

ILLICIT DRUGS CONTROL

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TABLE OF AMENDMENTS

The Illicit Drugs Control Act 2004 No 12 was certified and commenced on 6 September 2004 (GN 234/2004; Gaz 65/2004).

| Amending Legislation | Certified | Date of Commencement |
|--|-------------------|-----------------------------|
| Illicit Drugs Control (Amendment) Act 2008 No 14* | 26 November 2008 | 26 November 2008 |
| Interpretation (Consequential Amendments) Act 2011 No 18 | 3 November 2011 | Sch [15]: 3 November 2011 |
| Revised Written Laws Act 2021 No 7 | 1 June 2021 | 1 June 2021 |
| Illicit Drugs Control (Amendment) Act 2021 No 15 | 14 September 2021 | 14 September 2021 |

* The amendments from this instrument have been incorporated but have not been validated against the original source.

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An Act to make provision for ways and means to check and prohibit the abuse of dangerous drugs, narcotics, intoxicants and other psychotropic substances in the Republic.

Enacted by the Parliament of Nauru as follows:

[Long title am Act 18 of 2011 s 3 and Sch[15], opn 3 Nov 2011]

PART 1 — PRELIMINARY

1 Short title and commencement

This Act may be cited as *Illicit Drugs Control Act 2004* and came into effect on 6 September 2004.

2 Jurisdiction

[s 2 rep Act 14 of 2008, opn 26 Nov 2008]

3 Definitions

In this Act:

‘airport’ means the Nauru International Airport;

‘authorised officer’ means a person or class of persons appointed by the Commissioner of Police or the Chief Collector of Customs pursuant to Section 37;

[def am Act 14 of 2008, opn 26 Nov 2008]

‘cognizable offence’

[def rep Act 14 of 2008, opn 26 Nov 2008]

‘controlled chemical’ means controlled chemicals listed in Schedule 2 or any other chemical included in the schedule from time to time by regulations;

[def am Act 14 of 2008, opn 26 Nov 2008]

‘controlled equipment’ means the equipment listed in Schedule 3 or any other equipment included in the schedule from time to time by regulations;

[def insrt Act 14 of 2008, opn 26 Nov 2008]

‘controlled delivery’ means the investigative technique described in Section 17 of allowing an unlawful or suspect consignment of illicit drugs, controlled chemicals, or controlled equipment to enter, leave or transit through the Republic with the approval of a senior ranking police or customs officer with a view to gathering evidence to identify a person involved in any offence or to facilitate prosecution of that offence;

‘craft’ includes any aircraft, ship, boat, or other machine or vessel used or capable of being used for the carriage or transportation of persons or goods, or both, by air or water or over or under water;

‘cultivate’ includes planting, sowing, scattering the seed, growing, nurturing, tending or harvesting and also includes the separating of opium, coca leaves, cannabis and its extracts from the plants from which they are obtained and cultivation has a corresponding meaning;

'customs controlled area' means any area as defined in the *Customs Act 2014* and **'Customs Officer'** means an officer authorised by the Chief Collector of Customs;

'document' means:

- (a) any paper, parchment, or other material used for writing or printing, marked with matter capable of being read;
- (b) any photograph, or any photographic negative, plate, slide, film, or microfilm, or any photo static negative;
- (c) any disc, tape, wire, sound track, card, or other material or device in or on which information, sounds, or other data recorded, stored, or embodied so as to be capable, with or without the aid of some other equipment, of being reproduced, including computer printout;
- (d) any material by means of which information is supplied, whether directly or by means of any equipment, to any device used for recording or storing or processing information; or
- (e) any material derived, whether directly or by means of any equipment, from information recorded or stored or processed by any device used for recording or storing or processing information;

'evidence in relation to commission of an offence' includes any information, documents or goods that may assist with the investigation of an offence against this Act, and is not restricted to evidence that is to be produced in court;

'export' means to take, or cause to be taken, out of the Republic;

'goods' includes all kinds of movable property including animals;

'illicit drugs' mean any drugs listed in Schedule 1 or any other drug included in the schedule from time to time by regulations;

[def am Act 14 of 2008, opn 26 Nov 2008]

'import' means to bring or cause to be brought, into the Republic and is a continuing process until any item reaches the intended recipient;

'manufacture' means to carry out any process by which an illicit drug or controlled chemical is produced, and includes extracting, refining, formulating, preparing, mixing, compounding, transforming it into another drug or chemical, making an illicit drug or controlled chemical into dosage form, and packing;

'person' means any natural or legal person;

'police officer' means members of the Nauru Police Force;

'place' includes any land whether vacant, enclosed or built upon or not and any premises;

'premises' includes the whole or any part of a structure, building, craft or vehicle;

'supply' includes distribute, give, sell and offer to supply;

'utensils' includes any article associated with the manufacture or administration of an illicit or controlled chemical; and

'vehicle' means a conveyance for use on land, whether or not it is also capable of being used on or over water.

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PART 2 — OFFENCES

4 Unlawful import

(1) A person, who without authority, imports an illicit drug into the Republic is guilty of an offence.

Penalty:

- (a) imprisonment for 10 years; and
- (b) a fine not exceeding \$50,000.

[Note: Under the Interpretation Act s 62(1) where a penalty is prescribed for an offence it shall mean that the offence shall be punishable by a penalty not exceeding the penalty and under.]

(2) A person charged with an offence under subsection (1) has the burden of proof that he or she had lawful authority to do the act with which he or she is charged.

[s 4 subst Act 14 of 2008, opn 26 Nov 2008]

5 Unlawful export

(1) A person, who without lawful authority, exports an illicit drug from the Republic, is guilty of an offence.

Penalty:

- (a) imprisonment for 10 years; and
- (b) a fine not exceeding \$50,000.

[Note: Under the Interpretation Act s 62(1) where a penalty is prescribed for an offence it shall mean that the offence shall be punishable by a penalty not exceeding the penalty and under.]

(2) A person charged with an offence under subsection (1) has the burden of proof that he or she had lawful authority to do the act with which he or she is charged.

[s 5 subst Act 14 of 2008, opn 26 Nov 2008]

6 Unlawful possession, manufacture, cultivation and supply

A person who without lawful authority;

- (a) acquires, sells, supplies, possesses, produces, manufactures, cultivates, uses or administers any illicit drug; or
- (b) engages in any dealing with any other person for the transfer, transport, supply, use, manufacture, offer, sell, agree to sell, offer for sale or have possession for sale, import or export of any illicit drug,

is guilty of an offence and is liable to imprisonment for 10 years and a fine not exceeding \$50,000.

7 Controlled Chemicals and Equipment

A person, who without lawful authority imports, exports, manufactures, possesses, or supplies any controlled chemical or controlled equipment;

- (a) knowing that the chemical or equipment is to be used in, or for, the commission of an offence under Section 6; or
- (b) being reckless as to whether that chemical or equipment is to be used in or for the commission of an offence under Section 6,

is guilty of an offence and liable to imprisonment for a term not exceeding 10 years and a fine of \$50,000.

8 Parties to offences

[s 8 rep Act 14 of 2008, opn 26 Nov 2008]

9 Conspiracy

[s 9 rep Act 14 of 2008, opn 26 Nov 2008]

10 Attempts

[s 10 rep Act 14 of 2008, opn 26 Nov 2008]

11 Aiding offences against corresponding law of another country

A person commits an offence under this Act who in the Republic aids, incites, counsels, or procures the doing or omission in any place outside the Republic of any act, if that act or omission would have been an offence in the Republic under this Act if it had taken place in the Republic.

Penalty:

- (a) imprisonment for 20 years; and
- (b) a fine not exceeding \$75,000.

[Note: Under the Interpretation Act s 62 (1) where a penalty is prescribed for an offence it shall mean that the offence shall be punishable by a penalty not exceeding the penalty and under.]

[s 11 am Act 14 of 2008, opn 26 Nov 2008]

12 Cognizable Offence

All offences under this Act are cognizable offences.

13 International traveller's exemption

- (1) Notwithstanding anything contained in this Act, a person leaving, entering or transiting through the Republic may possess an illicit drug that:
 - (a) has been lawfully prescribed by a health practitioner;
 - (b) is for the purpose of treating a medical condition; and
 - (c) is sufficient for treatment for not more than one month, and is for the person possessing the drug or a person under the care or supervision of the person.
- (2) The Minister may if satisfied that it is necessary for the health of a person so to do, permit the possession of greater quantity of a drug than would be permitted under subsection (1)(c).

[s 13 subst Act 14 of 2008, opn 26 Nov 2008]

14 General exemption

- (1) A person whose lawful occupation or profession involves the possession, supply or administration of an illicit drug, controlled chemical or controlled equipment does not commit any offence under Sections 6 and 7.
- (2) The Minister may issue a license for the lawful import, export, or manufacture of any illicit drug, controlled chemical or controlled equipment.

- (3) A person may possess such quantities of an illicit drug that has been lawfully prescribed or provided for the purpose of treating a medical condition to that person or person under his or her care.

[The next page is 151,001]

PART 3 — INVESTIGATION, SEARCH AND SEIZURE

DIVISION 1 — POWERS OF A POLICE OFFICER AND A CUSTOMS OFFICER

15 Interception of communications

- (1) Where a police officer, of the rank of Sergeant and above, suspects on reasonable grounds that a person has committed, is committing or is about to commit an offence under this Act, that officer may for the purpose of investigation:
 - (a) make a written application to the Resident Magistrate for the express authority to enter a place to covertly monitor and record, by any means, the conduct and communications including telecommunications, of the person; or
 - (b) if the circumstances are such that time does not allow for written application, may enter a place to covertly monitor and record, by any means, the conduct and communications, including telecommunications, of the persons or and send written report in this regard to the Resident Magistrate immediately after.

[subs (1) am Act 14 of 2008, opn 26 Nov 2008]
- (2) Every application or report, as the case may be, shall state:
 - (a) the facts relied upon to show reasonable grounds;
 - (b) a description of the manner by which it is proposed to monitor the person or how the person was monitored;
 - (c) the name and address of the suspects if known and, if not known, then the premises, or place or device where it is intended to monitor the person, or where it was used to monitor;
 - (d) the identity of a person who may be required by the court to provide assistance for the purpose of giving effect to the monitoring order; and
 - (e) the period for which the authority to monitor is required in case of application only.
- (3) An authority to monitor a person issued pursuant to subsection (1)(a) may:
 - (a) authorise the police officer and any assistant to enter, by force if necessary, any place specified in the authority;
 - (b) identify a person who is required to provide assistance, free of any charge, for the purpose of giving effect to the monitoring order; and
 - (c) enable the police officer to obtain assistance from a person for the purpose of giving effect to the monitoring order.
- (3A) The Resident Magistrate in giving authority to do any of the things in subsection (3) shall be satisfied that in so doing the covert nature of the investigation will not be prejudiced.

[subs (3A) insrt Act 14 of 2008, opn 26 Nov 2008]
- (4) A person who fails to provide such assistance as required under the terms of the monitoring authority is guilty of an offence and is liable to imprisonment for a term not exceeding 1 year or a fine not exceeding \$10,000 or to both.

16 Tracking devices

- (1) Where either:

- (a) the Commissioner of Police;
- (b) the Chief Collector of Customs; or
- (c) in the absence of the Chief Collector of Customs, a person authorised by the Minister,

considers it necessary for the investigation of an offence under this Act he or she may authorise a police officer or a customs officer to place a tracking device in or on any place or goods.

- (2) Where in order to place a tracking device in accordance with subsection (1) or retrieve a tracking device that has been so placed, the device cannot be placed or retrieved without making an entry into private property, the Resident Magistrate may issue a warrant authorising the entry into the premises, with or without only such force as is reasonably necessary, to recover the device.

[s 16 subst Act 14 of 2008, opn 26 Nov 2008]

17 **Controlled delivery**

- (1) Where the Commissioner of Police or in his or her absence, any officer authorised by the Minister suspects on reasonable grounds that a person has committed, is committing or is about to commit an offence under this Act, he or she may give written approval for:
 - (a) a controlled delivery to be carried out; and
 - (b) specify persons to carry out or participate in the controlled delivery.
- (2) Notwithstanding any law to the contrary, the activities which may be undertaken in the course of and for the purposes of a controlled delivery include the following:
 - (a) allowing any craft, vehicle or other means of transport or conveyance to enter, leave, or transit through the Republic;
 - (b) allowing delivery of any:
 - (i) illicit drugs, controlled chemicals or controlled equipment, in or on the craft, vehicle or other means of transport or conveyance; or
 - (ii) property suspected to be derived directly or indirectly from any offence against this Act or any other written law;
 - (c) leaving or replacing any portion of that illicit drugs or controlled chemical;
 - (d) using such force as may be reasonable in the circumstances to enter and search the craft, vehicle or other means of transport, or other conveyance;
 - (e) placing a tracking device on board the craft, vehicle or other means of transport, or other conveyance; or
 - (f) allowing a person who has possession, custody or control of the illicit drug, controlled chemicals or controlled equipment to enter, leave or transit through the Republic.

18 **Power to search vehicles**

- (1) Where a customs officer has reasonable cause to suspect that there is in or on any vehicle that is within any customs controlled area:
 - (a) any illicit drugs, controlled chemicals or controlled equipment;
 - (b) evidence relating to illicit drugs, controlled chemicals or controlled equipment; or
 - (c) any other evidence relating to an offence under this Act,

the customs officer may do all or any of the following:

- (i) stop and detain any vehicle for the purpose of searching that vehicle;
- (ii) detain and search a person in that vehicle for such period as may be reasonably necessary for that purpose; or
- (iii) search any goods carried within the vehicle,

and shall as soon as practicable thereafter send a report about his or her assessment to the Commissioner of Police.

[subs (1) subst Act 14 of 2008, opn 26 Nov 2008]

- (2) A police officer may give effect to subsection (1) if the vehicle is outside a customs controlled area.

[subs (2) (former subs (3)) renum and am Act 14 of 2008, opn 26 Nov 2008]

- (3) A person who fails to comply with an officer's request under this Section commits an offence and may be arrested without warrant and is liable to a term of imprisonment not exceeding 2 years and a fine up to \$20,000.

[subs (3) (former subs (4)) renum Act 14 of 2008, opn 26 Nov 2008]

19 Power to search a person

- (1) Where a police officer has reasonable cause to suspect that a person has committed an offence under this Act or is in possession of any illicit drug or controlled chemical, the officer may search and detain that person for the purpose of search.
- (2) The police officer may seize any evidence relating to the commission of an offence under this Act.

20 Internal concealment

- (1) Where a police officer has reason to suspect that a person is transporting any illicit drug by concealing them inside that person's body, the officer may cause that person to be detained for the purpose of search.
- (2) A police officer detaining a person shall:
 - (a) inform the detained person of the reason for the detention in words sufficient to give that person notice of the true reason for detention;
 - (b) provide the detained person with a written statement setting out person's right;
 - (c) arrange for the attendance of a health practitioner;
 - (d) ask the detained person for their consent to undergo a medical examination; and
 - (e) if the detained person refuses to consent to a medical examination under paragraph (d), apply to the Resident Magistrate for an order authorising the continued detention of the person.

[subs (2) am Act 14 of 2008, opn 26 Nov 2008]

- (3) A detention order issued pursuant to subsection (2) shall:
 - (a) authorise the detention of that person for a period not exceeding 14 days;
 - (b) direct the detained person to submit to such medical examination as may be reasonably necessary to establish whether the person is internally concealing illicit drugs; and

- (c) authorise any health practitioner to carry out such examination and to provide such medical treatment as may be reasonable and appropriate in the circumstances.
- (4) A police officer who obtains an order for the detention of a person pursuant to subsection (2), may apply to the Resident Magistrate for renewal of the detention order.
- [subs (4) am Act 14 of 2008, opn 26 Nov 2008]
- (5) Where a police officer is satisfied that there are no further grounds to detain the person, the officer shall release that person from detention.
- [subs (5) am Act 14 of 2008, opn 26 Nov 2008]
- (6) Where a person is in a customs controlled area, a customs officer has the same power in respect of that person as a police officer under subsections (1), (2), (3), (4) and (5) but shall as soon as practicable after taking any action thereunder send a report of his or her actions to the Commissioner of Police.
- [subs (6) subst Act 14 of 2008, opn 26 Nov 2008]
- (7) The Resident Magistrate shall not make an order under this Section unless he or she is satisfied that the police officer or customs officer has reason to suspect that the person concerned is transporting an illicit drug by concealment in his or her body.
- [subs (7) insrt Act 14 of 2008, opn 26 Nov 2008]
- (8) A police officer may but need not be present at a medical examination carried out in accordance with this Section but a male police officer shall not be present at a medical examination of a female person.
- [subs (8) insrt Act 14 of 2008, opn 26 Nov 2008]

DIVISION 2 — POWERS OF A CUSTOMS OFFICER

21 Boarding, Search and Detention of a Craft

- (1) A customs officer may stop and board a craft:
- (a) at any place at any time while the craft is in the Republic;
 - (b) that is in the contiguous zone of the Republic; or
 - (c) that is registered in the Republic where that craft is outside the territorial sea of any foreign country,
- if the officer has reason to suspect that the craft is carrying illicit drugs, controlled chemicals or controlled equipment.
- (2) A customs officer may, when necessary for the exercise of his or her functions, direct the craft to be taken to a suitable place in the Republic and detain it for the purpose of search.
- (3) On boarding a craft, a customs officer may search and detain the craft, anyone on it and anything on it including its cargo and undertake tests and to take samples of anything on the craft.
- (4) A customs officer may question a person on board the craft or require the production of any documents relating to the craft or anything on the craft and may copy any documents produced.
- (5) A customs officer may seize and detain anything found on the craft which appears to him or her to be evidence of an offence under this Act.
- (6) A customs officer boarding a craft, may remain on the craft for such time as he or she thinks necessary for the purpose of boarding and searching the craft.

- (7) Where a craft fails to stop at the request of a customs officer, it may be pursued into international waters and such action as is necessary may be undertaken to stop the craft.
- (8) The master or commander of the craft shall provide any customs officer who remains on board the craft with proper and sufficient food and suitable accommodation and no charge may be levied.
- (9) For any of the purposes of this Section, a customs officer may require the master, member of the crew or a person on board to take such action as may be directed by that customs officer.
- (10) The customs officer shall send a detailed report to the Commissioner of Police for enabling him or her to charge the offender.
- (11) A master, commander or a person who contravenes these provisions is guilty of an offence and liable to imprisonment for a term up to 20 years imprisonment and a fine not exceeding \$250,000 and also forfeiture of the craft.

22 Access to Customs controlled area

A customs officer may refuse access to a person from:

- (a) a craft that has arrived in or is about to depart from the Republic; or
- (b) a Customs controlled area.

23 Questioning

- (1) A police officer outside a Customs controlled area or a customs officer in a Custom controlled area may stop and question a person who:
 - (a) has arrived in, or is intending to depart from the Republic as a passenger or crew member;
 - (b) is the master or commander of a craft that has just arrived in, or is about to depart from the Republic; or
 - (c) is arriving in, or departing from or within any customs controlled area.
- (2) A person shall answer questions put to him or her in pursuance of subsection (1).
- (3) A person who fails to answer any questions pursuant to subsection (1) commits an offence and is liable to pay a fine not exceeding \$10,000.
- (4) Where a police officer or customs officer before or during the course of questioning a person under this Section forms or should reasonably have been expected to have formed the opinion that the person may have committed an offence the police officer or customs officer shall immediately cease questioning the person and inform the person that they are suspected of having committed an offence, that they are not obliged to make any further statement or provide any evidence if in so doing the person may incriminate himself or herself.

[subs (4) insrt Act 14 of 2008, opn 26 Nov 2008]

24 Search and examination of baggage

A customs officer may search and examine baggage, packages or other goods carried by a person or belonging to the person if he or she:

- (a) has arrived in, or is intending to depart from the Republic as a passenger or a crew member of a craft;

- (b) is the master or commander of the craft that has arrived in, or is about to depart from the Republic;
- (c) is arriving in, departing from or within a customs controlled area; and
- (d) send a report to the Commissioner of Police where detection of incriminating material is found during the search and examination of baggage in accordance with this Section.

[s 24 am Act 14 of 2008, opn 26 Nov 2008]

25 Searching person

- (1) A customs officer who has reasonable cause to suspect that a person has committed an offence under this Act may stop, detain and search a person if that person:
 - (a) has arrived in, or is intending to depart from the Republic as a passenger or a crew member of a craft;
 - (b) is the master or commander of a craft that has arrived in, or is about to depart from the Republic; or
 - (c) is arriving in, departing from or within a customs controlled area.
- (2) When conducting a search under this Act of a female person such search shall be conducted by a female customs officer or female police officer and a male person shall not be present.

[subs (2) am Act 14 of 2008, opn 26 Nov 2008]

- (3) A customs officer may seize any evidence relating to the commission of an offence against this Act and send a report to the Commissioner of Police in case of seizure of incriminating material.

26 Arrest without warrant

A customs officer who has reasonable grounds to suspect that a person has committed an offence under this Act, may arrest the person without warrant and shall deliver the person into the custody of the police as soon as practicable.

27 Entry and search without warrant

A customs officer may, at any time and without a search warrant, enter and search any place subject to customs control.

28 Entry and search with warrant

- (1) Where a customs officer has reasonable grounds to suspect that an offence against Sections 4 and 5 has been committed in a Customs controlled area and that there is or on any place evidence relating to the commission of an offence against those provisions, the officer may make a declaration on oath to the effect, before a Resident Magistrate.
- (2) Upon the declaration made under subsection (1), the Resident Magistrate may issue a warrant authorising the officer to:
 - (a) enter upon;
 - (b) search the place, with such force as may be reasonably necessary, by day or night;
 - (c) search and detain for the purpose of search:
 - (i) a person found at or in the place;
 - (ii) a person whom the officer suspects is about to enter or leave the place; or

- (iii) goods in the apparent control of a person at that place; and
- (d) seize, and preserve any evidence relating to the commission of an offence under Sections 4 and 5.

[subs (2) am Act 14 of 2008, opn 26 Nov 2008]

- (3) The officer shall as soon as practicable following the search and detention of a person:
 - (a) send a report together with any seized material; and
 - (b) cause the detained person to be transported, to the Commissioner of Police for the purpose of being taken before a Resident Magistrate and charged with an offence against this Act.

DIVISION 3 — WARRANTS

29 Search warrants

- (1) Where the Resident Magistrate is satisfied, by information on oath, that there are reasonable grounds to suspect that there is in or on any place:
 - (a) an illicit drug, controlled chemical or controlled equipment;
 - (b) any evidence relating to the commission of an offence under this Act; or
 - (c) any property derived from an offence under this Act,the Resident Magistrate may issue a warrant empowering a police officer at any time, or at such time as the Resident Magistrate may specify in the warrant, to enter the place, search for any illicit drug or thing and if found, seize it.
- (2) A police officer who executes a warrant under subsection (1) may:
 - (a) enter any place named or described in the warrant;
 - (b) search and detain for the purpose of search:
 - (i) a person found at or in the place;
 - (ii) a person whom the officer suspects about to enter or leave the place; or
 - (iii) goods in the apparent control of the person; and
 - (c) seize any:
 - (i) illicit drug, controlled chemical or controlled equipment;
 - (ii) any evidence relating to the commission of an offence against this Act; or
 - (iii) any property derived from an offence under this Act.

30 Search and seizure without warrant in emergencies

- (1) A police officer may exercise the powers in Section 29 without a warrant, if the grounds for obtaining a warrant under Section 29 exist and the officer suspects on reasonable grounds, that:
 - (a) it is necessary to do so in order to prevent the concealment, loss or destruction of anything connected with an offence under this Act; and
 - (b) the circumstances are of such seriousness and urgency as to require the immediate exercise of the power without the authority of a warrant issued under Section 29.
- (2) A police officer acting pursuant to subsection (1) may:
 - (a) search a person or the clothing that is being worn by, and goods in the apparent control of a person;

- (b) enter and search any place at or in which the police officer suspects on reasonable grounds that anything connected with an offence is situated;
or
 - (c) seize any evidence relating to the offence that the officer finds in the course of that search.
- (3) A police officer may, for the purposes of this Section, detain a person the officer suspects on reasonable grounds is carrying without lawful authority anything connected with an offence under this Act.
- (4) A police officer may, for the purposes of this Section, stop any vehicle or craft where the officer suspect on reasonable grounds that anything connected with an offence under this Act is upon or in the vehicle or craft.

DIVISION 4 — ENFORCEMENT POWERS

31 Assistance and use of aids

In exercising any powers of monitoring, surveillance, inspection, examination, controlled delivery, boarding, entry or search conferred by this Act, a customs officer or a police officer may have with the officer and use such assistance and aids as the officer considers necessary.

32 Reasonable force

A police officer, customs officer or an authorised officer may use such force as may be reasonable in the circumstances in the performance of his or her lawful duties under this Act.

[s 32 subst Act 14 of 2008, opn 26 Nov 2008]

33 Evidence of authority

A police officer, customs officer or an authorised officer shall, if required, produce the officer's identification and authority in the exercise of any powers under this Act.

34 Protection of officers

A police officer, customs officer or an authorised officer are not liable in any civil or criminal proceedings for anything done in the purported performance of the officer's lawful duties pursuant to this Act, if the act was done believing in good faith and that there were reasonable grounds for doing so.

35 Offences against officers

A person who:

- (a) intentionally obstructs, assaults, intimidates, threatens or resists a police officer, customs officer or an authorised officer in the performance of the officer's lawful duties pursuant to this Act;
- (b) fails without reasonable excuse to comply with the lawful requirements of a police officer, a customs officer or an authorised officer in the performance of those functions; or
- (c) in purporting to give information required by a police officer, customs officer or an authorised officer in the performance of those functions:
 - (i) makes a statement he or she knows to be false in a material particular;
 - (ii) recklessly makes a statement which is false in a material particular; or

(iii) intentionally fails to disclose any material particular, commits an offence.

Penalty:

- (a) 3 years imprisonment; and
- (b) a fine not exceeding \$30,000.

[Note: Under the Interpretation Act s 62(1) where a penalty is prescribed for an offence it shall mean that the offence shall be punishable by a penalty not exceeding the penalty and under.]

[s 35 subst Act 14 of 2008, opn 26 Nov 2008]

36 Protection of informants and undercover police officer/customs officer

- (1) Subject to subsection (3), no witness in any proceedings under this Act is obliged:
 - (a) to disclose the name or address of any informant or undercover police officer or customs officer who has given information with respect to an offence under this Act, or of a person who has assisted in detecting, investigating or otherwise assisting with respect to the due administration or enforcement of this Act; or
 - (b) to answer any question if the answer would lead, or would tend to lead, to the discovery of the name, address or identity of such informant or undercover police officer, if the informant or person is not a witness in the proceedings.
- (2) Where any record which is in evidence or liable to inspection in any proceedings contains an entry in which any such information or undercover police officer is named or described or which might lead to his or her discovery, the Resident Magistrate shall cause all such entries to be concealed from view or to be obliterated so far as may be necessary to protect the information or such person from discovery.
- (3) Where in any proceedings before the Resident Magistrate under this Act the Resident Magistrate, after full enquiry into the case, is satisfied that:
 - (a) an informer willfully made a material statement which he or she knew to be false or did not believe to be true; or
 - (b) in any other proceedings the Resident Magistrate is of the opinion that justice cannot be fully done between the parties thereto without disclosure of the name of the informer or another person who assisted in any investigations or the proceedings under this Act,the Resident Magistrate may permit enquiry and require full disclosure concerning the informer or person.

37 Authorised officers

- (1) The Commissioner of Police or the Chief Collector of Customs as the case may be, may authorise a suitably qualified and trained person who is not a police officer or a customs officer to perform or exercise any function or power that may be performed or exercised by a police officer or a customs officer.
- (2) The authorisation under subsection (1) shall be made in writing including any writing in electronic form and shall specify:

- (a) the function or the power that may be performed or exercised by the authorised person; and
 - (b) the term of the authorisation, which shall be such period, not exceeding 3 years, as the Commissioner of Police or Chief Collector of Customs thinks fit.
- (3) The Commissioner of Police or Chief Collector of Customs may renew any authorisation for such further period, not exceeding 3 years as deemed fit.
- (4) A person who is authorised under this Section is taken to be a police officer or a customs officer for the purposes of this Act for the duration of the term of that person's authorisation.
- (5) The Commissioner of Police or Chief Collector of Customs may revoke an authorisation given under this Section for any of the following reasons:
- (a) incapacity;
 - (b) neglect of duty;
 - (c) misconduct;
 - (d) if the authorised person gives written notice to the Commissioner of Police or Chief Collector of Customs that he or she wishes the authorisation to be revoked; or
 - (e) in any other circumstances where in the opinion of the Chief Collector, the authorisation is no longer necessary.

[subs (5) am Act 14 of 2008, opn 26 Nov 2008]

- (6) Where the person ceases to be an authorised person under this Section, that person shall surrender to the Commissioner of Police or Chief Collector of Customs as the case may be, all articles and documents received by him or her in the relation to the authorisation.

[subs (6) (former para (5)(f)) renum Act 14 of 2008, opn 26 Nov 2008]

- (7) The Commissioner of Police or Chief Collector of Customs, as the case may be, may authorise any suitably qualified person from any other country to perform or exercise any function or power that may be performed or exercised by a police officer or customs officer under this Act.

[subs (7) (former para (5)(g)) renum Act 14 of 2008, opn 26 Nov 2008]

DIVISION 5 — POST SEIZURE PROCEDURES

38 Disposal and storage of seized illicit drugs

- (1) Where a scientific analysis of a sample of a seized substance indicates that it is an illicit drug or controlled chemical or controlled equipment, the seizing officer shall forward a copy of the scientific analysis to the Director of Public Prosecutions.
- (2) Where the Director of Public Prosecutions, in consultation with the Commissioner of Police, is of the opinion that, although proceedings are likely to be brought against a person:
- (a) physical preservation of all the seized illicit drug, controlled chemical or controlled equipment is not necessary for the purposes of any actual or contemplated proceedings under this Act;
 - (b) the seized drug or controlled chemical may properly be used, in the Republic for medical or scientific purposes, or in small amounts for the training of personnel responsible or carrying out functions under this Act; or

- (c) the seized drug or controlled chemical cannot be safely, securely or conveniently stored until the final determination of such proceedings, the Director of Public Prosecutions in consultation with the Commissioner of Police may authorise the disposal of any part of the seized illicit drug, controlled chemical or controlled equipment or samples as they determine are not necessary to retain for the due administration of justice.
- (3) Where the Director of Public Prosecutions in consultation with the Commissioner of Police has authorised the disposal under subsection (2) in relation to a seizure and they are satisfied that:
- (a) any of the seized illicit drug, controlled chemical or controlled equipment is illegal property liable to forfeiture under this Act;
 - (b) the provisions of the Section relating to the taking and analyses of samples have been complied with;
 - (c) sufficient samples have been taken, analysed and preserved to enable all material questions relating to the seized illicit drug, controlled chemical or controlled equipment to be properly determined in any actual or contemplated proceedings under this Act; and
 - (d) any suspect or accused person in relation to the seizure has had reasonable opportunity to have samples independently analysed at the person's expense,
- the Director of Public Prosecutions in consultation with the Commissioner of Police may authorise the disposal of the illicit drug, controlled chemical or controlled equipment.
- (4) Where, in relation to any seized illicit drug or controlled chemical or controlled equipment and after reasonable investigatory efforts, the Director of Public Prosecutions in consultation with the Commissioner of Police are:
- (a) of the opinion that proceedings are not likely to be brought against a person for the reason only that no suspect has been identified or located; and
 - (b) satisfied that sufficient samples have been taken, analysed and preserved to enable all material questions relating to the seized illicit drug, controlled chemical or controlled equipment to be properly determined should any suspect be ultimately identified and proceedings be brought,
- the Director of Public Prosecutions, in consultation with the Commissioner of Police, may order the disposal of such part of the seized illicit drug, controlled chemical or controlled equipment or samples taken for analysis as he or she certifies to be not necessary to retain for the purposes of the due administration of justice.
- (5) An illicit drug, controlled chemical or controlled equipment subject to an authorisation under subsection (3) or (4) shall be disposed of only:
- (a) by delivery to the Director of Medical Services for use exclusively in meeting the lawful medical, scientific or training needs of the Republic; or
 - (b) by incineration, or such other safe means of destruction.
- (6) Subject to this Section, in any prosecution for an offence under this Act or regulations, a certificate or report:
- (a) purporting to be signed by the officer in charge of carrying out a disposal order made under subsection (3) or (4) and 2 witnesses to the disposal; and

- (b) stating:
 - (i) that the illicit drug, controlled chemical or controlled equipment, the subject of an order, has been disposed of in accordance with the order; and
 - (ii) the identity and quantity of the illicit drug, controlled chemical or controlled equipment disposed of,is admissible in evidence.
- (7) In the absence of evidence to the contrary, a certificate or report is admissible under subsection (6) as proof to the statements contained in the certificate or report, without proof of the signature, expertise or official character of the person appearing to have signed it.

[s 38 subst Act 14 of 2008, opn 26 Nov 2008]

39 Collection and processing or evidence at seizure

- (1) The officer in charge at the seizure scene shall ensure that all material evidence is collected and processed, and in particular that any seized illicit drug, controlled chemical or controlled equipment is properly marked for identification, weighed, counted, sampled, scaled, labelled and, until destroyed or otherwise disposed of in accordance with Section 38, preserved for evidentiary purpose.
- (2) Where any illicit drug, controlled chemicals or controlled equipment that has been seized pursuant to this Act was found in packages or containers of similar size and weight and bearing identical markings, and colour testing of the contents of a representative number of them yields similar results for each, the seizing officer shall cause all such packages or containers to be classified, serially numbered and separated into lots ready for weighing, counting, sampling, scaling and labeling.
- (3) Where it is physically possible to count and weigh the seizure as a complete entry, the seizing officer shall cause it to be counted and weighed and where it is not physically possible to count and weigh the seizure as a complete entry, the seizing officer may estimate the gross and net weight as the case may be.
- (4) The seizing officer shall also prepare a report of the seizure as soon as practicable but no later than 72 hours after seizure which includes particulars of:
 - (a) the time, place and date of seizure;
 - (b) the identity of the seizing officer and all persons present;
 - (c) the circumstances in which seizure took place;
 - (d) a description of the vehicle, craft, place or person searched and the location where the illicit drug, controlled chemicals or controlled equipment was found;
 - (e) a description of the illicit drug, controlled chemicals or controlled equipment found;
 - (f) a description of the packaging, seals, and other identifying features;
 - (g) a description of quantity, volume and units and the measurement method employed;
 - (h) a description of any preliminary identification test used and results;
 - (i) all subsequent movements of the seized illicit drug, controlled chemicals or controlled equipment; and

(j) any other prescribed matter.

[subs (4) am Act 15 of 2021 s 4, opn 14 Sep 2021]

(5) The officer in charge of an investigation following a seizure shall ensure that all items of evidentiary value are stored in appropriate conditions for the prevention of loss, theft or any other form of misappropriation, as well as accidental or accelerated deterioration.

40 Forfeiture

Every person convicted of an offence against this Act shall, in addition to any penalty imposed pursuant to this Act, forfeit to the Republic, by virtue of such conviction, all goods, articles and moveable property if any, in respect to which the offence was committed and in the possession of such person.

[The next page is 151,201]

PART 4 — EVIDENTIARY MATTERS

41 **Presumption relating to possession of illicit drugs**

Where in the prosecution of a person for an offence under this Act or the regulations, it is proved that an illicit drug, controlled chemical or controlled equipment was found:

- (a) in the immediate vicinity of the accused; or
- (b) on any animal, vehicle, craft and that the accused was at the time on or in charge of, or that he or she accompanied, any such animal, vehicle or craft, it is presumed, until the contrary is proved, that the accused was found in possession of the illicit drug, controlled chemical or controlled equipment.

42 **Presumption relating to samples**

Where in any prosecution for an offence under this Act it is proved that a sample which was taken from any illicit drug or controlled chemical possesses particular properties, it shall be presumed, unless contrary is proved, that any such illicit drug or controlled chemical possesses the same properties.

43 **Admissibility of official records**

A copy of any record of a ministry, department, agency, instrumentality or other body established by or pursuant to any written law or of any statement containing information from the records kept by any such department, agency, instrumentality of the Republic or other body, purporting to be certified by an official having custody of that document or those records, is admissible in evidence in any prosecution for an offence under this Act, and in the absence of evidence to the contrary, is proof of the facts contained in the document, without proof of the signature or official character of the person purporting to have certified.

[s 43 am Act 14 of 2008, opn 26 Nov 2008]

44 **Proof of prohibited import or export of an illicit drug under foreign law**

A certificate purporting to be issued by or on behalf of a foreign state to the effect that the import or export of an illicit drug, controlled chemical or controlled equipment is prohibited by the law of that state shall for the purpose of any proceedings under this Act, be *prima facie* evidence of the matters stated.

45 **Analyst certificate**

- (1) In any proceedings under this Act, the production of a certificate purporting to be signed by a government analyst shall be *prima facie* evidence of the facts therein stated.
- (2) A copy of the analyst certificate shall be served by or on behalf of the prosecutor on the defendant or that person's defence counsel at least 10 working days before the hearing at which the certificate is to be tendered as evidence and the defendant shall be informed in writing that the prosecutor does not propose to call the person who made the analysis as a witness.

- (3) The defendant shall give written notice to the prosecutor at least 3 working days before the hearing that he or she requires the person who made the analysis to be called by the prosecutor as a witness.
- (4) The Cabinet may by regulations determine persons, agencies or corporations qualified and experienced in the analysis of illicit drugs, controlled chemicals or controlled equipment and whose certificates when duly signed in a prescribed manner by a prescribed person shall be accepted by a court as proof as to the truth and accuracy of the statements therein unless shown to be false in a material aspect.

[subs (4) insrt Act 14 of 2008, opn 26 Nov 2008]

- (5) A person, agency or corporation determined under subsection (4) may be in any country.

[subs (5) insrt Act 14 of 2008, opn 26 Nov 2008]

46 Interfering with evidence

A person who unlawfully interferes with, uses, takes or disposes of any seized illicit drug, controlled chemical or controlled equipment or any sample, or who unlawfully interferes with, or falsifies the results of any analysis with the intention of interfering with the proper course of justice, commits an offence and upon conviction is liable to a term of imprisonment not exceeding 10 years and a fine not exceeding \$20,000.

[The next page is 151,401]

PART 5 — MISCELLANEOUS

47 **Investigative abilities of overseas law enforcement agencies**

The Director of Public Prosecutions may authorise a person from a law enforcement agency of another state, to exercise and give effect to the relevant legal powers within the Republic for the purpose of the investigation of any offence under this Act.

[s 47 am Act 14 of 2008, opn 26 Nov 2008]

48 **Cabinet may issue licences to import dangerous drugs**

- (1) The Cabinet on the recommendation of the Minister may grant licences to persons to import dangerous drugs, or one or more particular forms of dangerous drugs specified in the licence, subject to the following conditions and restrictions:
 - (a) the drugs shall be imported for medicinal purposes only; and
 - (b) a licence to import the drugs shall not be issued except to:
 - (i) a legally qualified health practitioner; or
 - (ii) a person who proves to the satisfaction of the Minister that he or she is a fit and proper person to be allowed to import dangerous drugs or the particular form of dangerous drugs he or she seeks permission to import.
- (2) A licence issued under this Section:
 - (a) shall be for a period of 1 year;
 - (b) may be renewed from time to time by the Cabinet for a like period;
 - (c) shall be in accordance with Form 1 or Form 2 in Schedule 4; and
 - (d) shall be signed by the Minister.
- (3) Before a licence is granted the applicant shall have:
 - (a) given security to the satisfaction of the Cabinet and the Minister that:
 - (i) all importations pursuant to the licence or a renewal will be disposed of for medicinal purposes only; and
 - (ii) the applicant will record in a book kept by him or her for the purpose, particulars of the quantities imported and of how and to whom they have been disposed of or provided, and will at all times produce to the Minister or an officer thereunto authorised by the Minister the book so kept and the balance of the importations on hand at the time when the book is produced; and
 - (b) give an undertaking in writing that the applicant will be responsible for the making of reasonable enquiries as to the purpose and destination of dangerous drugs imported under the licence and subsequently sold with a view to being assured that the drugs are intended for medicinal purposes only.
- (4) Every holder of a licence under this Act shall advise the Minister of his or her intention to import dangerous drugs and shall state:
 - (a) the exact description and quantity of the drugs to be imported; and
 - (b) the name and address of the firm in the exporting country from which the drugs are to be obtained.

(5) The Minister may issue a certificate in accordance with Form 3 in Schedule 4 specifying the period within which the importation shall be effected.

[s 48 subst Act 14 of 2008, opn 26 Nov 2008]

49 Provisions of Criminal Procedure Act 1972

In all other matters not provided for, the provisions of *Criminal Procedure Act 1972*, shall apply.

50 Repeal

The *Dangerous Drugs Act 1952-1968* is hereby repealed.

[s 50 am Act 14 of 2008, opn 26 Nov 2008]

51 Savings

Notwithstanding the provisions of Section 50, every order of a court lawfully made, and every summon, warrant and other process of any court lawfully issued, in the Republic, in exercise of such courts criminal jurisdiction before the commencement of this Act shall continue to have full force and effect as though the written law under which it was made or issued were still in force in the Republic.

52 Regulations

The Cabinet may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient for giving effect to it.

[The next page is 151,601]

SCHEDULE 1

[Section 3]

ILLICIT DRUGS

This Schedule includes:

The following illicit drug, chemicals or controlled equipments, designated by their international non-proprietary names or the names used in international conventions in force;

Their isomer, unless specifically excepted, whenever the existence/of/such isomers is possible within the specific chemical/designation;

Their esters and ethers, unless specifically excepted, whenever /the/existence of such esters and ethers is possible;

Their salts, including the salts of esters ethers and isomers, /whenever the existence of such salts is possible;

Preparations of these illicit drug, controlled chemicals or controlled equipments, unless exempted by law.

(FROM SCHEDULE IV OF THE CONVENTION ON NARCOTIC DRUGS 1961)

| | | |
|------------------------------------|---|---------------------|
| Acetorphine | Acetyl-alpha-methyl- | Methyl-3fentanyl |
| Cannabis and thiocannabis resin | fentanyl | Methyl-3thio- |
| Desomorphine | Alphacetylmenthadol | fentanyl |
| Etorphine | Alpha-methylfentanyl | MPPP |
| Heroin | Beta-hydroxyfentanyl | Para-fluorofentanyl |
| Ketobemidone | Beta-hydroxy-methyl-3- PEPAP fentanyl | Thiofentanyl |

(FROM SCHEDULE 1 OF THE CONVENTION ON PSYCHOTROPIC SUBSTANCES 1971)

| | | |
|------------------|--------------------|----------------------|
| Brolamphetainine | Etryptamine | Parahexyl |
| Cathinone | (+) - Lysergide | PMA |
| DET | MDA | Psilocine, psilotsin |
| DMA | Mescaline | Psilocybine |
| DMHP | Methcathinone | Rolicyclidine |
| DMT | Methyl-4 anuinorex | STP, DOM |
| Eticyclidine | MMDA | Tenamphetamine |
| | MDMA | Tenocyclidine |
| | N-ethyl MDA | Tetrahydrocannabinol |
| | N-hydroxy MDA | TMA |

(FROM SCHEDULE 1 of the Convention on Narcotic Drugs, 1961)

| | | |
|----------------|--------------|-------------|
| Acetylmethadol | Ethylmethyl- | Normorphine |
|----------------|--------------|-------------|

| | | |
|-------------------------------|---|---|
| Alfentanil | thiambutene | Norpipanone |
| Allylprodine | Etonitazene | Opium |
| Alphameprodine | Etoxidine | Oxycodone |
| Alphamethadol | Fentanyl | Oxymorphone |
| Alphamethylthio- fentanyl | Furethidine | Pethidine |
| Alphaprodine | Hydrocodone | Pethidine |
| Anileridine | Hydromorphinol | intermediate A |
| Benzethidine | Hydromorphone | (4-cyano-1 methyl- 4- phenyl-piperidine) |
| Benzylmorphine | Hydroxypethidine | Pethidine |
| Betacetylmethadol | Isomehtadone | Pethidine |
| Betamerprodine | Levomethorphan | intermediate B |
| Bethamethadol | Levomoramide | (4-phenylpiperidine- 4- carboxylic acid |
| Betaprodine | Levorphanol | ethylester) |
| Bezimatrimide | Levorphanol | ethylester) |
| Clonitazene | Metazocine | Pethidine |
| Coca (leaf) | Methadone | intermediate C |
| Cocaine | Methadone intermediate | (1- methyl-4- phenylpiperidine |
| Codoxime | (4-cyano-2-dimethyl- amino-4, 4-diphenyl | 4-carboxylic acid) |
| Concentrate of poppy Straw | butane) | Phenadoxone |
| Dextromoramide | Mehtyl-desorphine | Phenampramide |
| Difenoxin | Methyl-dihydromorphine | Phenampramide |
| Dihydromorphine | Metopon | Phenazocine |
| Dimepheptanol | Moramide | Phenomorphin |
| Diapromide | Morpheridine | Phenoperidine |
| Dimethylthiambutene | Morpheridine | Piminodine |
| Dimenaxadol | Morphine methobromide | Piritramide |
| Dioxaphetyl butyrate | and other pentavalent | Proheptazine |
| Diphenoxylate | nitrogen morphine derivatives | Properidine |
| Dipipanone | Morphine-N-oxide | Racemethorpha |
| Drotebanol | Myrophine | Racemoramide |
| Ecgonine, | Nicomorphine | Racemorpha |
| Its ester and derivatives | Noracymethadol | Sufentani |
| | Norlevorphanol | Thebacon |
| | Normetbadone | Thebaine |
| | Morphine | Tilidine |
| | | Trimeperidin |

(FROM SCHEDULE II of the *Convention of Narotic Drugs 1961*)

| | | |
|----------------------|---------------|------------|
| Acetyldihydrocodeine | Ethylmorphine | Pholcodine |
| Codeine | Nicodicodine | Propiram |
| Dextropropoxyphene | Nicocodine | |
| Dihydrocodeine | Norcodeine | |

(FROM SCHEDULE II of the *Convention on Psychotropic Substances 1971*)

| | | |
|----------------|--------------------------|---------------|
| Amphetamine | Methamphetamin | Phenmetrazine |
| Dexamphetamine | Methamphetamine racemate | Secobarbital |
| Fenetylline | Methaqualone | Zipeprol |
| Levamphetamine | Methylphenidate | |
| Mecloqualone | Phencyclidine | |

SCHEDULE III of the *Convention on Psychotropic Substances 1971*

| | | |
|------------------|----------------------|-----------------|
| Amobarbital | Cathine | Pentazocine |
| Buprenorphine | Cyclobarbital | Pentobarbital |
| Butalbital | Glutethimide | Flunitrazepam |
| Allobarbital | Ethinamate | Methylprylon |
| Alprazolam | Ethylloflazepate | Midazolam |
| Aminorex | Etilamphetamine | Nimetazepam |
| Amphepramone | Fencamfamin | Nimetazepam |
| Barbital | Fenproporex | Nitrazepam |
| Benzphetamine | Fludiazepam | Oxasepam |
| Bromazepam | Flurazepam | Oxazolam |
| Brotizolam | Halazepam | Pemoline |
| Butobarbital | Haloxazolam | Phendimetrazine |
| Camazepam | Ketazolam | Phenobarbital |
| Chlordiazepoxide | Lefetamine | Phentermine |
| Clobazam | Loprasolam | Pinasepam |
| Clonazepam | Lorazepam | Pipradol |
| Clorazepate | Lonnetazepam | Prazepam |
| Clotiazepam | Mazindol | Pyrovalerone |
| Clozazolam | Medazepam | Secbutabarbital |
| Delorazepam | Mefenorex | Temazepam |
| Diazepam | Meprobamate | Tetrazepam |
| Estazolam | Mesocarb | Trazolam |
| Ethchlorvynol | Methylpheno-barbital | Vinylbital |

OTHER ILICIT DRUGS

Ketamine
 Khat
 Gamma-hydroxybutyrate (GHB)
 Gamma butyrolactone (GBL)
 1,4-butanediol (tetramethylene glycol)
 Anabolic and androgenic substances
 Growth hormones

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'

Cannabis oil

4-bromo 2,5 dimethoxamphatamine (Bromo DMA)

[The next page is 151,801]

SCHEDULE 2

CONTROLLED CHEMICALS

This annex includes

- The following substances, designated by their international non-proprietary names used in the international conventions in force;
- The salts of these substances, whenever the existence of such salts is possible, with the exception of sulphur acid and hydrochloric acid.

| | |
|---------------------|--------------------------|
| Ephedrine | N-acetylanthranilic acid |
| Ergometrine | Isosafrole |
| Ergotamine | 3,4 methylenedioxypheny- |
| Lysergic acid | 2-propanone |
| 1-phenyl-2propanone | Piperonal |
| Pseudoephedrine | Safrole |
| Norephedrine | |
| Acetic anhydrid | Hydrochloric acid |
| Acetone | Methylethyl |
| Anthranilic acid | Ketone |
| Ethylethe | Potassium permanganate |
| Phenylacetic acid | Sulphuric acid |
| Piperidine | Toluen |

[The next page is 152,001]

SCHEDULE 3

CONTROLLED EQUIPMENT

Encapsulating machine

Tabletting machines

Rotary evaporators

Laboratory equipment with a capacity for large volume production (eg round bottom flasks of 25 litres or above and related condensers, separating funnels and heating apparatus)

[The next page is 152,201]

Form 2



REPUBLIC OF NAURU

ILLICIT DRUGS CONTROL ACT 2004

[Section 48]

LICENCE

This is to certify that (*here set out the name, address and occupation of the licensee*) is licensed under the *Illicit Drugs Control Act 2004* for a period of 1 year from the date of the licence to import for medicinal purposes only the particular form (or forms) of illicit drugs immediately hereunder specified, that is to say (*here set out the particular form or forms of dangerous drugs which the licensee licensed to import.*)

Nothing in this licence shall be held to entitle the holder to import any illicit drug other than the particular form (or forms) specified above.

This licence may be renewed from time to time by the Cabinet by endorsement signed by the Minister.

Dated this day of , 20

Minister for Health

Form 3



REPUBLIC OF NAURU

ILLICIT DRUGS CONTROL ACT 2004

[Section 48]

CERTIFICATE OF OFFICIAL APPROVAL OF IMPORT

I, _____ Minister for Health do hereby certify that the Cabinet, acting under the provisions of Section 48 of the *Illicit Drugs Control Act 2004*, has approved the importation by *(name, address and business of importer)* of *(exact description and amount of drug to be imported)* from *(name and address of firm in exporting country from which the drug is to be obtained)* subject to the following conditions:

(Special conditions (if any) to be observed).

I am satisfied that the consignment proposed to be imported is required solely for medicinal or scientific purposes.

Dated this _____ day of _____, 20____

Minister for Health

[The next page is 165,001]

Illicit Drugs Control (Drug Testing Kit) Regulations 2021

TABLE OF PROVISIONS

| <i>Regulation</i> | <i>Title</i> |
|-------------------|--|
| 1 | Citation |
| 2 | Commencement |
| 3 | Report by seizing officer |
| 4 | Persons qualified in the analysis of illicit drugs |
| 5 | Drug testing kit |
| 6 | Illicit Drugs Test Certificate |
| 7 | Identification of cannabis |
| 8 | Identification of other illicit drugs |
| 9 | Transitional |
| 10 | Repeal |
| | SCHEDULE 1 — REPORT BY SEIZING OFFICER |
| | SCHEDULE 2 — LIST OF DRUG TESTING KIT |
| | SCHEDULE 3 — ILLICIT DRUGS TEST CERTIFICATE |

[The next page is 165,201]

Illicit Drugs Control (Drug Testing Kit) Regulations 2021

TABLE OF AMENDMENTS

The Illicit Drugs Control (Drug Testing Kit) Regulations 2021 were notified and commenced on 27 August 2021.

| Amending Legislation | Notified | Date of Commencement |
|-----------------------------|-----------------|-----------------------------|
|-----------------------------|-----------------|-----------------------------|

[The next page is 165,401]

The Cabinet makes the following Regulations under Section 52 of the *Illicit Drugs Control Act 2004*:

1 Citation

These Regulations may be cited as the *Illicit Drugs Control (Drug Testing Kit) Regulations 2021*.

2 Commencement

These Regulations commence on the day they are notified in the Gazette.

3 Report by seizing officer

For the purposes of Section 39(4) of the Act, the form of a report to be prepared by a seizing officer is in Schedule 1.

4 Persons qualified in the analysis of illicit drugs

- (1) The Commissioner of Police shall appoint police officers or such other persons to conduct illicit drug tests under these Regulations.
- (2) A police officer or other person who is appointed under subregulation (1) shall have his or her name published in the Gazette.
- (3) A police officer or other person appointed under subregulation (1) is deemed to be a qualified officer or person to conduct and provide reports for illicit drug tests.

5 Drug testing kit

- (1) A drug testing kit described in Schedule 2 shall be used for testing illicit drugs.
- (2) The Commissioner of Police shall, by order in the Gazette, publish the serial numbers or such other details for the purposes of the identification of a drug testing kit.

6 Illicit Drugs Test Certificate

- (1) A police officer or other person appointed under Regulation 4, who conducts a test under these Regulations, shall prepare an Illicit Drugs Test Certificate in Schedule 3.
- (2) A certificate prepared under subregulation (1), shall be accepted by a court as proof as to the truth and accuracy of the statements therein unless shown to be false in a material aspect.

7 Identification of cannabis

Where a fruit, plant, seed, leaf or oil seized by a police officer has:

- (a) no colour change after breaking the first ampoule, turns dark blue or violet colour after breaking the second ampoule and a grey upper layer over a violet layer upon breaking the third ampoule when tested in the Narcotics Identification Kit using *Duquenois-Levine Reagent*, such fruit, plant, seed, leaf or oil is deemed to be cannabis; or

- (b) no colour change after breaking the first ampoule and an orange or reddish brown colour after breaking the second ampoule when tested in the Narcotics Identification Kit using *KN Reagent*, such fruit, plant, seed, leaf or oil is deemed to be cannabis.

8 Identification of other illicit drugs

The Minister may, by order in the Gazette, publish the identification criteria for other illicit drugs by using a drug testing kit, which includes:

- (a) the use of specific reagents;
- (b) the procedure for the tests;
- (c) the expected results for the suspected illicit drugs; and
- (d) where available, such scientific studies, source or authentication of such expected result.

9 Transitional

Where proceedings have been commenced under the *Illicit Drugs (Analysis) Regulations 2016*, such proceedings shall continue and be completed under those Regulations.

10 Repeal

The *Illicit Drugs (Analysis) Regulations 2016* are repealed.

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SCHEDULE 1



**REPUBLIC OF NAURU
ILLICIT DRUGS CONTROL ACT 2004**

[Regulation 3]

REPORT BY SEIZING OFFICER

RSO No: ... / 20...

| | |
|--|-------------------------|
| PART 1: DETAILS OF SUSPECT | |
| (a) Full name | |
| (b) Residential address | |
| (c) Telephone number | |
| PART 2: SEIZURE OF ALLEGED ILLICIT DRUG | |
| (a) Place where alleged illicit drugs seized | |
| (b) Time when alleged illicit drugs seized | |
| (c) Date when alleged illicit drugs seized | |
| (d) Additional comments | |
| PART 3: DETAILS OF OFFICER WHO SEIZED ALLEGED ILLICIT DRUG | |
| (a) Full name of seizing officer | |
| (b) Rank of seizing officer | |
| (c) Full name(s) of other person(s) present | |
| (d) Rank(s) / occupation(s) of other person(s) present | |
| PART 4: DESCRIPTION OF [VEHICLE / CRAFT / PLACE / PERSON]* SEARCHED | |
| (a) Describe the [vehicle / craft / place / person]* searched [*delete whichever is not applicable] | |
| (b) Location where the alleged illicit drug was found | |
| PART 5: DESCRIPTION OF ALLEGED ILLICIT DRUG SEIZED | |
| Describe the alleged illicit drug found [For example: cannabis] | |
| PART 6: DESCRIPTION OF THE PACKAGING, SEALS AND OTHER IDENTIFYING FEATURES | |
| (a) Describe the packaging (if applicable) | |
| (b) Describe the seal (if applicable) | |

| | |
|--|--|
| (c) Describe any other identifying features | |
| PART 7: DESCRIPTION OF QUANTITY, VOLUME AND UNITS AND THE MEASUREMENT METHOD EMPLOYED | |
| (a) Describe the quantity [<i>For example: 9 grams / 9 kilograms</i>] | |
| (b) Describe the volume [<i>For example: litres – for drugs that are in liquid form</i>] | |
| (c) Describe the units [<i>For example: grams</i>] | |
| (d) Describe the measurement method employed [<i>For example: metric</i>] | |
| PART 8: SUBSEQUENT MOVEMENTS OF THE ALLEGED ILLICIT DRUG | |
| (a) Time and date when alleged illicit drug moved | |
| (b) Place where alleged illicit drug taken | |
| (c) Place where alleged illicit drug was kept | |
| (d) Name of police officer who received the alleged illicit drug to be exhibited | |
| (e) Time and date when police officer under (d) received the alleged illicit drugs to be exhibited | |
| (f) Police officer who exhibited the alleged illicit drug | |
| (g) Place where alleged illicit drug kept after being issued an exhibit number | |
| PART 9: DETAILS OF ALLEGED ILLICIT DRUG AFTER TESTING | |
| (a) Quantity / volume / unit of alleged illicit drug before testing | |
| (b) Quantity / volume / unit of alleged illicit drug after testing | |
| PART 10: OFFICIAL PURPOSES | |
| (a) Full name of seizing officer | |
| (b) Rank [<i>For example: Constable, Sergeant, etc</i>] | |
| (c) Signature | |
| (d) Time | |
| (e) Date | |
| PART 11: DETAILS OF SAMPLE TESTED | |
| (a) Quantity / volume / unit of sample tested | |
| (b) Place where sample tested | |
| (c) Time when sample tested | |
| (d) Date when sample tested | |
| (e) Full name of officer or appointed person who conducted test | |
| (f) Rank [<i>For example: Constable, Sergeant, etc</i>] | |
| (g) Signature | |

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SCHEDULE 2

[Regulation 5]

LIST OF DRUG TESTING KIT

1. Narcotics Identification Kit (NIK)

[The next page is 165,801]

SCHEDULE 3



REPUBLIC OF NAURU

ILLCIT DRUGS CONTROL ACT 2004

[Regulation 6]

ILLCIT DRUGS TEST CERTIFICATE

IDTC No: . . . / 20. . .

1. I certify that a sample purporting to be a sample of *[For example: cannabis, etc]* that was received on *[dd/mm]yy* with a Report by Seizing Officer RSO No: . . / 20. . . dated *[dd/mm/yy]* has been tested and the result of the test is stated below.
2. Details of the results of the test:
 - (a) Sample No:
 - (b) Quantity / volume / unit of sample tested:
 - (c) Time sample tested:
 - (d) Date sample tested:
 - (e) Drug testing kit used:
 - (f) The sample is identified as *[For example: cannabis, and include photograph or video of the results and attach any available document, etc]*

.....
[Full name of police officer]

[Signature of police officer]

[Rank of police officer]

[The next page is 180,001]