methylamino-1-phenylpropane).
 METHAQUALONE (2-methyl-3-(2-methylphenyl)-4(3H)-quinazolinone).
 METHYLPHENIDATE (α -phenyl-2-piperidineacetic acid methyl ester).
 NORPSEUDOEPHEDRINE (*threo*-2-amino-1-hydroxy-1-phenylpropane).
 PROPYLHEXEDRINE (1-cyclohexyl-2-methylaminopropane).
 PYROVALERONE (1-(4-methylphenyl)-2-(1-pyrrolidinyl)-1-pentanone).]

2. The isomers of the substances mentioned in this Part of this Schedule whenever the existence of such isomers is possible within the specific chemical designation.

3. The esters and ethers of the substances mentioned in this Part of this Schedule and the esters and ethers of the isomers mentioned in clause 2 of this Part of this Schedule whenever the existence of such esters or ethers is possible.

4. The salts of the substances mentioned in this Part of this Schedule and the salts of the isomers, esters, and ethers mentioned in clause 2 or clause 3 of this Part of this Schedule.

5. Substances containing any proportion of a substance mentioned in clause 1, clause 2, clause 3, or clause 4 of this Part of this Schedule.

Clause 1 was substituted for the original clause 1 (as amended by clause 3 (1) of the Misuse of Drugs Order 1981 (S.R. 1981/114) by s. 9 (2) of the Misuse of Drugs Amendment Act (No. 2) 1987.

Part III

1. The following substances, namely:

ACETYLMETHADOL (3-acetoxy-6-dimethylamino-4,4-diphenylheptane).
 [ALFENTANIL (*N*-[1-[2-(4-ethyl-4,5-dihydro-5-oxo-1H-tetrazol-1-yl)ethyl]-4-(methoxymethyl)-4-piperidinyl]-*N*-phenylpropanamide).]*
 ALLYLPRODINE (3-allyl-1-methyl-4-phenyl-4-propionoxypiperidine).
 ALPHACETYLMETHADOL (α -3-acetoxy-6-dimethylamino-4,4-diphenylheptane).
 ALPHAMEPRODINE (α -3-ethyl-1-methyl-4-phenyl-4-propionoxypiperidine).
 ALPHAMETHADOL (α -6-dimethylamino-4,4-diphenyl-3-heptanol).
 ALHAPRODINE (α -1,3-dimethyl-4-phenyl-4-propionoxypiperidine).

SECOND SCHEDULE—*continued*CLASS B CONTROLLED DRUGS—*continued*

- ANILERIDINE (1-*para*-aminophenethyl-4-phenylpiperidine-4-carboxylic acid ethyl ester).
- BENZETHIDINE (1-(2-benzyloxyethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester).
- BENZYL MORPHINE (3-benzylmorphine).
- BETACETYLMETHADOL (β -3-acetoxy-6-dimethylamino-4,4-diphenyl-heptane).
- BETAMEPRODINE (β -3-ethyl-1-methyl-4-phenyl-4-propionoxypiperidine).
- BETAMETHADOL (β -6-dimethylamino-4,4-diphenyl-3-heptanol).
- BETAPRODINE (β -1,3-dimethyl-4-phenyl-4-propionoxypiperidine).
- BEZITRAMIDE (1-(3-cyano-3,3-diphenylpropyl)-4-(2-oxo-3-propionyl-1-benzimidazolyl) piperidine).
- CLONITAZENE (2-*para*-chlorbenzyl-1-diethylaminoethyl-5-nitrobenzimidazole).
- CODOXIME (dihydrocodeinone-6-carboxymethyloxime).
- CONCENTRATE OF POPPY STRAW—that is, the material arising when parts of any plant of the species *Papaver somniferum* have entered a process for the concentration of the alkaloids.
- DEXTRAMORAMIDE ((+)-4-[2-methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidinyl) butyl] morpholine).
- DIAMPROMIDE (*N*-[2-(methylphenethylamino) propyl] propionanilide).
- DIETHYLTHIAMBUTENE (3-diethylamino-1,1-di-(2'-thienyl)-1-butene).
- DIFENOXIN (1-(3-cyano-3,3-diphenylpropyl)-4-phenylisonipecotic acid).
- DIHYDROMORPHINE.
- DIMENOXADOL (2-dimethylaminoethyl 1-ethoxy-1,1-diphenylacetate).
- DIMEPHEPTANOL (6-dimethylamino-4,4-diphenyl-3-heptanol).
- DIMETHYLTHIAMBUTENE (3-dimethylamino-1,1-di-(2'-thienyl)-1-butene).
- DIOXAPHETYL BUTYRATE (ethyl 4-morpholino-2,2-diphenylbutyrate).
- DIPHENOXYLATE (1-(3-cyano-3,3-diphenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester).
- DIPIANONE (4,4-diphenyl-6-piperidine-3-heptanone).
- DROTEBANOL (3,4-dimethoxy-17-methylmorphinan-6 β ,14-diol).
- EGGONINE, its esters and derivatives which are convertible to ecgonine and cocaine, except when contained in a Class C controlled drug.
- ETHYLMETHYLTHIAMBUTENE (3-ethylmethylamino-1,1-di-(2'-thienyl)-1-butene).
- ETONITAZENE (1-diethylaminoethyl-2-*para*-ethoxybenzyl-5-nitrobenzimidazole).
- ETOXERIDINE (1-[2-(2-hydroxyethoxy)ethyl]-4-phenylpiperidine-4-carboxylic acid ethyl ester).
- FENTANYL (1-phenethyl-4-(*N*-propionylanilino)piperidine).
- FURETHIDINE (1-(2-tetrahydrofurfuryloxyethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester).
- HYDROCODONE (dihydrocodeinone).
- HYDROMORPHINOL (14-hydroxydihydromorphine).
- HYDROMORPHONE (dihydromorphinone).
- HYDROXPETHIDINE (4-*meta*-hydroxyphenyl-1-methylpiperidine-4-carboxylic acid ethyl ester).
- ISOMETHADONE (6-dimethylamino-5-methyl-4,4-diphenyl-3-hexanone).

SECOND SCHEDULE—*continued*CLASS B CONTROLLED DRUGS—*continued*

LEVOMETHORPHAN ((-)-3-methoxy-*N*-methylnorphinan) but not including dextromethorphan ((+)-3-methoxy-*N*-methylnorphinan) and dextrorphan ((+)-3-hydroxy-*N*-methylnorphinan).

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

LEVOPHENACYLMORPHAN ((-)-3-hydroxy-*N*-phenacylmorphinan).

LEVORPHANOL ((-)-3-hydroxy-*N*-methylnorphinan).

[MECLOQUALONE (3-(2-chlorophenyl)-2-methyl-4-(3H)-quinazolinone).]†

METAZOCINE (2'-hydroxy-2,5,9-trimethyl-6,7-benzomorphinan).

METHADONE (6-dimethylamino-4,4-diphenyl-3-heptanone).

METHADONE-INTERMEDIATE (4-cyano-2-dimethylamino-4,4-diphenylbutane).

METHYLDÉSOPHINE (6-methyl-Δ⁶-deoxymorphine).

METHYLDIHYDROMORPHINE (6-methyldihydromorphine).

METOPON (5-methyldihydromorphinone).

MORAMIDE-INTERMEDIATE (2-methyl-3-morpholino-1,1-diphenylpropanecarboxylic acid).

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

MORPHINE METHOBROMIDE and other pentavalent nitrogen morphine derivatives.

MORPHINE-N-OXIDE.

MYROPHINE (myristylbenzylmorphine).

[NABILONE (*trans*-3-(1-1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo[b,d] pyran-9-one).]‡

NICOMORPHINE (3,6-dinicotinylmorphine).

NORACYMETHADOL (α-3-acetoxy-6-methylamino-4,4-diphenyl-heptane).

NORLEVORPHANOL ((-)-3-hydroxymorphinan).

NORMETHADONE (6-dimethylamino-4,4-diphenyl-3-hexanone).

NORMORPHINE (demethylmorphine).

NORPIANONE (4,4-diphenyl-6-piperidino-3-hexanone).

OXYCODONE (14-hydroxydihydrocodeinone).

OXYMORPHINE (14-hydroxydihydromorphinone).

PETHIDINE (1-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester.)

PETHIDINE-INTERMEDIATE-A (4-cyano-1-methyl-4-phenylpiperidine).

PETHIDINE-INTERMEDIATE-B (4-phenylpiperidine-4-carboxylic acid ethyl ester).

PETHIDINE-INTERMEDIATE-C (1-methyl-4-phenylpiperidine-4-carboxylic acid).

PHENADOXONE (6-morpholino-4,4-diphenyl-3-heptanone).

PHENAMPROMIDE (*N*-(1-methyl-2-piperidinoethyl) propionanilide).

PHENAZOCINE (2'-hydroxy-5,9-dimethyl-2-phenethyl-6,7-benzomorphinan).

PHENDIMETRAZINE (3,4-dimethyl-2-phenylmorpholine).

PHENMETRAZINE (3-methyl-2-phenylmorpholine).

PHENOMORPHAN (3-hydroxy-*N*-phenethylmorphinan).

PHENOPERIDINE (1-(3-hydroxy-3-phenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester).

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

PIRITRAMIDE (1-(3-cyano-3,3-diphenylpropyl)-4-(1-piperidino)piperidine-4-carboxylic acid amide).

SECOND SCHEDULE—*continued*CLASS B CONTROLLED DRUGS—*continued*

PROHEPTAZINE (1,3-dimethyl-4-phenyl-4-propionoxyazacycloheptane).
 PROPERIDINE (1-methyl-4-phenylpiperidine-4-carboxylic acid isopropyl ester).
 RACEMETHORPHAN ((±)-3-methoxy-*N*-methylmorphinan).
 RACEMORAMIDE ((±)-4-[2-methyl-4-oxo-3, 3-diphenyl-4- (1-pyrrolidiny) butyl] morpholine).
 RACEMORPHAN ((±)-3-hydroxy-*N*-methylmorphinan).
 [SUFENTANIL (N-[4-(methoxymethyl)-1-[2-(2-thienyl)ethyl]-4-piperidyl] propionanilide).]†
 THEBACON (acetyldihydrocodeinone).
 THEBAINE.
 [TILIDINE ((±)-ethyl *trans*-2-(dimethylamino)-1-phenyl-3-cyclo-hexene-1-carboxylate).]†

TRIMEPERIDINE (1,2,5-trimethyl-4-phenyl-4-propionoxypiperidine).

*This item was inserted by s. 4 of the Misuse of Drugs Amendment Act 1986.

†These items were inserted by clause 3 (2) of the Misuse of Drugs Order 1981 (S.R. 1981/114).

‡This item was inserted by s. 9 (3) of the Misuse of Drugs Amendment Act (No. 2) 1987.

2. The isomers of the substances mentioned in this Part of this Schedule whenever the existence of such isomers is possible within the specific chemical designation.

3. The esters and ethers of the substances mentioned in this Part of this Schedule and the esters and ethers of the isomers mentioned in clause 2 of this Part of this Schedule whenever the existence of such esters or ethers is possible.

4. The salts of the substances mentioned in this Part of this Schedule and the salts of the isomers, esters, and ethers mentioned in clause 2 or clause 3 of this Part of this Schedule.

5. Substances containing any proportion of a substance mentioned in clause 1, clause 2, clause 3, or clause 4 of this Part of this Schedule.

Section 2 (1)

THIRD SCHEDULE

CLASS C CONTROLLED DRUGS

Part I

CANNABIS FRUIT.

CANNABIS PLANT [(whether fresh, dried, or otherwise)]—That is, any part of any plant of the genus *Cannabis* except a part from which all the resin has been extracted.

CANNABIS SEED.

[CATHA EDULIS PLANT.]

COCA LEAF—That is, the leaf of any plant of any species of the genus *Erythroxylon*, except a leaf from which all ecgonine, cocaine, and any other ecgonine alkaloids have been removed.

The words in the first set of square brackets were substituted for the words“(fresh and dried)” by s. 8 of the Misuse of Drugs Amendment Act 1982.

The item in the second set of square brackets was inserted by clause 4 of the Misuse of Drugs Order 1981 (S.R. 1981/114).

See S.R. 1977/37/7 (2).

THIRD SCHEDULE—*continued*
CLASS C CONTROLLED DRUGS—*continued*

Part II

CODEINE (3-methylmorphine); its isomers, esters, and ethers, if any; its salts, and the salts of its isomers, esters, or ethers, if any; and any substance, preparation or mixture containing any proportion of the said substance or of any such isomer, ester, ether, or salt, other than a preparation or mixture named or described in Part VI of this Schedule.
[PROPOXYPHENE (α -4 (N, N-dimethylamino)-1, 2-diphenyl-3-methyl-2-propionyxybutane); its isomers, esters, and ethers, if any; its salts and the salts of its isomers, esters, or ethers, if any; except in preparations of propoxyphene described in clause 5A of Part V of this Schedule.]

The words in square brackets were substituted for the former words (as added by clause 2 (1) of the Misuse of Drugs Order 1982 (S.R. 1982/259) by clause 2 (1) of the Misuse of Drugs Order (No. 2) 1984 (S.R. 1984/315).

PART III

1. The following substances, namely:

ACETYLDIHYDROCODEINE.

DIHYDROCODEINE.

ETHYLMORPHINE (3-ethylmorphine).

NICOCODINE (6-nicotinylcodeine).

NICODICODINE (6-nicotinyldihydrocodeine or nicotinic acid ester of dihydrocodeine).

NORCODEINE (*N*-demethylcodeine).

PHOLCODINE (morpholinylethylmorphine).

PROPIRAM (*N*-(1-methyl-2-piperidinoethyl)-*N*-2-pyridylpropionamide).

2. The isomers of the substances mentioned in this Part of this Schedule whenever the existence of such isomers is possible within the specific chemical designation.

3. The esters and ethers of the substances mentioned in this Part of this Schedule and the esters and the ethers of the isomers mentioned in clause 2 of this Part of this Schedule whenever the existence of such esters or ethers is possible.

4. The salts of the substances mentioned in this Part of this Schedule and the salts of the isomers, esters, and ethers mentioned in clause 2 or clause 3 of this Part of this Schedule.

5. Substances containing any proportion of a substance mentioned in clause 1, clause 2, clause 3, or clause 4 of this Part of this Schedule, other than a preparation or mixture named or described in Part VI of this Schedule.

Part IV

1. The following substances, namely:

AMOBARBITAL (5-ethyl-5-(3-methylbutyl) barbituric acid).

[BUPRENORPHINE (17-cyclopropylmethyl-7,8-dihydro-7-(1-hydroxy-1,2, 2-trimethylpropyl) -6-0-methyl-6, 14-ethano-17-normorphine).]

BUTOBARBITONE (5-butyl-5-ethylbarbituric acid).

CYCLOBARBITAL (5-(1-cyclohexen-1-yl)-5-ethylbarbituric acid).

THIRD SCHEDULE—*continued*

CLASS C CONTROLLED DRUGS—*continued*

GLUTETHIMIDE (2-ethyl-2-phenylglutarimide).
NEALBARBITONE (5-allyl-5-neopentylbarbituric acid).
PENTOBARBITAL (5-ethyl-5-(1-methylbutyl) barbituric acid).
SECOBARBITAL (5-allyl-5-(1-methylbutyl) barbituric acid).

2. The isomers of the substances mentioned in this Part of this Schedule whenever the existence of such isomers is possible within the specific chemical designation.

3. The esters and ethers of the substances mentioned in this Part of this Schedule and the esters and the ethers of the isomers mentioned in clause 2 of this Part of this Schedule whenever the existence of such esters or ethers is possible.

4. The salts of the substances mentioned in this Part of this Schedule and the salts of the isomers, esters, and ethers mentioned in clause 2 or clause 3 of this Part of this Schedule.

5. Substances containing any proportion of a substance mentioned in clause 1, clause 2, clause 3, or clause 4 of this Part of this Schedule [, except a mixture of a derivative of barbituric acid named or described in clause 1 of this Part of this Schedule compounded with one or more other pharmacologically active ingredients not named or described in clause 1 of this Part of this Schedule].

In clause 1 the words in square brackets were substituted for the former words (as inserted by clause 2 of the Misuse of Drugs Order 1983 (S.R. 1983/173) by clause 2 of the Misuse of Drugs Order 1984 (S.R. 1984/101).

In clause 5 the words in the square brackets were added by clause 2 (1) of the Misuse of Drugs Order 1978 (S.R. 1978/143).

Part V

1. The following substances, namely:

AMFEPRAMONE (2-(diethylamino) propiophenone).
BARBITAL (5,5-diethylbarbituric acid).
ETHCHLORVYNOL (ethyl-2-chlorovinylethynyl-carbinol).
ETHINAMATE (1-ethynylcyclohexanol carbamate).
[MAZINDOL (5-(4-chlorophenyl)-2, 5-dihydro-3H-imidazo [2, 1-a]-isoindol-5-ol).]
MEPROBAMATE (2-methyl-2-propyl-1,3-propanediol dicarbamate).
METHYLPHENOBARBITAL (5-ethyl-1-methyl-5-phenylbarbituric acid).
METHYLPRYLON (3,3-diethyl-5-methylpiperidine-2,4-dione).
PHENOBARBITAL (5-ethyl-5-phenylbarbituric acid).
[PHENTERMINE (2-amino-2-methyl-1-phenylpropane).]
PIPRADROL (1,1-diphenyl-1-(2-piperidyl)methanol).
SPA ((-)-1-dimethylamino-1,2-diphenylethane).

2. The isomers of the substances mentioned in this Part of this Schedule whenever the existence of such isomers is possible within the specific chemical designation.

3. The esters and ethers of the substances mentioned in this Part of this Schedule and the esters and ethers of the isomers mentioned in clause 2 of

THIRD SCHEDULE—*continued*

CLASS C CONTROLLED DRUGS—*continued*

this Part of this Schedule whenever the existence of such esters or ethers is possible.

4. The salts of the substances mentioned in this Part of this Schedule and the salts of the isomers, esters, and ethers mentioned in clause 2 or clause 3 of this Part of this Schedule.

[5. Mixtures of a derivative of barbituric acid named or described in Part IV of this Schedule compounded with one or more other pharmacologically active ingredients not named or described in Part IV of this Schedule.

[[5A. Preparations of propoxyphene, its isomers, esters, and ethers, if any, its salts, and the salts of its isomers, esters, or ethers, if any, for oral use containing not more than the equivalent of 135 milligrams of propoxyphene base per dosage unit or with a concentration of not more than 2.5 percent in undivided preparations, being preparations whereof none of the other ingredients is a substance named or described in the First or Second Schedules to this Act or in Parts I to V of this Schedule.]]

6. Substances containing any proportion of a substance mentioned in clause 1, clause 2, clause 3, clause 4, [[clause 5 or clause 5A]] of this Part of this Schedule, other than a preparation or mixture named or described in Part VI of this Schedule.]

In clause 1 the reference to the item "mazindol" was substituted for the former item (as inserted by clause 2 (2) of the Misuse of Drugs Order 1982 (S.R. 1982/259)) by clause 2 (2) of the Misuse of Drugs Order (No. 2) 1984 (S.R. 1984/315), and the reference to the item "phentermine" was inserted by clause 2 (2) of the Misuse of Drugs Order 1982 (S.R. 1982/259).

Clauses 5 and 6 were substituted for the original clause 5 by clause 2 (2) of the Misuse of Drugs Order 1978 (S.R. 1978/143).

Clause 5A was substituted for the former clause 5A (as inserted by clause 2 (3) of the Misuse of Drugs Order 1982 (S.R. 1982/259)) by clause 2 (3) of the Misuse of Drugs Order (No. 2) 1984 (S.R. 1984/315).

In clause 6 the words in double square brackets were substituted for the words "or clause 5" by clause 2 (4) of the Misuse of Drugs Order 1982 (S.R. 1982/259).

Part VI

The following preparations and mixtures, namely:

(a) Preparations containing any proportion of the following substances or of any salt of any such substance, namely, acetyldihydrocodeine, codeine, dihydrocodeine, ethylmorphine, and pholcodine when:

(i) Compounded with one or more other pharmacologically active ingredients in such a way that the substance cannot be recovered by readily applicable means or in a yield which would constitute a risk to health; and

(ii) Containing not more than 100 milligrams of the substance in each dosage unit and with a concentration of not more than 2.5 percent in undivided preparations:

[(aa) Preparations containing a derivative of barbituric acid named or described in Part IV or Part V of this Schedule, in solutions

THIRD SCHEDULE—*continued*

CLASS C CONTROLLED DRUGS—*continued*

containing not more than 0.5 percent of that derivative of barbituric acid:]

- (b) Preparations of cocaine containing not more than 0.1 percent of cocaine base, being preparations compounded with one or more other pharmacologically active ingredients (none of which are substances named or described in the First or Second Schedules to this Act or in Parts I to V of this Schedule) in such a way that the preparation has no, or a negligible, risk of abuse, and in such a way that the cocaine cannot be recovered by readily applicable means or in a yield which would constitute a risk to health:
- (c) Preparations of difenoxin containing, per dosage unit, not more than 0.5 mg of difenoxin and a quantity of atropine sulphate equivalent to at least 5 percent of the dose of difenoxin:
- (d) Preparations of opium or morphine containing not more than 0.2 percent of morphine, being preparations compounded with one or more other pharmacologically active ingredients (none of which are substances named or described in the First or Second Schedules to this Act or in Parts I to V of this Schedule) in such a way that the opium or the morphine, as the case may be, cannot be recovered by readily applicable means or in a yield which would constitute a risk to health:
- (e) Single dosage units of diphenoxylate containing in each unit not more than 2.5 milligrams of diphenoxylate calculated as base and not less than 25 micrograms of atropine sulphate:
- (f) Liquid preparations of diphenoxylate containing, in each millilitre, not more than 0.5 milligrams of diphenoxylate calculated as base and not less than 5 micrograms of atropine sulphate:
- [(ff) Preparations of propiram containing not more than 100 mg of propiram per dosage unit and compounded with at least the same amount of methylcellulose:]
- (g) Ipecacuanha and opium powder containing 10 percent of opium in powder and 10 percent of ipecacuanha root in powder intimately mixed with finely powdered lactose:
- (h) Mixtures containing not more than one of the preparations specified in paragraphs (a) to (g) of this Part of this Schedule, being mixtures whereof none of the other ingredients is a substance named or described in the First or Second Schedules to this Act or in Parts I to V of this Schedule.

Para. (aa) was inserted by clause 2(3) of the Misuse of Drugs Order 1978 (S.R. 1978/143), and para. (ff) was inserted by clause 2(4) of that Order.

[PART VII

AMPHETAMINE ANALOGUES, in which the 1-amino-2-phenylethane nucleus carries any of the following radicals, either alone or in combination:

- (a) 1 or 2 alkyl radicals, each with up to 6 carbon atoms, attached to the nitrogen atom:
- (b) 1 or 2 methyl radicals, or an ethyl radical, attached to the carbon atom adjacent to the nitrogen atom:

THIRD SCHEDULE—*continued*

CLASS C CONTROLLED DRUGS—*continued*

- (c) A hydroxy radical, attached to the carbon atom adjacent to the benzene ring:
 - (d) Any combination of up to 5 alkyl radicals and/or alkoxy radicals and/or alkylamino radicals (each with up to 6 carbon atoms, including cyclic radicals) and/or halogen radicals and/or nitro radicals and/or amino radicals, attached to the benzene ring.
- PETHIDINE ANALOGUES, in which a 4-phenylpiperidine nucleus carries any of the following radicals, either alone or in combination:
- (a) An alkyl radical, with up to 6 carbon atoms, attached to the nitrogen atom:
 - (b) A phenalkyl radical, with up to 12 carbon atoms, attached to the nitrogen atom:
 - (c) A phenalkyl radical, as in paragraph (b), with 1 or more alkyl radicals, each with up to 6 carbon atoms, attached to the benzene ring in the phenalkyl radical:
 - (d) An alkylcarbonyloxy or alkoxycarbonyl or hydroxy radical, with up to 6 carbon atoms, attached to the 4 position in the piperidine ring:
 - (e) Any combination of up to 5 alkyl radicals and/or alkoxy radicals (each with up to 6 carbon atoms, including cyclic radicals) and/or halogen radicals, attached to the benzene ring.
- PHENCYCLIDINE ANALOGUES, being chemical compounds with the 1-alkylamino-1-arylcylohexane structure, with any combination of the following alkylamino and aryl radicals:
- (a) The alkylamino radical is 1-piperidinyl, 1-pyrrolidinyl, 4-morpholinyl, or any other radical with up to 6 carbon atoms in the alkyl portion:
 - (b) The aryl radical is phenyl, thienyl, pyridinyl, or pyrrolidinyl:
 - (c) The aryl radical, as described in paragraph (b), carries any combination of up to 5 alkyl radicals and/or alkoxy radicals (each with up to 6 carbon atoms, including cyclic radicals) and/or halogen radicals.
- FENTANYL ANALOGUES, in which the N-[1-(2-phenethyl)-4-piperidyl]aniline nucleus has additional radicals, either alone or in combination, attached as follows:
- (a) An acetyl, propionyl, butenoyl or butanoyl radical, attached to the aniline nitrogen atom:
 - (b) One or more alkyl radicals, with up to 10 carbon atoms in total, attached to the ethyl moiety:
 - (c) Any combination of up to 5 alkyl radicals and/or alkoxy radicals (each with up to 6 carbon atoms, including cyclic radicals) attached to each of the benzene rings.
- METHAQUALONE ANALOGUES, in which the 3-arylquinazolin-4-one nucleus has additional radicals, either alone or in combination, attached as follows:
- (a) An alkyl radical, with up to 6 carbon atoms, attached at the two position:
 - (b) Any combination of up to 5 alkyl radicals and/or alkoxy radicals (each with up to 6 carbon atoms, including cyclic radicals) and/or halogen radicals, attached to each of the aryl rings.

THIRD SCHEDULE—*continued*

CLASS C CONTROLLED DRUGS—*continued*

DMT (DIMETHYLTRYPTAMINE) ANALOGUES, in which the 3-(2-aminoethyl)indole nucleus has additional radicals, either alone or in combination, attached as follows:

- (a) 1 or 2 alkyl radicals, each with up to 6 carbon atoms, including cyclic radicals, attached to the amino nitrogen atom:
- (b) 1 or 2 methyl groups, or an ethyl group, attached to the carbon atom adjacent to the amino nitrogen atom:
- (c) Any combination of up to 5 alkyl radicals and/or alkoxy radicals (each with up to 6 carbon atoms, including cyclic radicals) and/or halogen radicals, attached to the benzene ring.]

Part VII was added to the Third Schedule by s. 10 of the Misuse of Drugs Amendment Act (No. 2) 1987.

THE MISUSE OF DRUGS AMENDMENT ACT 1978

Title

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THE MISUSE OF DRUGS AMENDMENT ACT 1978
1978, No. 65

An Act to facilitate the detection of certain drug dealing offences, to increase the maximum penalties that may be imposed in respect of such offences, and to amend the Misuse of Drugs Act 1975¹ [16 October 1978]

1. Short Title—This Act may be cited as the Misuse of Drugs Amendment Act 1978, and shall be read together with and deemed part of the Misuse of Drugs Act 1975 (hereinafter referred to as the principal Act).

PART I

AMENDMENTS TO PRINCIPAL ACT

2. *This section inserted s. 4A in the principal Act.*

3. (1) *This subsection substituted a new subsection for subs. (2) of s. 6 of the principal Act.*

(2) *Repealed by s. 3 (2) of the Misuse of Drugs Amendment Act 1982.*

4. (1) *This subsection inserted subs. (2A) in s. 6 of the principal Act.*

(2) *Impliedly repealed by s. 3 (1) of the Misuse of Drugs Amendment Act 1982.*

5. *Repealed by s. 150 (1) of the Criminal Justice Act 1985.*

6. *This section amended s. 12 (1) of the principal Act.*

7. *This section inserted s. 29A in the principal Act.*

¹E/NL.1998/56

8. *Repealed by s. 6 (2) (a) of the Misuse of Drugs Amendment Act (No. 2) 1987.*²

9. *This section inserted s. 34A in the principal Act.*

PART II

SPECIAL PROVISIONS RELATING TO DETECTION, ENFORCEMENT, AND SENTENCING

10. Interpretation—(1) In this Part of this Act, unless the context otherwise requires,—

“Drug dealing offence” means any offence against section 6 of the principal Act in relation to a Class A controlled drug or a Class B controlled drug:

“Emergency permit” means a permit granted under section 19 of this Act to intercept a private communication by means of a listening device:

“Intercept”, in relation to a private communication, includes hear, listen to, record, monitor, or acquire the communication:

“Interception warrant” means a warrant granted under section 15 of this Act to intercept a private communication by means of a listening device:

“Listening device” means any electronic, mechanical, or electromagnetic instrument, apparatus, equipment, or other device that is used or is capable of being used to intercept a private communication; but does not include a hearing aid or similar device used to correct subnormal hearing of the user to no better than normal hearing:

“Private communication” means any oral communication made under circumstances that may reasonably be taken to indicate that any party to the communication desires it to be confined to the parties to the communication; but does not include such a communication occurring in circumstances in which any party ought reasonably to expect that the communication may be intercepted by some other person not having the express or implied consent of any party to do so:

“Proper officer of Customs”, in relation to any power conferred by or under section 12 or section 13 or section 16 of this Act, means any officer of Customs exercising or authorised to exercise that power by the order or with the concurrence (whether precedent or

²E/NL.1988/45

subsequent) of the Minister of Customs or the Comptroller of Customs, or in pursuance of any other lawful authority:

“Tracking device” means a device capable of transmitting a signal to a receiver for the purpose of indicating the location of the device.

(2) A reference in this Part of this Act to a party to a private communication is a reference to—

- (a) Any originator of the communication and any person intended by the originator to receive it; and
- (b) A person who, with the express or implied consent of any originator of the communication or any person intended by the originator to receive it, intercepts the communication.

(3) For the purposes of sections 12 and 13 of this Act,—

“Aircraft”, “boat”, “bulk cargo container”, “goods”, “package”, “pallet”, “ship”, and “vehicle” have the same meanings as in section 2 of the Customs Act 1966:

“Postal packet” has the same meaning as in section 305 (3) of the Customs Act 1966.

11. Application of Part—This Part of this Act shall apply notwithstanding anything in the Post Office Act 1959 or the Customs Act 1966.

The Post Office Act 1959 was repealed by s. 2 (1) of the Post Office Act Repeal Act 1987.

Special Powers of Police and Customs Officers

12. Allowing delivery of unlawfully imported drugs for purpose of detection, etc.—(1) Where any proper officer of Customs acting in the course of his official duties believes on reasonable grounds that there is in or on any aircraft, boat, bulk cargo container, package, pallet, postal packet, ship, vehicle, or goods any controlled drug that has been imported into New Zealand in contravention of section 6 (1) (a) of the principal Act, he may, for the purpose of his investigation of the matter, leave or replace that drug, or any portion of it, in or on the aircraft, boat, bulk cargo container, package, pallet, postal packet, ship, vehicle, or goods and may, in the same manner as if there had been delivery from Customs control,—

- (a) Allow the aircraft, boat, ship, or vehicle to leave; or
- (b) Allow the bulk cargo container, package, pallet, or goods to be collected by or delivered to or on behalf of the consignee; or

(c) Return the postal packet to [New Zealand Post Limited] for delivery to the addressee—
(as the case may require).

(2) No proper officer of Customs who exercises any power conferred by subsection (1) of this section, and no officer or employee of [New Zealand Post Limited] who, in the course of his duties, does any thing in respect of any postal packet returned to [New Zealand Post Limited] in accordance with that subsection (whether or not he knows that the postal packet contains a controlled drug), shall be under any criminal or civil liability in respect thereof.

In subss. (1) and (2) the words in square brackets were substituted in each case for the words "the Post Office" by s. 32 (1) of the State-Owned Enterprises Act 1986.

13. Use of tracking devices by Police and Customs officers—(1) Where any member of the Police or proper officer of Customs believes on reasonable grounds that—

- (a) A drug dealing offence has been or is being or is about to be committed; and
- (b) The drug is in or on any aircraft, boat, bulk cargo container, package, pallet, ship, vehicle, or goods, or any person involved or suspected to be involved in the offence is in or on any aircraft, boat, ship, or vehicle,—

he may, for the purpose of his investigation of the matter, place a tracking device in or on that aircraft, boat, bulk cargo container, package, pallet, ship, vehicle, or goods.

(2) The power conferred by subsection (1) of this section may be exercised in respect of any postal packet that any proper officer of Customs intends to return to [New Zealand Post Limited] pursuant to section 12 (1) (c) of this Act, but shall not be exercisable in respect of any other postal packet.

(3) Within 72 hours of having placed a tracking device in or on any object pursuant to subsection (1) of this section, the member of the Police or proper officer of Customs shall lodge a written report on the exercise of the power, and the circumstances in which it came to be exercised, with the Registrar of a [District Court], who shall, as soon as reasonably practicable, bring the report to the notice of a [District Court Judge.]

(4) If the [District Court Judge] to whom the report is referred pursuant to subsection (2) of this section considers that the circumstances so warrant, he shall refer a copy of the report to the Commissioner of Police or the Comptroller of Customs, as the case may require, with such recommendations

as he thinks fit. In any such case, the [District Court Judge] may also refer a copy of his report to the Minister of Police or, as the case may require, the Minister of Customs.

(5) No report made under subsection (3) of this section shall form part of the Court records, but the Registrar shall cause every such report to be kept in safe custody for at least 6 years. At the expiration of that period, the Registrar may destroy the report.

In subs. (2) the words in square brackets were substituted for the words "the Post Office" by s. 32 (1) of the State-Owned Enterprises Act 1986.

Internal Concealment

[13A. Power to detain on belief of internal concealment—(1) If any member of the Police or officer of Customs has reasonable cause to believe that any person has any Class A controlled drug or Class B controlled drug secreted within that person's body for any unlawful purpose, the member of the Police or officer of Customs may cause that person to be detained under this section.

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

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

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

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

- (a) Inform the detained person of the reason for the detention, in words sufficient to give the detained person notice of the true reason for the detention; and
- (b) Hand to the detained person a Statement of Rights in the form set out in the Second Schedule to this Act; and
- (c) Arrange for the attendance of a medical practitioner (who shall be nominated or approved for the purpose by

- the Commissioner of Police or the Comptroller of Customs, either generally or in any particular case or class of case), and, in the presence of that medical practitioner, ask the detained person if he or she wishes to undergo an examination of one or more of the kinds specified in section 13c (1) of this Act; and
- (d) Apply to a District Court Judge, in accordance with section 13e of this Act, for a warrant authorising the continued detention of the detained person under section 13A of this Act.

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

- (a) A physical examination (whether or not facilitated by an instrument or device) to be conducted by a medical practitioner nominated or approved for the purpose by the Commissioner of Police or the Comptroller of Customs, either generally or in any particular case or class of case:
- (b) An X-ray examination with or without a contrast agent:
- (c) An ultrasound scan.
- (2) Except in a case where the detained person immediately makes it clear that he or she does not wish to undergo any examination, the medical practitioner called under section 13B (c) of this Act shall explain to the detained person what is involved in each kind of examination.
- (3) If the detained person wishes to undergo an examination of a kind described in subsection (1) of this section, the detained person shall sign a written statement to the effect that he or she consents to the examination, and the medical practitioner shall endorse on the written consent a certificate to the effect that the medical practitioner has advised the detained person of what is involved in the examination and is satisfied that the detained person, when giving consent, understood what is involved in that examination.
- (4) Notwithstanding that any such detained person states that he or she does not wish to undergo any examination of a kind described in subsection (1) of this section, the detained person may subsequently, at any time while the detention is continuing, advise any member of the Police or officer of Customs that he or she now wishes to undergo such an examination, in which case the provisions of subsections (2) and (3) of this section shall apply with any necessary modifications.

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

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

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

[13D. Certificate by person conducting examination—

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

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

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

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

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

(a) The detained person; and

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

(c) The medical practitioner appointed under that section.

[13E. Detention warrant—(1) Subject to subsection (2) of this section, every application for a warrant authorising the continued detention of any person under section 13A of this Act shall be made by a member of the Police or an officer of

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

- (a) The facts relied upon to show that there is reasonable cause to believe that the detained person has any Class A controlled drug or Class B controlled drug secreted within that person's body for any unlawful purpose:
 - (b) The time at which, the date on which, and the place at which the detention commenced under section 13A of this Act:
 - (c) The address, and a description of the nature, of the premises in which the detained person is being detained, and, if it is proposed that the detained person be moved to any other premises for the purposes of the detention, the address, and a description of the nature, of those other premises:
 - (d) The time or times at which, and the date or dates on which, the detained person was asked if he or she wished to undergo any examination of a kind described in section 13c(1) of this Act, and the detained person's response to any such question, including the reasons given by the detained person for any negative response:
 - (e) If any such examination has been conducted, the results of that examination as set out in the certificate given under section 13D(1) of this Act.
- (2) In any case where, because of the urgency of the matter or for any other sufficient cause, it seems proper to do so, a District Court Judge may permit an application under this section to be made on oath orally, but in that event the Judge shall make a note in writing of the particulars referred to in paragraphs (a) to (e) of subsection (1) of this section.
- (3) In considering an application made under this section, the Judge may take into account any oral or documentary material that the Judge considers relevant, whether or not it would be admissible in a court of law.
- (4) If, on an application made under this section, a Judge is satisfied—
- (a) That there has been reasonable compliance with the requirements of section 13B of this Act; and
 - (b) That there is reasonable cause to believe that the detained person has secreted within that person's body any Class A controlled drug or Class B controlled drug for any unlawful purpose; and

- (c) That the premises in which the detained person is being detained, or any other premises in which it is proposed to detain that person, are suitable for the purpose,—

the Judge may grant a detention warrant in the prescribed form authorising the continued detention of the person to whom it relates under section 13A of this Act.

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

- (a) The expiry of the period of 7 days commencing with the date on which the detention under section 13A of this Act commenced, or such shorter period as the Judge may specify in the warrant; or
- (b) The detention is sooner brought to an end in any of the circumstances described in section 13H of this Act.

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

- (a) Shall record in writing his or her reasons for granting the warrant; and
- (b) May impose all such conditions relating to the circumstances and conduct of the detention as the Judge thinks fit.

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

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

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

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

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

- (a) That the detained person is being accommodated, fed, and generally cared for in a reasonable and proper manner; and
 - (b) That the detained person is being offered all such medical care (if any) as may seem to the medical practitioner to be necessary or desirable in the interests of that person,—
- and to report to the Judge if the medical practitioner is not so satisfied in any particular respect.
- (4) Notwithstanding anything in subsection (2) or subsection (3) of this section, where—
- (a) The detained person consults a barrister or solicitor of that person's choosing and that barrister or solicitor agrees to act for that person, the barrister or solicitor appointed under subsection (1) of this section shall not be responsible for any matter falling within the normal responsibilities of a barrister or solicitor acting for a client; or
 - (b) The detained person consults a medical practitioner of that person's choosing and that medical practitioner agrees to attend that person as a patient, the medical practitioner appointed under subsection (1) of this section shall not be responsible for any matter falling within the normal responsibilities of a medical practitioner attending a patient.
- (5) On appointing a barrister or solicitor or a medical practitioner under this section, or at any time thereafter while the detention continues, a District Court Judge may give to the barrister or solicitor or medical practitioner all such directions relating to the functions of the barrister or solicitor or medical practitioner as the Judge thinks fit.

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

- (a) The barrister or solicitor appointed under section 13F of this Act:
 - (b) The medical practitioner appointed under that section.
- (2) The following persons shall at all reasonable times have the right of access to any person who is being detained under section 13A of this Act:
- (a) Any barrister or solicitor who is acting for the detained person:
 - (b) Any medical practitioner who is attending the detained person as a patient:

- (c) Any other person whom the detained person reasonably wishes to see.
- (3) Nothing in subsection (2) of this section, or any other enactment or rule of law, shall entitle any person to have access to the detained person—
 - (a) In the absence of any member of the Police or officer of Customs who is for the time being guarding the detained person; or
 - (b) Otherwise than subject to such reasonable conditions as may be necessary to ensure the safety of the detained person or to avoid the frustration of the purpose of the detention.

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

- (a) Where the detained person is arrested:
- (b) Where a certificate is given under section 13D of this Act, following an examination, to the effect that, in the professional judgment of the person conducting the examination, the detained person has nothing secreted within that person's body that could be or contain a Class A controlled drug or a Class B controlled drug:
- (c) Where the member of the Police or officer of Customs who is in charge of the case forms the view that there is no longer reasonable cause to believe that the detained person has any Class A controlled drug or Class B controlled drug secreted within that person's body for any unlawful purpose:
- (d) Where an application to a District Court Judge for a detention warrant, or for the renewal of a detention warrant, in respect of the detained person is declined:
- (e) Where the warrant is cancelled on appeal under section 13L of this Act.

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

(2) Every application for renewal of a detention warrant shall be made by a member of the Police or an officer of Customs in writing and on oath, and shall set out, or be accompanied by, the following particulars:

- (a) The facts relied upon to show that there is still reasonable cause to believe that the detained person has any Class A controlled drug or Class B controlled drug secreted within that person's body for any unlawful purpose:
 - (b) The date or dates on which the detained person was asked to consent to undergo any examination of a kind described in section 13c of this Act, and the detained person's response to that request, including any reasons given by the detained person for any negative response:
 - (c) If any such examination has been conducted, the results of that examination as set out in the certificate given under section 13D (1) of this Act:
 - (d) Any matters that the barrister or solicitor appointed under section 13F of this Act wishes to draw to the attention of the Judge who is to consider the application for renewal:
 - (e) Any matters that the medical practitioner appointed under that section wishes to draw to the attention of that Judge:
 - (f) Any matters that any barrister or solicitor who is acting for the detained person, or any medical practitioner who is attending the detained person as a patient, wishes to draw to the attention of that Judge.
- (3) Every such application shall be supported by such other information as the Judge may require.
- (4) Notice of every such application shall be given to the barrister or solicitor appointed under section 13F of this Act and to any barrister or solicitor who is acting for the detained person.
- (5) Notwithstanding any of the preceding provisions of this section or any enactment or rule of law to the contrary, neither the detained person nor any person referred to in any of paragraphs (d) to (f) of subsection (2) of this section shall be entitled to see or hear any evidence that was adduced in support of the original application for the grant of the detention warrant, or any evidence adduced in support of the application for the renewal of the warrant and relating to any matter other than one to which paragraph (b) or paragraph (c) of that subsection applies; and for the purposes of this subsection, every such person shall be excluded from the hearing while any such evidence is being given.

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

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

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

(b) Hear any person referred to in any of paragraphs (d) to (f) of that subsection in respect of the application.

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

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

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

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

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

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

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

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

[13j. Powers of officers of Customs—The powers conferred by sections 13A to 13i of this Act may be exercised by any officer of Customs only in respect of offences against the principal Act involving the importation into or the exportation

from New Zealand of any Class A controlled drug or Class B controlled drug.

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

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

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

(2) Where a notice of appeal is filed in the High Court under this section, the Registrar of the Court in which the decision under appeal was made shall forward the Court file to the High Court.

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

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

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

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

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

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

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

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

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

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

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

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

(a) The number of applications for detention warrants made under section 13E of this Act by any member of the Police or (as the case may require) any officer of Customs:

(b) The number of applications for renewals of detention warrants made under section 13I of this Act by any member of the Police or (as the case may require) any officer of Customs:

(c) The number of such applications referred to in each of the preceding paragraphs of this section that were granted and the number that were refused:

(d) The average duration of the detention warrants (including renewals) granted on applications by members of the

Police or (as the case may require) officers of Customs:

- (e) The number of prosecutions that have been instituted in which has been adduced evidence obtained directly during the detention of any persons pursuant to detention warrants granted on applications by members of the Police or (as the case may require) officers of Customs, and the results of those prosecutions.]

Ss. 13A to 13M (and the heading thereto) were inserted by s. 2 of the Misuse of Drugs Amendment Act 1985.³

Listening Devices

14. Application by Police for warrant to intercept private communications—(1) An application may be made in accordance with this section to a Judge of the [High Court] for a warrant for any member of the Police to intercept a private communication by means of a listening device in any case where there are reasonable grounds for believing that—

- (a) A person has committed, or is committing, or is about to commit, a drug dealing offence; and
(b) It is unlikely that the Police investigation of the case could be brought to a successful conclusion without the grant of such a warrant.

(2) Every application under subsection (1) of this section shall be made by a commissioned officer of Police, in writing, and on oath, and shall set out the following particulars:

- (a) The facts relied upon to show that there are reasonable grounds for believing that a person has committed, or is committing, or is about to commit, a drug dealing offence; and
(b) A description of the manner in which it is proposed to intercept private communications; and
(c) The name and address, if known, of the suspect whose private communications there are reasonable grounds for believing will assist the Police investigation of the case, or, if the name and address of the suspect are not known, a general description of the premises or place in respect of which it is proposed to intercept private communications, being premises or a place believed to be used for any purpose by any person involved in the drug dealing offence; and
(d) The period for which a warrant is requested; and
(e) Whichever of the following is applicable:

³E/NL.1986/43

(i) The other investigative procedures and techniques that have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case, and the reasons why they have failed in that respect; or

(ii) The reasons why it appears that other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case, or are likely to be too dangerous to adopt in the particular case; or

(iii) The reasons why it is considered that the case is so urgent that it would be impractical to carry out the Police investigation using only investigative procedures and techniques other than the interception of private communications.

15. Matters on which Judge must be satisfied in respect of applications—On an application made to him in accordance with section 14 of this Act, the Judge may grant an interception warrant if he is satisfied that it would be in the best interests of the administration of justice to do so, and that—

(a) There are reasonable grounds for believing that a person has committed, or is committing, or is about to commit a drug dealing offence; and

(b) There are reasonable grounds for believing that evidence relevant to the investigation of the offence will be obtained through the use of a listening device to intercept private communications; and

(c) Whichever of the following is applicable:

(i) Other investigative procedures and techniques have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case; or

(ii) Other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case, or are likely to be too dangerous to adopt in the particular case; or

(iii) The case is so urgent that it would be impractical to carry out the Police investigation using only investigative procedures and techniques other than the interception of private communications; and

(d) The private communications to be intercepted are not likely to be privileged in proceedings in a Court of law by virtue of section 8 of the Evidence Act 1908 or of

any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and his client.

16. Contents and term of warrant—(1) Every interception warrant shall be issued in the form set out in the Schedule to this Act, and shall—

- (a) State the offence in respect of which the warrant is granted; and
- (b) State the name and address of the suspect, if known, whose private communications may be intercepted, or, where his name and address are not known, the premises or place in respect of which private communications may be intercepted, being premises or a place believed to be used for any purpose by any person involved in the drug dealing offence; and
- (c) Specify the commissioned officer of Police who (with any other member of the Police or proper officer of Customs for the time being assisting him) may intercept the private communications; and
- (d) Where the Judge considers it necessary, contain express authority to enter (with force, where necessary) any aircraft, ship, hovercraft, carriage, vehicle, or premises, for the purpose of placing, servicing, or retrieving a listening device; and
- (e) Contain such additional terms and conditions as the Judge considers advisable in the public interest.

(2) Without limiting subsection (1) of this section, where it is proposed to place a listening device in the residential or business premises of a person who is a barrister or solicitor, or a clergyman, or a registered medical practitioner, the Judge shall prescribe such conditions (if any) as he considers desirable to avoid so far as practicable the interception of communications of a professional character to which the barrister or solicitor or clergyman or registered medical practitioner is a party.

(3) Every interception warrant shall be valid for such period, not exceeding 30 days, as the Judge shall specify in the warrant.

17. Effect of warrant—Every interception warrant shall have effect, according to its terms, to authorise the interception of private communications by means of a listening device.

18. Renewal of warrants—(1) Any Judge of the [High Court] may from time to time grant a renewal of an

interception warrant upon application made to him at any time before the warrant (or any current renewal thereof) has expired.

(2) Every application for the renewal of an interception warrant shall be made in the manner provided by section 14 of this Act, and shall give—

(a) The reason and period for which the renewal is required; and

(b) Full particulars, together with times and dates, of any interceptions made or attempted under the warrant, and an indication of the nature of the information that has been obtained by every such interception.

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

(4) A renewal of an interception warrant may be granted under this section if the Judge is satisfied that the circumstances described in section 15 of this Act still obtain.

(5) Every renewal of an interception warrant shall be valid for such period, not exceeding 30 days, as the Judge shall specify in the renewal.

(6) A renewal of an interception warrant may be granted upon an application made within the time prescribed by subsection (1) of this section notwithstanding that the warrant (or any renewal thereof) has expired before the application is determined.

(7) Nothing in this section shall prevent a Judge from granting a second or subsequent renewal of an interception warrant upon an application duly made to him.

19. Emergency permits—(1) In any case where a Judge is satisfied that circumstances exist that would justify the grant of an interception warrant under section 15 of this Act, but the urgency of the situation requires that the interception should begin before a warrant could with all practicable diligence be obtained, the Judge may, orally or in writing, grant an emergency permit for the interception of private communications in respect of particular premises or a particular place and in a particular manner.

(2) No emergency permit shall authorise the interception of telephonic communications.

(3) Any application for an emergency permit may be made orally, but otherwise every such application shall comply with the requirements of section 14 of this Act.

(4) Where the Judge grants the application for an emergency permit, he shall forthwith make a note in writing of the particulars of the application. The note shall be filed in the [High Court] Registry nearest to where the application is made, and shall, for the purposes of section 20 (1) of this Act, be deemed to be a document relating to the application for the permit. The Judge shall also make a note of the terms of the permit.

(5) The provisions of section 16 of this Act, so far as they are applicable and with the necessary modifications, shall apply to emergency permits in the same manner as they apply to interception warrants.

(6) Every emergency permit shall remain valid for 48 hours from the time when it is given, and shall then expire.

(7) On filing the report required by section 28 of this Act, the member of the Police who applied for the emergency permit (or, if he is not the member filing the report, then that member) may apply to the Judge who granted the permit (or, if he is not the Judge receiving the report, then that Judge) for a certificate confirming the permit pursuant to subsection (9) of this section.

(8) Where the Police, within the period of 48 hours during which the emergency permit is valid, apply for an interception warrant in place of the permit, the member of the Police applying for the warrant may also apply for a certificate confirming the permit pursuant to subsection (9) of this section.

(9) The Judge to whom an application is made pursuant to subsection (7) or subsection (8) of this section shall issue a certificate confirming the permit if he is satisfied, having regard to the requirements of section 15 of this Act, that if the original application for the emergency permit had been an application for an interception warrant, he would have granted a warrant.

(10) For the purposes of section 25 of this Act, an interception of a private communication pursuant to an emergency permit shall be deemed to have been made unlawfully unless the Judge to whom an application is made in accordance with subsection (7) or subsection (8) of this section issues a certificate confirming the permit pursuant to subsection (9) of this section.

20. Security of applications—(1) As soon as an application for an interception warrant or for a renewal of an interception warrant or for an emergency permit or for a certificate confirming an emergency permit has been determined by the Judge, the Registrar shall place all documents relating to the

application (except the warrant or renewal or permit or certificate itself) in a packet, seal the packet, and thereafter keep it in safe custody, subject to the succeeding provisions of this section.

(2) Notwithstanding any enactment or rule of law or rules of Court entitling any party to any proceedings to demand the production of any documents, no such party shall be entitled to demand the production of any documents held in safe custody pursuant to subsection (1) of this section, except in accordance with the succeeding provisions of this section.

(3) Every such party who requires the production of any document held in safe custody pursuant to subsection (1) of this section shall, except in a case to which subsection (9) or subsection (10) of this section applies, applying in writing to the Registrar, who shall forthwith notify the senior Police officer in the district.

(4) If, within 3 days after notice is given to the senior Police officer in the district under subsection (3) of this section, that officer gives written notice to the Registrar that he intends to oppose the production of the documents, the Registrar shall refer the matter to a Judge.

(5) Where the senior Police officer in the district does not give written notice to the Registrar as aforesaid, the Registrar shall produce the documents to the party applying for production.

(6) Where a matter is referred to a Judge pursuant to subsection (4) of this section, both the person requesting production of the documents and the member of the Police opposing production shall be given an opportunity to be heard.

(7) If the Judge is satisfied that information in any document the production of which is in dispute identifies or is likely to lead to the identification of a person who gave information to the Police, or of any member of the Police whose identity was concealed for the purpose of any relevant investigation and has not been subsequently revealed, he may, if he believes it in the public interest to do so, order that the whole or any specified part of the document be not produced.

(8) Subject to the provisions of subsection (7) of this section, the Judge shall order the production of the documents to the party requesting it.

(9) Where a request for the production of any document kept in safe custody pursuant to subsection (1) of this section is made in the course of any proceedings presided over by a Judge and the request is opposed, the Judge shall adjudicate upon the

matter as if it had been referred to him pursuant to subsection (4) of this section.

(10) Where such a request is made in the course of any other proceedings, the presiding judicial officer shall forthwith refer the matter to a Judge for adjudication as aforesaid.

(11) Notwithstanding anything in this section, every Judge or [District Court Judge] who is presiding over any proceedings in which the issue of an interception warrant or emergency permit is in issue shall be entitled to inspect any relevant document held under subsection (1) of this section.

21. Destruction of irrelevant records made by use of listening device—(1) Every person who intercepts a private communication in pursuance of an interception warrant or any emergency permit shall, as soon as practicable after it has been made, destroy any record, whether written or otherwise, of the information obtained by that interception if none of the information directly or indirectly relates to the commission of a drug dealing offence.

(2) Every person who fails to comply with subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$500.

22. Destruction of relevant records made by use of listening device—(1) The Commissioner of Police shall ensure that every record, whether written or otherwise, of the information obtained by the Police from the interception of a private communication in pursuance of an interception warrant or an emergency permit, being information that relates wholly or partly and directly or indirectly to the commission of a drug dealing offence, is destroyed as soon as it appears that no proceedings, or no further proceedings, will be taken in which the information would be likely to be required to be produced in evidence.

(2) Nothing in subsection (1) of this section shall apply to—

(a) Any record of any information adduced in proceedings in any Court, or (in any case where the defendant pleads guilty) of any record of any information that, in the opinion of the Judge to whom the report referred to in subsection (3) of this section is made, would have been adduced had the matter come to trial:

(b) Any record of any information contained in any transcript or written statement given to any person in accordance with section 24 (a) of this Act.

(3) Every report made to a Judge in accordance with section 28 of this Act shall state whether or not subsection (1) of this section has yet been complied with, and, if it has not, the Judge shall give such directions relating to the eventual destruction of the record as he thinks necessary to ensure compliance with that subsection, including a requirement that he be advised when the record has been destroyed.

23. Prohibition on disclosure of private communications lawfully intercepted—(1) No person who—

- (a) Intercepts or assists in the interception of a private communication in pursuance of an interception warrant or emergency permit; or
 - (b) Acquires knowledge of a private communication as a direct or indirect result of that interception—
- shall knowingly disclose the substance, meaning, or purport of that communication, or any part of that communication, otherwise than in the performance of his duty.

(2) Every person who acts in contravention of subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$500.

24. Notice to be given of intention to produce evidence of private communication—Particulars of a private communication intercepted pursuant to an interception warrant or an emergency permit shall not be received in evidence by any Court against any person unless the party intending to adduce it has given to that person reasonable notice of his intention to do so, together with—

- (a) A transcript of the private communication where he intends to adduce it in the form of a recording, or a written statement setting forth the full particulars of the private communication where he intends to adduce oral evidence of it; and
- (b) A statement of the time, place, and date of the private communication, and of the names and addresses of the parties to the communication, if they are known.

25. Inadmissibility of evidence of private communications unlawfully intercepted—(1) Subject to subsections (2) [to (4)] of this section, where a private communication intercepted by means of a listening device otherwise than in pursuance of an interception warrant or

emergency permit issued under this Act or of any authority conferred by or under any other enactment has come to the knowledge of a person as a direct or indirect result of that interception or its disclosure, no evidence [so acquired] of that communication, or of its substance, meaning, or purport, and no [other] evidence obtained as a direct or indirect result of the interception or disclosure of that communication, shall be given against any person, except in proceedings relating to the unlawful interception of a private communication by means of a listening device or the unlawful disclosure of a private communication unlawfully intercepted in that manner.

(2) Where in any criminal proceedings for a drug dealing offence, the Court is of the opinion that any evidence that is inadmissible by virtue of subsection (1) of this section—

(a) Is relevant; and

(b) Is inadmissible by virtue of that subsection merely because of a defect of form or an irregularity in procedure, not being a substantive defect or irregularity, in the application for or the granting of the interception warrant or emergency permit, or in the manner in which the evidence was obtained,—

and that the defect in form or irregularity in procedure was not the result of bad faith, the Court may admit that evidence.

(3) Subsection (1) of this section shall not render inadmissible against any party to a private communication evidence of that communication that has, in the manner referred to in that subsection, come to the knowledge of the person called to give evidence, if all the parties to the communication consent to that person giving the evidence.

[(4) Subsection (1) of this section shall not render inadmissible evidence of a private communication by any person who intercepted that communication by means of a listening device with the prior consent of any party to the communication.]

In subs. (1) the words in the first set of square brackets were substituted for the words "and (3)" by s. 2 (1) of the Misuse of Drugs Amendment Act 1987,⁴ and the words in the second and third sets of square brackets were inserted respectively by s. 2 (a) and (b) of the Misuse of Drugs Amendment Act 1979.⁵

Subs. (4) was added by s. 2 (2) of the Misuse of Drugs Amendment Act 1987.

26. Inadmissibility of evidence of private communications lawfully intercepted—(1) Where a private communication intercepted in pursuance of an interception warrant or an emergency permit discloses evidence relating to any offence other than a drug dealing offence, no evidence of

⁴E/NL.1988/44

⁵E/NL.1988/45

that communication, or of its substance, meaning, or purport, shall be given in any Court.

[(2) If, in any proceedings for any offence described in section 312B (1) (a) of the Crimes Act 1961 or a conspiracy to commit such an offence,—

- (a) Evidence is sought to be adduced of a private communication intercepted in pursuance of an interception warrant or an emergency permit issued under this Part of this Act; and
- (b) The Judge is satisfied, on the evidence then before the Judge,—
 - (i) That a warrant or permit could have been issued under Part XIA of the Crimes Act 1961; and
 - (ii) That the evidence sought to be adduced would have been admissible if the warrant or permit had been issued under that Part of that Act,—

the evidence may be admitted notwithstanding subsection (1) of this section.]

Subs. (2) was added by s. 3 of the Misuse of Drugs Amendment Act 1987.

27. Privileged evidence—Where evidence obtained by the interception of a private communication would, but for the interception, have been privileged by virtue of—

- (a) Section 8 of the Evidence Act 1908; or
- (b) Any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and his client,—

such evidence shall remain privileged and shall not be given in any Court, except with the consent of the person entitled to waive that privilege.

28. Report to be made to Judge on use of warrant or permit—(1) As soon as practicable after an interception warrant or an emergency permit has expired, the member of the Police who applied for it, or (if he is unable to act) another commissioned officer of Police, shall make a written report to the Judge who granted the warrant or permit, or (if he is unable to act) to another Judge, on the manner in which the power conferred by the warrant or permit has been exercised and the results obtained by the exercise of that power.

(2) Notwithstanding anything in section 20 of this Act, the Judge who receives a report under subsection (1) of this section shall be entitled to inspect any relevant document held under subsection (1) of that section.

(3) Without limiting the generality of subsection (1) of this section, every report made for the purposes of that subsection shall contain the following information:

- (a) Where the listening device was placed:
 - (b) The number of interceptions made by means of the listening device:
 - (c) Whether any relevant evidence was obtained by means of the listening device:
 - (d) Whether any relevant evidence has been, or is intended to be, used in any criminal proceedings:
 - (e) Whether any records of a private communication intercepted pursuant to the warrant or permit have been destroyed in accordance with section 21 or section 22 of this Act, and, if not, why they have not been destroyed:
 - (f) Whether the listening device has been retrieved, and, if not, why it has not been retrieved.
- (4) On receiving a report under this section, the Judge may require such further information relating to the matter as he thinks fit, and (in addition to any directions he gives for the purposes of section 22 (3) of this Act) he may give such directions as he thinks desirable, whether relating to the retrieval of the listening device, or otherwise.

29. Commissioner of Police to give information to Parliament—The Commissioner of Police shall include in every annual report prepared by him for the purposes of section 65 of the Police Act 1958 the following information in respect of the period under review:

- (a) The number of applications for warrants made under section 14 of this Act; and
- (b) The number of applications for renewals of warrants made under section 18 of this Act; and
- (c) The number of applications for emergency permits made under section 19 of this Act; and
- (d) The number of such applications referred to in each of the preceding paragraphs of this subsection that were granted, and the number that were refused; and
- (e) The average duration of warrants (including renewals); and
- (f) The number of prosecutions that have been instituted in which evidence obtained directly or indirectly from an interception carried out pursuant to a warrant or

permit has been adduced, and the result of those prosecutions.

Bail

30. Bail not allowable in certain cases without order of Judge—No person who is charged with or convicted of a drug dealing offence shall be granted bail, except by order of a Judge of the [High Court].

31. Judge may impose conditions of bail—(1) Whenever a Judge grants a defendant bail under section 30 of this Act, he may impose as a condition of the defendant's release—

- (a) A condition that the defendant shall report to the Police at such time or times and at such place or places as the Judge orders:
- (b) Any other condition that appears to the Judge to be likely to result in the defendant attending personally at the time and place, or times and places, to which the hearing of the charge against the defendant or the passing of sentence on the defendant or the hearing of an appeal by or against the defendant is or may be from time to time adjourned:
- (c) Any other condition that appears to the Judge to be necessary or desirable in the interests of justice or for the prevention of crime.

(2) Where a Judge imposes any condition of bail pursuant to paragraph (b) or paragraph (c) of subsection (1) of this section, he shall not require any surety to be found in respect of that condition.

32. Arrest of defendant who has absconded or is about to abscond while on bail—(1) Notwithstanding anything in section 320 of the Crimes Act 1961, where a defendant has been released on bail pursuant to section 30 of this Act, any member of the Police may arrest that person without warrant if—

- (a) The member of the Police believes, on reasonable grounds, that the defendant has absconded or is about to abscond for the purpose of evading justice; or
- (b) The Police have been notified in writing by any surety for the defendant that the surety believes that the defendant has absconded or is about to abscond for the purpose of evading justice, and the member of

the Police is satisfied that there are reasonable grounds for that belief.

(2) Every defendant who has been arrested pursuant to subsection (1) of this section shall be brought before a Judge as soon as practicable, and in any event not later than 48 hours.

(3) Where any defendant is brought before a Judge pursuant to subsection (2) of this section, the Judge shall, on being satisfied that the defendant had absconded or was about to abscond, remand the defendant in custody.

33. Arrest of defendant who fails to comply with any conditions of bail—(1) Where a defendant has been released on bail pursuant to section 30 of this Act, and any condition was imposed by the Judge on the grant of bail pursuant to section 31 of this Act, any member of the Police may arrest that person without warrant if—

- (a) The member of the Police believes, on reasonable grounds, that the defendant has broken, is breaking, or is about to break, any such condition of bail; or
- (b) The Police have been notified in writing by any surety for the defendant that the surety believes that the defendant has broken, is breaking, or is about to break, any such condition of bail, and the member of the Police is satisfied that there are reasonable grounds for that belief.

(2) Every defendant who has been arrested pursuant to subsection (1) of this section shall be brought before a Judge as soon as practicable, and in any event not later than 48 hours.

(3) Where a defendant is brought before a Judge pursuant to subsection (2) of this section, the Judge may, subject to [section 142 of the Criminal Justice Act 1985],—

- (a) On being satisfied that the defendant has broken, was breaking, or was about to break any condition of bail, remand the defendant in custody; or
- (b) Release the defendant, in which case the defendant shall continue to be on bail and his bail bond shall continue in force in all respects as if he had not been arrested pursuant to this section.

(4) Notwithstanding anything in subsection (3)(b) of this section, in any case where the defendant was arrested pursuant to subsection (1)(b) of this section, the Judge shall release the defendant pursuant to the said subsection (3)(b) only if the surety consents in writing to the release.

(5) Where the surety does not consent in writing to the release, the Judge shall release the defendant pursuant to subsection (3) (b) of this section only on a fresh bail bond.

In subs. (3) the words in square brackets were substituted for the former words by s. 150 (1) of the Criminal Justice Act 1985.

34. Application of certain provisions of Summary Proceedings Act 1957—

[(1) Nothing in section 46 of the Summary Proceedings Act 1957 so far as it authorises a Court or Justice to allow a defendant to go at large, or in sections 49, 51 to 54, 56, 125, and 126, or in paragraphs (d), (g), and (h) of section 153, of that Act shall apply in respect of any person charged with or convicted of a drug dealing offence.]

(2) Except as provided in subsection (1) of this section, the provisions of sections 47 to 59, 125 to 128, and 153 of the Summary Proceedings Act 1957 shall apply in respect of any person charged with or convicted of a drug dealing offence as if every reference to a Court or [District Court Judge] or Justice in those provisions were a reference to a Judge of the [High Court].

Subs. (1) was substituted for the former subs. (1) (as substituted by s. 3 of the Misuse of Drugs Amendment Act 1979) by s. 11 (1) of the Misuse of Drugs Amendment Act (No. 2) 1987.

35. Appeals against decisions of Judge relating to bail—(1) Every person who applies for but is refused bail under section 30 of this Act may appeal to the Court of Appeal against that refusal.

(2) Every person who is granted bail pursuant to section 30 of this Act subject to any condition imposed under section 31 of this Act may appeal to the Court of Appeal against the imposition of that condition.

(3) Where any person is granted bail pursuant to section 30 of this Act, the Crown may appeal to the Court of Appeal against that grant, or against any failure or refusal to impose any condition that could have been imposed under section 31 of this Act.

(4) Every person wishing to appeal under this section against any decision of a Judge made pursuant to section 30 or section 31 of this Act shall file notice of his intention to appeal with the Registrar of the Court of Appeal within 10 days after the date of the decision to be appealed against.

(5) Every appeal under this section that is not heard before the date on which the decision appealed against ceases to be of

any effect shall lapse on that date, and shall be deemed to have been dismissed by the Court of Appeal for want of prosecution.

(6) No decision of a Judge appealed against under this section shall be suspended merely because that notice of appeal has been given.

36. Court of Appeal to hear and determine appeal—

(1) The Court of Appeal shall hear and determine every appeal under this section, and may confirm the decision appealed against, or, if it is satisfied that the Judge in making that decision exercised his discretion wrongly, it may reverse or modify that decision.

(2) Where, on any appeal under section 35 of this Act against a refusal to grant bail, the Court of Appeal determines that bail shall be granted, it shall have the same powers to impose any condition of bail that a Judge of the [High Court] has under section 31 of this Act.

37. Execution of decision of Court of Appeal—

(1) Where, on any appeal under section 35 of this Act against a refusal to grant bail, the Court of Appeal determines that bail shall be granted, the Judge whose decision was appealed against, or, if he is unable to act, another Judge of the [High Court], shall, on being informed of the decision of the Court of Appeal, order that the defendant be released on bail, subject to such conditions as the Court of Appeal may have specified in its decision.

(2) Where, on an appeal under section 35 of this Act against a condition of bail, the Court of Appeal cancels or amends that condition or substitutes any other condition, the Registrar of the Court whose decision was appealed against shall send written notice to the defendant and to every surety requiring them to attend at a specified time and place for the execution of a fresh bail bond containing the conditions (if any) required to give effect to the Court of Appeal's decision.

(3) If, in any case to which subsection (2) of this section applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond as aforesaid, the Registrar shall refer the matter to a Judge, who may issue a warrant for the arrest of the defendant.

(4) If, on an appeal under section 35 of this Act against a grant of bail, the Court of Appeal determines that bail shall not be granted, and the defendant is not then in custody, the Registrar of the Court whose decision was appealed against

shall issue a warrant for the arrest of the defendant, and when the defendant is brought before the Court pursuant to the warrant, he shall be remanded in custody.

(5) For the purpose of giving full effect to any decision of the Court of Appeal under section 36 of this Act, the provisions of sections 32 to 34 of this Act, so far as they are applicable and with the necessary modifications, shall apply as if the decision were made by a Judge of the [High Court] under sections 30 and 31 of this Act.

Imposition of Fines

38. Fine may reflect illicit gains—In any case where any person is convicted of a drug dealing offence and the Court by which he is convicted is satisfied on the balance of probabilities that any money or assets owned by the offender at the date of his trial has or have been acquired by him directly or indirectly from the offence, the Court may, having regard to the amount of such money or the value of such assets, impose a fine greater than it would otherwise have imposed on the offender for the offence.

39. Court may impose greater fine having regard to previous dealings—(1) In any case where any person is convicted of a drug dealing offence (in this section referred to as the primary offence) and the Court by which he is convicted is, on the application of the Crown,—

- (a) Satisfied beyond reasonable doubt that, before the commission of the primary offence, the offender had engaged in any conduct (other than conduct that constituted the primary offence) that constitutes a drug dealing offence; and
- (b) Satisfied on the balance of probabilities that any money or assets owned by the offender at the date of his trial has or have been acquired by him directly or indirectly from such conduct,—

the Court may, having regard to the amount of such money or the value of such assets, impose a fine greater than it would otherwise have imposed on the offender for the primary offence.

(2) Where the prosecutor intends to seek leave to adduce evidence of the matters referred to in subsection (1) of this section, he shall give written notice of his intention and of the particulars of the evidence to be adduced to the Court and to the defendant as soon as practicable after the conviction is

entered, and in any event not later than 5 days before the date set for sentencing.

(3) Notwithstanding anything in subsection (2) of this section, where the Court is satisfied that the information on which such an application for the exercise of the Court's powers could be based has come into the persecutor's hands too late for him to give 5 days' notice as required by that subsection, the Court may allow the prosecutor to give such shorter notice as may be necessary in the circumstances, but shall, if requested to do so by the defendant, postpone sentencing to a date not earlier than 5 days after the prosecutor gives such notice.

40. Court's power not to be exercised in certain cases—(1) The power conferred by section 39 (1) of this Act shall not be exercised by any Court—

(a) In respect of any conduct in relation to which the defendant has been charged with a drug dealing offence but acquitted of that charge:

(b) In respect of any money or assets in relation to which the power has been previously exercised by any Court.

(2) The powers conferred by sections 38 and 39 (1) of this Act shall not be exercised by any [District Court] so as to impose a fine greater than the maximum prescribed by section 6 (3) of the principal Act.

41. Inability of offender to explain source of money or assets may be evidence—(1) Where, in any case to which section 38 of this Act applies, the offender fails to explain to the Court's satisfaction the source of any money or assets owned by him, the Court may accept that as evidence that the money or assets was or were derived by the offender from the offence.

(2) Where, on any application for the exercise of the Court's power under section 39 of this Act, the Court is satisfied in accordance with subsection (1)(a) of that section that the offender has committed any previous drug dealing offence, and the offender fails to explain to the Court's satisfaction the source of any money or assets owned by him, the Court may accept that as evidence that the money or assets was or were derived by the offender from that previous drug dealing offence.

42. Court may treat alienated property as offender's—Where, in any case to which section 38 or section 39 of this Act applies, it appears to the Court that any disposition of money or assets has been made, whether for value or not, by or on

behalf of or by direction of or in the interests of the defendant to defeat the exercise of the Court's power under those sections, the Court may, on the application of the prosecutor or of its own motion, treat the money or assets as belonging to the offender for the purposes of those sections.

Enforcement of Fines

43. Enforcement of fines imposed in High Court—

Where the Court sentences an offender on conviction on indictment of a drug dealing offence to pay a fine and that fine is not paid within 14 days thereafter, or within such further time as may be allowed or fixed for the payment thereof, the following provisions shall apply:

- (a) The Registrar shall inquire into the means of the offender, and shall—
 - (i) Where the offender is detained in a penal institution, issue a warrant to produce the offender; or
 - (ii) Issue a summons in the form prescribed for the purpose of section 89(1)(a) of the Summary Proceedings Act 1957 (with any necessary modifications) requiring the offender, unless he sooner pays the amount outstanding under the conviction, to appear at the time and place appointed in the summons; or
 - (iii) If in the opinion of the Registrar a warrant is necessary to compel the attendance of the defendant, issue a warrant to arrest him and bring him before the Court—
to enable the offender to be orally examined as to his means:
- (b) For the purpose of the Registrar's inquiry into the offender's means the provisions of subsections (2) to (10) and (12) to (17) of section 89 of the Summary Proceedings Act 1957, with any necessary modifications, shall apply:
- (c) In addition to the powers conferred on the Registrar by subsection (4) of section 89 of the Summary Proceedings Act 1957, the Registrar may issue a warrant for the production of any inmate (other than the offender) of a penal institution whom he believes may be able to furnish him with any relevant information:

- (d) On completion of his inquiry, the Registrar shall make a report as to the offender's means, so far as he has been able to ascertain them, to the Judge who imposed the fine or, if that Judge is unable to act, any other Judge:
- (e) The Judge to whom a report is made under paragraph (d) of this section shall consider the report, and may make such order as he thinks fit, including an order—
 - (i) For the remission of either the whole or part of the fine; or
 - (ii) For the issue of a writ of sale; or
 - (iii) For the immediate imprisonment of the offender; or
 - (iv) Allowing time for payment or allowing payment by instalments:
- (f) For the purposes of sections 19E and 19F of the Crimes Act 1961, any order made by a Judge under paragraph (e) of this section shall be deemed to have been made under section 19D of that Act:
- (g) Any money or assets treated as the offender's pursuant to section 42 of this Act shall be deemed to be property of the offender and amenable as such to any order of the Judge under paragraph (e) of this section.

44. Enforcement of fines imposed in District Court—

Where any [District Court] sentences an offender on conviction of a drug dealing offence to pay a fine the following provisions shall apply:

- (a) For the purpose of his inquiry into the offender's means under section 89 of the Summary Proceedings Act 1957, the Registrar shall, where the offender is detained in a penal institution, issue a warrant to produce the offender to enable the offender to be orally examined as to his means:
- (b) In addition to the powers conferred on the Registrar by subsection (4) of section 89 of the Summary Proceedings Act 1957, the Registrar may issue a warrant for the production of any inmate (other than the offender) of a penal institution whom he believes may be able to furnish him with any relevant information:
- (c) Any money or assets treated as the offender's pursuant to section 42 of this Act shall be deemed to be the property of the offender and amenable as such to any order of the Court or the Registrar under any of the

provisions of Part III of the Summary Proceedings Act 1957.

45. Fine imposed in District Court may be enforced in High Court—Where any [District Court] sentences an offender on conviction of a drug dealing offence to pay a fine and the Registrar of that Court is satisfied that payment of that fine may be more effectively enforced in the [High Court], he may file a certificate to that effect under his hand in that Court, containing full particulars of the conviction and the amount of the fine, and thereafter payment of the fine shall be enforced as if the fine had been imposed in the [High Court].

46. Garnishee proceedings—(1) For the purpose of enforcing the payment of any fine imposed by any Court on conviction of an offender of a drug dealing offence, a sum that stands to the credit of the offender with any person (including a bank or savings bank) and that is on deposit with that person or is held by him in a current or other account (including a deposit account) shall be deemed to be a sum due or accruing to the Registrar enforcing the fine and shall be attachable accordingly, notwithstanding that any of the following conditions applicable to the deposit or account, that is to say—

- (a) Any condition that notice is required before any money is withdrawn:
- (b) Any condition that a demand for payment must be made:
- (c) Any condition that a personal application must be made before any money is withdrawn:
- (d) Any other condition (other than a condition that a deposit book, receipt for money deposited, or other like document must be produced before any money is withdrawn)—

has not been satisfied.

(2) In exercising his powers under section 43 of this Act or sections 19 to 19E of the Crimes Act 1961 or, as the case may require, under Part III of the Summary Proceedings Act 1957, the Registrar may require any person who has in his possession or knows the whereabouts of any deposit book, receipt for money deposited, or other like document relating to the deposit or account of the offender to deliver that book, receipt, or document to the Court or to disclose its whereabouts to the Court, as the case may require; and for that purpose the Registrar may summon any such person to appear before him at such time and place as he may specify, or issue a warrant for

the arrest of that person so that he may be brought before the Registrar.

(3) In this section the term "savings bank" includes the Post Office Savings Bank, a trustee savings bank established under the Trustee Savings Banks Act 1948, and a private savings bank established under the Private Savings Banks Act 1964.

In subs. (3), as to the Post Office Savings Bank, and a trustee savings bank, see the Post Office Bank Act 1987 and the Trustee Banks Restructuring Act 1988.

Parole

47. Parole—(1) Where any person is convicted of a drug dealing offence and is sentenced to imprisonment for a term of 10 years or more, the Judge imposing the sentence may at the same time make an order to the effect that the offender shall not have his case [for parole under Part VI of the Criminal Justice Act 1985 considered by the Parole Board] until the expiration of such period, not exceeding 7 years commencing with the date on which the order is made, as the Judge may specify in the order.

(2) Where any person is convicted of a drug dealing offence and is sentenced to imprisonment for a term of less than 10 years, the Judge imposing the sentence may at the same time make an order to the effect that the offender shall not [have his case for parole under Part VI of the Criminal Justice Act 1985 considered by the Parole Board or a District Prisons Board] until the expiration of such period, not exceeding seven-tenths of the term of the sentence commencing with the date on which the order is made, as the Judge may specify in the order.

In subss. (1) and (2) the words in square brackets were substituted in each case for the original words by s. 150 (1) of the Criminal Justice Act 1985.

Administration of Part

48. Part to be administered in Department of Justice—
This Part of this Act shall be administered in the Department of Justice.

[SCHEDULES]

Section 16 (1)

[FIRST SCHEDULE]

INTERCEPTION WARRANT

(Sections 14 to 16, Misuse of Drugs Amendment Act 1978)

1. To *[Full name of commissioned officer of Police]* and every other member of the Police or proper officer of Customs for the time being assisting you.

2. I am satisfied on an application made to me in writing and on oath that—

(a) There are reasonable grounds for believing that a person has committed, or is committing, or is about to commit a drug dealing offence; and

(b) There are reasonable grounds for believing that evidence relevant to the investigation of the offence will be obtained through the use of a listening device to intercept private communications; and

(c) *[Whichever of the following is applicable]:*

*Other investigative procedures and techniques have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case; and

or

*Other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case, or are likely to be too dangerous to adopt in the particular case; and

or

*The case is so urgent that it would be impractical to carry out the Police investigation using only investigative procedures and techniques other than the interception of private communications; and

(d) The private communications to be intercepted are not likely to be privileged in proceedings in a Court of law by virtue of section 8 of the Evidence Act 1908 or of any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and his client; and

(e) It would be in the best interests of the administration of justice to grant an interception warrant.

3. The offence in respect of which the warrant is granted is
(being an offence against section 6 of the Misuse of Drugs Act 1975 in relation to a Class A or Class B controlled drug).

4. This is to authorise you at any time or times within days from the date of this warrant—

*To use a listening device to intercept the private communications of
[Name and address of suspect];

or

*To intercept private communications at *[Premises or place, being premises or a place believed to be used for any purpose by a person involved in the drug dealing offence];*

*To enter, with force where necessary, *[State vehicle, place, or premises that may be entered]* for the purpose of placing, servicing, or retrieving the listening device:

*5. The following terms and conditions are imposed in the public interest:

INTERCEPTION WARRANT—continued

Dated at this day of 19
Judge of the [High Court].

The word "Schedules " has been inserted, and the words "First Schedule" have been substituted for the word "Schedule", to reflect the addition of a Second Schedule.

Section 13B (b)

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

MEDICAL EXAMINATIONS:

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

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

**NO SUCH EXAMINATION MAY TAKE PLACE WITHOUT YOUR
CONSENT**

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

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

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

DETENTION WARRANT:

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

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

SUPERVISING LAWYER AND DOCTOR:

If the Judge issues a detention warrant, he or she must appoint a lawyer and a doctor to see that your rights are protected and that you are properly cared for while you are being detained. These people are NOT

[SECOND SCHEDULE—*continued*

STATEMENT OF RIGHTS—*continued*

there as part of the team detaining you: they are there as agents of the Court to ensure fair play. You should consult them on any legal or medical matter that is worrying you.

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

RIGHT OF APPEAL:

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

VISITING RIGHTS:

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

END OF DETENTION:

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

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

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

COURT ACCESS:

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

FURTHER ADVICE:

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

This Schedule was added by s. 4 of the Misuse of Drugs Amendment Act 1985.
