

DANGEROUS DRUGS

Act 41 of 2000 – 5 December 2001

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*Ed. Section 63 provides for this Act to commence on a date to be fixed by Proclamation and as at 01.01.01 no such date has been proclaimed. The text of the Dangerous Drugs Act 1995 which accordingly is still in force is set out in Mauritius Laws 1996, vol 2 at page 278.

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PART I – PRELIMINARY

1 Short title

This Act may be cited as the Dangerous Drugs Act.

2 Interpretation

“ADSU” means the Anti Drug and Smuggling Unit of the Police organised for the prevention and detection of offences in connection with dangerous drugs;

“authorised person” means a medical practitioner, a pharmacist, a dental surgeon or a veterinary surgeon, in the exercise of his profession;

“Authority” means a body or person empowered to grant import and export authorisation and diversion certificate and, in relation to Mauritius, means the Permanent Secretary acting in accordance with sections 12, 13, 14 and 15;

“bank” has the same meaning as in the Banking Act;

[Inserted 14/09]

“coca leaves” means the leaves of any plant of the genus erythroxyllaceae from which cocaine can be extracted directly or by chemical transformation;

“Commissioner” means the Commissioner appointed under section 45(8);

“container” means any wrapper or receptacle;

“controlled delivery” has the meaning assigned to it in section 55;

“Conventions” mean the United Nations 1961 Single Convention on Narcotic Drugs as amended by the Protocol of 1972 on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;

“corresponding law” means a law stated, in a certificate purporting to be issued by or on behalf of the government of any country other than Mauritius, to be a law providing for the control and regulation in that country of the manufacture, sale, use, export and import of dangerous drugs in accordance with the Conventions;

“cultivation” includes the entire process of supervising the growth of a plant, from preparation of the soil up to and including harvest;

“dangerous drug” means –

- (a) any plant or part thereof or substance listed in Schedule I, II or III;
- (b) the isomers of the listed drugs, unless specifically excepted, whenever the existence of such isomers is possible within the specific chemical designation;
- (c) the esters and ethers of the drugs listed in Schedule I, II or III, whenever their existence is possible;
- (d) the salts esters of the drugs listed in Schedule I, II or III, including the salts of ethers and isomers whenever the existence of such salts is possible;
- (e) the preparations of these substances, other than those listed in Schedule V;

“diversion certificate” means a certificate in the form prescribed, issued by the Authority;

“drug offence” means an offence under this Act;

“export” does not apply to a dangerous drug in transit in Mauritius;

“export authorisation” means an authorisation issued by the Authority in a country from which a dangerous drug is exported;

“family” , in relation to a person, means –

- (a) a spouse, concubine or paramour of that person;
- (b) his legitimate, illegitimate, natural or adopted child;

- (c) a brother or sister of that person;
- (d) the lineal ascendant or descendant of that person; or
- (e) a brother, sister, concubine or paramour of the spouse of that person;

[Repealed and replaced 29/03]

“financial institution” has the same meaning as in the Banking Act;

[Inserted 14/09]

“gandia” means bhang, babzi, siddhi and all the parts of the plant known as Cannabis Sativa L or Cannabis Indica but does not include hashish, charras or chiras;

“Government store” means any place of storage approved by the Permanent Secretary;

“hashish”, “charras” or “chiras” means the resin obtained from the cannabis plant;

“import” does not apply to a dangerous drug in transit in Mauritius;

“Indian hemp” means the dried flowering or fruiting tops of the cannabis plant from which the resin has not been extracted;

“Judge” means a Judge of the Supreme Court;

“manufacture” means the entire process of producing a substance in consumable state, including extraction, refining and transformation by chemical reaction;

“Minister” means the Minister to whom responsibility for the subject of health is assigned;

“Permanent Secretary” means the Permanent Secretary of the Ministry of Health or any officer of that Ministry to whom he has delegated any of his powers under this Act;

“possessions” –

(a) means property of any kind, nature or description, whether movable or immovable, tangible or intangible; and

(b) includes –

(i) any cash in a bank account or bank deposit, whether in a person’s own name or in a fictitious name;

(ii) any currency, whether or not the currency is legal tender in Mauritius, and any bill, security, bond, negotiable instrument or any instrument capable of being negotiated which is payable to bearer or endorsed payable to bearer, whether expressed in Mauritius currency or otherwise;

(iii) any balance held in Mauritius currency or in any other currency in accounts with any bank which carries on business in Mauritius or elsewhere;

(iv) any balance held in any currency with any bank outside Mauritius;

(v) motor vehicles, ships, aircraft, boats, works of art, jewellery, precious metals or any other item of value; and

(vi) any right or interest in property;

[Repealed and replaced 14/09]

“precursor” means any substance listed in Schedule IV;

“preparation” means –

(a) a solution or mixture, in whatever physical state, containing a dangerous drug;

(b) a dangerous drug in dosage form;

“prescription” means a prescription given by an authorised person for the supply of a dangerous drug for purposes of treatment given by him in the exercise of his profession;

“prescribed” means prescribed by regulations made under section 60;

“production” includes manufacture, processing, testing, mixing, dilution, cutting, packing and labelling;

“raw opium” means the spontaneously coagulated juice obtained from capsules of the *Papaver Somniferum* L whatever its content of morphine, which has been submitted only to the manipulations necessary for packing and transport;

“recipient” means a person to whom a dangerous drug is to be supplied.

3 Classification of dangerous drugs

(1) Each of the dangerous drugs to which this Act applies is listed in either Schedule I, II or III and different measures of control are specified in this Act according to the classification so adopted, dependent upon the degree of seriousness of the risk to public health of each such dangerous drug and the presence or otherwise of a medical use for it.

(2) All substances used in the manufacture of narcotic drugs and psychotropic substances as classified by the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, or otherwise, are included as precursors in Schedule IV.

(3) Plants and substances are included in the appropriate Schedule under their respective international non-proprietary names, or, lacking such a name, under their chemical names.

(4) Solid or liquid mixtures containing one or more substances governed by this Act, when divided into dosage units, are deemed to be preparations of dangerous drugs and subject to the same conditions as the substances they contain and preparations containing 2 or more substances subject to different conditions shall be subject to those conditions governing the most strictly controlled of their constituent substances.

(5) The Minister may, by regulations under section 60, exempt preparations containing a substance listed in Schedule II, III or IV from such measure of control provided in this Act as may be specified in those regulations, when he is satisfied that those preparations are so compounded as to present no or no significant risk of abuse and that the substance cannot be readily recovered from them in a quantity sufficient to present such a risk.

4 Reference to the Pharmacy Act

The substances listed in Schedules II and III and their preparations shall be subject, in addition, to this Act, to the provisions of the Pharmacy Act to the extent that such provisions are consistent with those contained in this Act.

PART II – CONTROL OF DANGEROUS DRUGS

5 Cultivation

(1) No person shall cultivate the opium poppy, coca bush or cannabis plant.

(2) A police officer may uproot or otherwise destroy any opium poppy, coca bush or cannabis plant found growing upon any land held or occupied under any title whatever and may take and remove samples for analysis and safe keeping as specified in section 58.

6 Prohibition of substances and preparations listed in Schedule I

Subject to section 7, no person shall at any time produce, manufacture, trade by wholesale or retail, distribute, transport, possess, supply, transfer (free or for payment), purchase, use, import, export or transit across Mauritius any of the plants, substances and preparations listed in Schedule I.

7 Medical or scientific research or teaching

(1) For the purposes of medical or scientific research or teaching or the use of the forensic science services, the Permanent Secretary may authorise a person to cultivate, produce, manufacture, acquire, import, use or hold plants, substances and preparations listed in Schedules I, II and III in quantities not exceeding those strictly required for the purpose in question.

(2) Any person authorised under subsection (1) shall keep a register in which he shall enter –

- (a) the quantities of listed plants, substances, preparations which he respectively imports, acquires, manufactures and destroys;
- (b) the date or dates of each such operation, together with the names of his respective suppliers.

(3) Any person so authorised shall furnish the Permanent Secretary with an annual report as to the quantities which he has used or destroyed during the preceding year and the quantities which he holds in stock.

(4) Every register maintained under subsection (2) shall be so maintained for a period of 5 years following the making of the last entry therein.

8 Licensing of substances and preparations listed in Schedules II and III

(1) Subject to subsection (2), no person shall cultivate, produce, manufacture, trade by wholesale or retail, distribute, or use any of the plants, substances and preparations listed in Schedules II and III unless he is expressly licensed for that purpose, and no person shall do so at any establishment or on any premises not expressly licensed for that purpose.

(2) Subsection (1) shall not apply to State owned enterprises specially authorised in writing by the Minister or to their employees acting in that capacity.

(3) (a) Any person who wishes to engage in the operations mentioned in subsection (1), shall make an application on the prescribed form to the Permanent Secretary.

(b) The Permanent Secretary shall, on receipt of an application, verify the character and professional qualifications of the applicant and of any person responsible for carrying out the obligations laid down in this Act and in the licence and may, subject to subsections (2) and (6), grant the licence.

(c) A licence issued under this subsection shall indicate the substances and preparations involved in the authorised activity, the quantities that may be involved, the form of bookkeeping required, and all other obligations which the licensee must fulfill.

(4) (a) Any person who wishes to use all or part of the establishments and premises of licensed private enterprises or specially authorised State enterprises for the production, manufacture, wholesale trading and distribution, international trading, or use of the plants, substances and preparations listed in Schedules II and III, shall make an application on the prescribed form to the Permanent Secretary.

(b) The Permanent Secretary may, on receipt of an application and after verifying that the establishments and premises, or parts thereof to be used, comply with the security standards established by the Ministry of Health, grant the licence.

(5) Every licence issued under this section shall indicate upon its face its period of validity.

(6) The Permanent Secretary may revoke or suspend a licence for any period not exceeding 6 months, in the event of irregularities in the exercise of the authorised activity, of particular breaches of the obligations laid down in the licence or of negligence on the part of the staff, or if the relevant application for the licence contained an inaccurate statement of fact.

(7) No licence shall be issued to any person convicted of an offence under this Act and any licence purporting to be issued to such a person shall be null and void.

(8) Where any person who has been issued with a licence under this section is convicted of an offence under this Act, the Permanent Secretary shall forthwith withdraw and cancel the licence.

(9) Where any person who has been issued with a licence under this section is charged with an offence under this Act, the Permanent Secretary may in his discretion, suspend the operation of the licence until the final determination of the charge by a Court of law.

9 Dangerous Drugs Tribunal

(1) Where the Permanent Secretary has reason to suspect that an authorised person is supplying to or prescribing for any person a dangerous drug otherwise than is properly required

or in excess of the amount that is properly required for the medical or dental treatment of that person or the veterinary treatment of an animal, he may, notwithstanding any other provisions of this Act, refer the matter for inquiry to an *ad hoc* Dangerous Drugs Tribunal.

(2) The Tribunal referred to in subsection (1) shall consist of a Chairman who shall be a Barrister at Law and –

- (a) 3 other medical practitioners, where the authorised person is a medical practitioner;
- (b) 3 other dental surgeons, where the authorised person is a dental surgeon;
- (c) 3 other veterinary surgeons, where the authorised person is a veterinary surgeon;
- or
- (d) 3 other pharmacists, where the authorised person is a pharmacist.

(3) The members of the Tribunal shall be appointed by the Minister on such terms and conditions as he thinks fit.

(4) The Tribunal shall have all the powers of the Supreme Court to summon and examine witnesses on oath and to order the production of documents or other articles in evidence.

(5) The Tribunal, having considered any matter referred to it under subsection (1), shall make its recommendation to the Minister.

(6) The Minister may, on the recommendation of the Tribunal –

- (a) withdraw the authority of the authorised person to supply, procure or be in possession of any dangerous drugs; and
- (b) direct that no prescription containing a dangerous drug shall be issued by that authorised person.

(7) Notice of any withdrawal of authority or direction under subsection (6) shall be published in the *Gazette*.

10 Limitation on stocks

(1) On or before 31 December each year, the Permanent Secretary shall, in the light of the prevailing market conditions, lay down the maximum quantities of the various substances and preparations that each licensed private enterprise and specially authorised State owned enterprise under this Part may manufacture or stock, during the following year, as required for the normal conduct of its business.

(2) The Permanent Secretary may at any time alter the limits laid down by him in accordance with subsection (1), and shall promptly notify each licensee in writing of the limits applicable to it under subsection (1) or, as the case may be, under this subsection.

(3) The Permanent Secretary may, where he is satisfied that a person authorised to stock a dangerous drug holds a quantity in excess of his annual entitlement, requisition the surplus quantity of the drug upon payment of an amount not less than the amount paid to acquire the drug.

11 Safety measures

Every person authorised under this Act to hold dangerous drugs shall take such safety measures as are necessary for the storage and transport of the drugs, in order to prevent theft or any other form of diversion or loss.

12 Import and export

(1) Any person who exports or imports dangerous drugs shall apply for separate authorisation from the Permanent Secretary on a standard form established by the Commission on Narcotic Drugs of the United Nations Economic and Social Council as specified in regulations made under section 60.

(2) (a) An application for authorisation shall indicate –

- (i) the nature of the operation envisaged;
- (ii) the names and addresses of the importer and exporter and, if known, those of the consignee;

(iii) the international non-proprietary name of each substance or, failing this, the name of the substance in the Schedules, the pharmaceutical form and, in the case of a preparation, its name if it has one, the quantity of each substance and preparation involved in the operation, the period during which the operation shall take place, the mode of transport or shipment to be used, and the point of entry into, or of departure from, Mauritius.

(b) The import certificate issued by the Government of the importing country or territory shall be attached to every application for export.

(3) (a) An import or export authorisation shall contain the same details as the relevant application regarding the operation that it permits.

(b) The import authorisation shall specify whether the import is to be effected in a single consignment or may be effected in more than one consignment.

(c) The export authorisation shall also indicate the number and date of the import certificate, affirming that the import of the substance or the preparation has been authorised.

(4) After an imported consignment has entered Mauritius or when the period stipulated in the import authorisation has expired, the Permanent Secretary shall send the export authorisation to the Government of the exporting country or territory, with an endorsement specifying the quantity of each plant, substance and preparation actually imported.

(5) Every dangerous drug shall –

(a) on importation, be kept at a Government store at the risk and expense of the importer;

(b) be delivered or taken from the Government store only on production by and in the presence of the authorised person, of a delivery permit signed by the Permanent Secretary in the form prescribed.

(6) Any commercial document, such as an invoice, a cargo manifest or a customs, transport or other shipping document, shall include the names of the plants and substances listed in the Schedules, the names of the preparations, if they have one, the quantities exported from Mauritius or to be imported into it, and the name and address of the exporter, the importer and, where available, the consignee.

(7) Any consignment entering or leaving Mauritius shall –

(a) be detained by the Customs authorities until the legitimacy of the consignment is confirmed or until a Court orders its forfeiture, where it is not accompanied by a proper export or import authorisation; and

(b) be seized where no export or import authorisation has been granted.

13 Drugs in transit

(1) Subject to subsection (5), no person shall bring any dangerous drug to Mauritius in transit, unless the dangerous drug is accompanied by valid export and import authorisations.

(2) Where a dangerous drug in transit is accompanied by an export authorisation or diversion certificate and the Permanent Secretary has reasonable grounds to believe that the authorisation or certificate is false or has been obtained by fraud or wilful misrepresentation of a material particular, he may seize and detain the dangerous drug to which the authorisation or certificate relates.

(3) The Permanent Secretary shall, on being satisfied that the export authorisation or diversion certificate is valid, release any dangerous drug detained under subsection (2).

(4) Where a dangerous drug brought in transit is landed or transshipped in Mauritius, it shall remain under the control of the Permanent Secretary and be kept in a Government store.

(5) Subsection (1) shall not apply to a dangerous drug in transit by post or to any dangerous drug bona fide forming part of the medical stores of any ship or aircraft.

14 Interference with dangerous drugs in transit

No person shall –

- (a) cause a dangerous drug lawfully in transit to be subjected to any process which could alter its nature;
- (b) wilfully open or break any package or container containing any dangerous drug lawfully in transit,

otherwise than in accordance with instructions issued by the Permanent Secretary.

15 Diversion certificates

(1) The Permanent Secretary may, upon production to him of a valid import authorisation issued by an Authority in the country to which it is proposed to divert a dangerous drug, issue a diversion certificate in respect of a dangerous drug in transit.

- (2) A diversion certificate shall be in duplicate and –
 - (a) one copy shall accompany the dangerous drug when it is sent from Mauritius; and
 - (b) the other copy shall be forwarded by the Permanent Secretary to the Authority in the country to which the consignment has been diverted.

(3) On the issue of a diversion certificate, any person holding the export authorisation or diversion certificate accompanying the dangerous drug on its arrival in Mauritius shall remit it to the Permanent Secretary who shall return it to the Authority issuing it together with notice of the name of the country to which the consignment has been diverted.

(4) No person shall, except under the authority of a diversion certificate, cause or procure any dangerous drug lawfully brought in transit to be diverted to any destination other than that to which it was originally consigned.

16 Free trade zones and free ports

Notwithstanding the provisions of any other enactment, all free ports and free trade zones shall be subject to the same control and supervision under the provisions of this Act as other parts of Mauritius.

17 Supply of drugs to an authorised person

(1) Every authorised person who requires a supply of a dangerous drug shall make an application to the supplier in a form approved by the Permanent Secretary in triplicate.

- (2) Where a supplier receives an application under subsection (1), he shall –
 - (a) endorse the original and each copy with –
 - (i) a serial number corresponding to the relevant entry made in the Prescriptions Book kept under the Pharmacy Act; and
 - (ii) a statement of the amount of any dangerous drug actually supplied by him;
 - (b) deliver the original and a copy with the dangerous drug to the recipient who shall complete both the original and the copy and return the original to the supplier.
- (3) Every original and every copy of an application furnished under this section shall be –
 - (a) serially numbered for each year; and
 - (b) kept by the supplier and the recipient for inspection purposes.

(4) No pharmacist shall dispense, prepare, supply or cause to be dispensed, prepared or supplied any dangerous drug under a prescription issued by an authorised person in respect of whom a direction has been given in accordance with section 9(6)(b).

18 Prescription of drugs by authorised persons

(1) Subject to subsection (3), an authorised person who prescribes a dangerous drug shall –

- (a) handwrite the prescription, date and sign it;
- (b) give his name and address;
- (c) give the name and address of the person for whom the dangerous drug is prescribed, or, where it is given by a veterinary surgeon, of the person to whom the dangerous drug prescribed is to be delivered;

- (d) where he is a dentist, write the words "FOR LOCAL DENTAL TREATMENT ONLY", or where he is a veterinary surgeon, write the words "FOR ANIMAL TREATMENT ONLY"; and
- (e) specify in figures and words the total amount of the dangerous drug to be supplied, or, where the dangerous drug is packed in ampoules, either the total amount to be supplied or the total amount intended to be administered or injected.

(2) No authorised person shall issue a prescription for the supply of a dangerous drug to himself or for his own use.

(3) No authorised person shall, otherwise than on prescribed forms, prescribe the dangerous drugs listed in Schedule II and such other dangerous drugs listed in Schedule III as may be specified in regulations.

(4) No authorised person shall prescribe any dangerous drug –

- (a) for a period of treatment exceeding 10 days –
 - (i) in the case of drugs listed in Schedule II; and
 - (ii) in the case of such of the drugs listed in Schedule III as may be prescribed;
- (b) for a period of treatment exceeding one month in the case of all other dangerous drugs listed in Schedule III.

19 Supply of drugs on prescription

(1) No person shall supply a dangerous drug on prescription unless –

- (a) the prescription complies with section 18;
- (b) he has taken such reasonable steps as may be necessary to ascertain that the prescription is genuine;
- (c) the prescription is presented for dispensing not later than 7 days after the date of the prescription.

(2) No person shall supply a dangerous drug more than once on a prescription.

(3) Every person dispensing a dangerous drug on prescription shall –

- (a) at the time of dispensing, mark on the prescription the date on which it is dispensed;
- (b) keep the prescription on the premises where the dangerous drug prescribed has been dispensed;
- (c) deliver to the person for whose use the dangerous drug was supplied or to his agent a copy of the prescription bearing –
 - (i) the serial number of the prescription;
 - (ii) the date on which the prescription was dispensed;
 - (iii) the stamp of the pharmacy; and
- (d) forthwith notify the Permanent Secretary of any suspect prescription, specifically as regards the quantity of dangerous drugs prescribed and the repetition of any such prescriptions.

20 Packaging and labelling

(1) Subject to subsection (2), no person shall supply a dangerous drug otherwise than in a container labelled –

- (a) in the case of a powder, solution or ointment, with the total quantity of the dangerous drug supplied and the percentage of the dangerous drug contained in it;
- (b) in the case of tablets and other articles, with the total quantity of the dangerous drug contained in the tablet or article;
- (c) in the case of substances and preparations listed in Schedule II, a double red band.

(2) Subsection (1) shall not apply to a dangerous drug dispensed by, or on the prescription of, a medical practitioner, dental surgeon or veterinary surgeon.

(3) The outer wrapping of parcels for consignment containing dangerous drugs shall bear no information other than the names and addresses of the sender and the consignee and shall be sealed with the sender's mark.

21 Possession of drugs

(1) No person shall possess any dangerous drug unless he is authorised to do so under this Act.

(2) A person shall be deemed to possess a dangerous drug if it is in his custody or is held by another person subject to his control, or on his behalf, or if it is in or upon enclosed premises or a vehicle, boat or aircraft which is for the time being subject to his control.

(3) Subject to subsection (4), a person to whom a dangerous drug is lawfully supplied for his own use shall be deemed to be a person authorised to possess the drug so supplied.

(4) Where a dangerous drug is supplied or prescribed by an authorised person for a patient and is also being supplied to the same patient by another authorised person, the patient shall not be deemed to be a person authorised to be in possession of any of those dangerous drugs unless the patient disclosed to the first-mentioned authorised person that he was already being supplied with the dangerous drug by that other authorised person.

(5) An authorised person, any person employed or engaged in dispensing medicines at a hospital or any person in charge of any laboratory attached to a college, hospital or other institution approved by the Minister for purposes of research or instruction, may possess such dangerous drugs so as may be necessary for the practice of his profession or employment.

22 International carriers

The Minister may authorise ships, aircraft and other public transport conveyances registered in Mauritius and engaged in international travel to carry small quantities of medicines listed in Schedules II and III within the limits required for the provision of first aid in emergency cases.

23 Keeping of registers

- (1) Subject to section 24, every person who supplies a dangerous drug shall –
- (a) keep a register in which entries shall be made by him or by a person under his control concerning every supply of a dangerous drug purchased or otherwise obtained by him and every transaction effected by him with respect to a dangerous drug;
 - (b) make an entry in the register –
 - (i) in respect of a dangerous drug obtained by him, on the day the dangerous drug is received;
 - (ii) in respect of any sale or supply by him of a dangerous drug, on the day on which the transaction is effected;
 - (c) where he carries on business at more than one set of premises, keep a separate register in respect of each set of premises;
 - (d) keep the register in the part of the premises to which it relates;
 - (e) make every entry in chronological sequence in ink;
 - (f) make no correction of any entry otherwise than by a marginal note or footnote initialled and dated by him, giving the particulars of the correction;
 - (g) on or before 15 January in every year furnish the Permanent Secretary with a statement in the prescribed form containing all information respecting any dangerous drug delivered to him or obtained from him and the stock of dangerous drugs during the preceding year; and
 - (h) on request, give to the Permanent Secretary such particulars of his stock of dangerous drugs or of any transaction involving a dangerous drug as the Permanent Secretary may require.
- (2) A register kept under subsection (1) shall –
- (a) be in the prescribed form;

- (b) have every page numbered serially.
- (3) No entry in a register shall be cancelled, obliterated or altered.
- (4) Every entry made under subsection (1) shall be expressed –
 - (a) in the case of a solid, in grammes;
 - (b) in the case of a powder, solution or ointment, in terms of the total quantity of the dangerous drugs supplied and the percentage of the dangerous drug contained in it;
 - (c) in the case of tablets and other articles, in terms of the total quantity of the dangerous drugs contained in the tablet or article; and
 - (d) in the case of a liquid, in millilitres.
- (5) A separate register may, with the approval of the Permanent Secretary, be kept for each branch of any business relating to the sale and supply of dangerous drugs.

24 Books of medical practitioner or pharmacist

- (1) Section 23 shall not apply to –
 - (a) a medical practitioner who enters –
 - (i) in a day book particulars of every dangerous drug obtained by him and of every dangerous drug supplied by him together with the name and address of the person to whom and the date on which the dangerous drug is supplied; and
 - (ii) on the same date as the entry in the day book, in a separate book particulars of any dangerous drug obtained by him and a reference for easy identification of each entry in the day book which relates to the supply of a dangerous drug;
 - (b) a pharmacist retailing poisons who on the same date as he makes an entry in the poisons register kept by him under the Pharmacy Act enters in a day book kept for the purpose, particulars of every dangerous drug supplied by him and a reference for easy identification of each corresponding entry in the Poisons Register.
- (2) Every reference made in a separate book under subsection (1) shall be in chronological order and the book shall be divided into separate parts relating to each category of dangerous drugs and shall be used only for the purposes of subsection (1).
- (3) Every entry in a day book or separate book under this section shall be made –
 - (a) on the same day and in the same manner as an entry would otherwise have been made in the register kept under section 23; and
 - (b) in chronological order in ink.
- (4) No entry made under this section shall be cancelled, obliterated or altered.

25 Records

- (1) Every register kept under section 23, every separate book or day book kept under section 24, and every Poisons Register containing an entry to which reference is made in the separate book, shall –
 - (a) be kept on the premises to which such register or book relates or where the prescription was dispensed; and
 - (b) be available for inspection at all times.
- (2) Every person who supplies dangerous drugs shall, on 30 June and 31 December in every year –
 - (a) check his stock of dangerous drugs and balance each register kept under section 23; and
 - (b) forthwith report to the Permanent Secretary any discrepancy found to exist as a result of such check.

26 Retention of documents

Every document required to be obtained or kept under this Act shall be preserved –

- (a) in the case of a register, book or other like record, for 5 years from the date on which the last entry is made in it; and
- (b) in the case of any other document, for 5 years from the date on which it is issued or made.

27 Provisions applicable to Schedule IV substances (precursors)

(1) The manufacture, wholesale trading or distribution except for distribution by retail, and international trading of substances listed in Schedule IV shall be subject to the provisions of sections 8 and 12.

(2) An export or import authorisation shall not be granted for a substance listed in Schedule IV if there are reasonable grounds to suspect that the consignment is destined for the illicit manufacture of dangerous drugs.

(3) Any manufacturer, importer, exporter, wholesaler and retailer shall enter in a register any acquisition or transfer of substances listed in Schedule IV, at the time of acquisition or transfer without blank spaces, erasures or overwriting, so as to indicate the date of the operation, the name and the quantity of the product acquired or transferred, and the name, address and profession of both the purchaser and the vendor, except that retailers need not enter the name of the purchaser in the register.

(4) The registers maintained under this section shall be kept for 5 years after the last entry, for presentation, whenever requested, to the Permanent Secretary.

(5) Any manufacturer, importer, exporter, wholesaler and retailer shall forthwith notify the Permanent Secretary of any suspect orders and operations, specifically as regards the quantity of the substance purchased or ordered, the repetition of such orders and purchases, or the modes of payment or transport used in connection therewith.

(6) Where there is serious ground to warrant the suspicion that a substance listed in Schedule IV is to be used in the unlawful manufacture of a dangerous drug, any police officer acting upon the written authority of the Permanent Secretary may forthwith seize and impound that substance and may detain it until a competent court gives further directions as to its disposition.

28 Inspection

Any person or establishment licensed under this Act shall be subject to inspections carried out, at least every 2 years, in accordance with the provisions of the Pharmacy Act.

PART III – OFFENCES

29 Penalty for unlawful activities

(1) Any person who –
(a) contravenes any provision of Part II; or
(b) obstructs a public officer carrying out his functions under this Act,
shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 15 years.

[Amended 30/08 (P 6/09)]

(2) Any person who –
(a) in Mauritius aids, abets, counsels or procures the commission in any place outside Mauritius of an offence, which if committed in Mauritius would be an offence against this Act and which is punishable under any corresponding law in force in that place;
(b) in any place outside Mauritius does any act preparatory to or in furtherance of the commission in Mauritius of an offence against this Act,
shall commit an offence and shall on conviction be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 15 years.

[Amended 30/08 (P 6/09)]

30 Drug dealing offences

- (1) Any person who unlawfully –
- (a) organises, manages, or finances any of the offences specified in this section;
 - (b) imports, exports, causes to be imported or exported, aids, abets, counsels or procures the importation or exportation of any dangerous drug;
 - (c) produces, manufactures, extracts, prepares or transforms any dangerous drug;
 - (d) offers, offers for sale, distributes, sells, brokers, delivers or transports on any terms whatsoever, dispatches, or dispatches in transit any dangerous drug;
 - (e) cultivates opium poppy, coca bush or cannabis plant;
 - (f) possesses, purchases or offers to purchase any dangerous drug for the purpose of any activity in this section,

shall commit an offence and shall, on conviction, be liable –

- (i) where the offence is in respect of a dangerous drug specified in Part I of Schedule I, Schedule II or Schedule III, to a fine not exceeding one million rupees and to penal servitude for a term not exceeding 25 years;
[Amended 30/08 (P 6/09)]
- (ii) where the offence is in respect of a dangerous drug specified in Part II of Schedule I, to a fine not exceeding one million rupees together with penal servitude for a term which shall not be less than 5 years and not more than 25 years.
[Amended 30/08 (P 6/09)]

(2) Nothing in this section shall render unlawful the act of a police officer, in the execution of his duty for the detection of offences, in offering to buy any dangerous drug.

(3) Where on the trial of a person charged with an offence under subsection(1)(f), it is proved that the possession, purchase or offer to purchase, as the case may be, was not for the purpose of any of the activity specified in subsection (1), he shall not by reason thereof be acquitted but the Court may find such person guilty of an offence of possession, purchase or offer to purchase, as the case may be, under section 34(1)(b).

[Added 29/03]

31 Detention for drug dealing

(1) Where any person is arrested under reasonable suspicion of having committed any offence under section 30, 33, 35, 36, 38 or 39, a police officer not below the rank of superintendent of police may, subject to this section, direct that the person arrested be detained in police custody for a period not exceeding 36 hours from his arrest, without having access to any person other than a police officer not below the rank of inspector or a Government Medical Officer and, in any such case, that person shall be detained accordingly.

(2) No direction under subsection (1) shall be issued unless the police officer has reasonable grounds to believe that giving access to any person other than the police officer not below the rank of inspector or the Government Medical Officer specified in that subsection –

- (a) will lead to interference with or harm to evidence connected with an offence under section 30 or 39 or interference with or physical injury to other persons; or
- (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the recovery of property obtained as a result of such an offence; or
- (d) will hinder the recovery of the value of the detained person's proceeds of drug trafficking.

(3) As soon as a direction is issued under subsection (1), the person detained shall be informed that he may, if he so wishes, be examined by a Government Medical Officer.

(4) A custody record containing the information specified in Schedule VI to this Act shall be kept in respect of any person detained pursuant to the powers conferred by this section.

(5) A video recording shall be kept in the manner specified in Schedule VII to this Act in respect of any person detained pursuant to the powers conferred by this section.

(6) A video recording under this section shall, notwithstanding the common law rule against hearsay, be admissible in evidence in the course of any judicial proceedings to the same extent and in the same manner as documentary evidence would be admissible.

(7) In this section, "video recording" includes the recording of visual images or sound by electronic or other technological means.

32 – [Repealed 30/08 (P 6/09)]

33 Precursors, materials and equipments

Any person who unlawfully produces, manufactures, imports, exports, transports, offers, sells, distributes, delivers on any terms whatsoever, consigns, dispatches, purchases or offers to purchase or holds precursors, equipment or materials –

- (a) for the purpose of using them in or for the unlawful cultivation, production or manufacture of dangerous drugs; or
- (b) knowing that the precursors, equipment and materials are to be used for any of the purposes specified in paragraph (a),

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 15 years.

[Amended 30/08 (P 6/09)]

34 Unlawful use of drugs

- (1) Any person who unlawfully –
 - (a) smokes, inhales, sniffs, consumes or administers to himself or any other person, in any way whatsoever, any dangerous drug;
 - (b) possesses, purchases, offered to purchase or transports any dangerous drug;
 - (c) has in his possession any pipe, syringe, utensil, apparatus or other article for use in connection with smoking, inhaling, sniffing, consuming or the administration of any dangerous drug,

shall commit an offence and shall, on conviction, and subject to subsections (2) and (5), be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years.

(2) Subject to subsection (5), before passing a sentence of imprisonment under subsection (1), the Court, where it considers this to be appropriate, explain to the convicted person that, if he undertakes to co-operate in order to be cured of his addiction, the Court, instead of sentencing him to imprisonment, may order him to undergo, at such institution as may be prescribed and for such period not exceeding 3 years as the Court may determine, such treatment, education, after care, rehabilitation or social reintegration as the Court thinks appropriate and if he so undertakes, the Court may order accordingly.

[cp GN 10/05]

- (3) (a) Where the Court is satisfied that an order made under subsection (2) has been complied with, the Court shall discharge the offender.
- (b) Where a person fails to comply with an order made by the Court under subsection (2), he shall commit an offence and shall be liable to a fine which shall not exceed 10,000 rupees and to imprisonment for a term which shall not exceed one year.

(4) The person in charge of the relevant institution prescribed for the purposes of subsection (2) shall notify a police officer attached to the Anti-Drug and Smuggling Unit of any persistent failure by any person subject to an order under subsection (2) to comply with the terms of that order.

(5) Notwithstanding subsection (2), a person convicted of an offence under subsection (1)(b) and found to have purchased, offered to purchase, transported or been in possession of any dangerous drugs -

- (a) listed in Part I of Schedule I, Schedule II or Schedule III, the street value of which is 5,000 rupees or more; or
[Amended 30/08 (P 6/09)]
- (b) listed in Part II of Schedule I, the street value of which is 10,000 rupees or more,

shall be liable to double the maximum penalties specified in respect of that offence under subsection (1).

[Repealed and replaced 29/03]

35 Offering or selling for personal consumption

(1) Any person who unlawfully offers, offers to buy, sells, offers to sell, distributes or offers to distribute any dangerous drug to a person for his personal consumption shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 15 years.

[Repealed and replaced 30/08 (P 6/09)]

(2) Nothing in this section shall render unlawful the act of a police officer in the execution of his duty for the detection of offences, in offering to buy any dangerous drug.

36 Facilitating or permitting drug offences

Any person who unlawfully –

- (a) facilitates for any other person the unlawful use of dangerous drugs, against payment or free of charge, either by procuring premises for that purpose or by any other means or while being a proprietor, manager, director, operator, on any terms whatsoever, of a hotel, furnished house, boarding house, drinking establishment, restaurant, club, society, dancing hall, entertainment hall or any other premises whatsoever open to the public or used by the public, connives at or permits the use of dangerous drugs in the said establishment or premises;
- (b) prescribes dangerous drugs as acts of complaisance, that is to say in the absence of any genuine belief that such a prescription is necessary or desirable in the interests of the health of the person for whom they are prescribed;
- (c) issues dangerous drugs on presentation of a prescription knowing the fictitious or complaisant nature of any such prescription;
- (d) obtains delivery or supply of dangerous drugs or who attempts to have such drugs delivered or supplied to him by means of a prescription of fictitious or complaisant nature;
- (e) administers to, or adds to the food or beverages of, a person without his knowledge, dangerous drugs;
- (f) knowingly or negligently permits premises of which he is the owner or which are under his occupation, management or charge to be used –
 - (i) for concealing or storing any dangerous drug;
 - (ii) for preparing or manufacturing any dangerous drug; or
 - (iii) for the sale of any dangerous drug;
- (g) knowingly or negligently permits any land of which he is owner or which is under his occupation, management or charge, to be planted with opium poppy, coca bush or cannabis plant,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 15 years.

[Amended 30/08 (P 6/09)]

37 Making a false declaration

Any person who for the purposes of obtaining for himself or for any person the issue, grant or renewal under this Act of a permit, licence, certificate or authorisation or for any other purpose relevant to this Act –

- (a) knowingly or recklessly makes a declaration or statement which is false or misleading in any material particular; or
- (b) knowingly utters, produces or makes use of any such declaration or statement or any document containing the same,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 10 years.

[Amended 30/08 (P 6/09)]

38 Incitement to drug offences and unlawful use

Any person who unlawfully –

- (a) by any means whatsoever, directly or indirectly incites others to commit any of the offences specified in this Act, even when such incitement is without effect;
- (b) by any means whatsoever, directly or indirectly incites others to make unlawful use of dangerous drugs or of substances presented as having the effects of such drugs,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 15 years.

[Amended 30/08 (P 6/09)]

39 Money Laundering

(1) Every person who unlawfully –

- (a) acquires, possesses, uses, converts or transfers goods, resources or rights thereto derived or realised, in whole or in part, directly or indirectly, from any offence under this Act;
- (b) conceals or disguises the genuine nature, origin, location, disposition, movement or ownership of the goods, resources or rights thereto derived or realised, in whole or in part, directly or indirectly, from any offence under this Act,

where he suspects or has reasonable grounds for suspecting that the goods, resources or rights thereto are derived or realised, in whole or in part, directly or indirectly, from any offence under this Act, shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 20 years.

(2) A person may be convicted for an offence under this section notwithstanding the absence of a conviction in respect of an offence under this Act, which generated the goods, resources or rights thereto alleged to have been laundered.

(3) In this section, “goods” or “resources” includes possessions.

[Repealed and replaced 14/09]

40 Driving while under the influence of a dangerous drug

(1) Any person who drives a motor-powered land vehicle, steers a motor-powered marine craft or flies a motor-powered aircraft while under the influence of a dangerous drug which he has used in an unlawful manner, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees or to a term of imprisonment not exceeding 5 years.

(2) Where an offence under subsection (1) results in death of or serious injury to any other person, the person convicted thereof shall be liable to double the maximum penalties specified in subsection (1).

(3) Any person who refuses to submit to such detection tests and verification procedures as may be prescribed in respect of any offence under subsection (1), shall commit an offence and shall, on conviction, be liable to the same penalties as those specified in subsection (1) or (2).

41 Aggravating circumstances

(1) For the purposes of this section, aggravating circumstances shall be deemed to exist whenever –

- (a) the offender belongs to a criminal organisation or ring;
- (b) he participated in other unlawful activities facilitated by commission of the offence;
- (c) he used violence or a weapon in its commission;
- (d) he held public office and committed the offence in the purported exercise of that office;
- (e) he was a medical practitioner, nurse, dental surgeon, veterinary surgeon or a person responsible for combatting the abuse of or traffic in dangerous drugs;
- (f) another person under the age of 18 years was concerned in the offence;
- (g) the drug was offered or delivered to a person under the age of 18 years or to a mentally handicapped person, or a person undergoing treatment involving withdrawal from drug abuse;
- (h) the drugs delivered caused death or serious injury to health of some person;
- (i) the offence was committed in a penal institution, a police establishment, a school, university or teaching institution, a hospital or clinic, a place of resort used by school children or students for social or recreational purposes or in the immediate vicinity of any such institution, establishment or place;
- (j) the offender mixed with the drugs additional substances which aggravated their dangers to health;
- (k) the offender was previously convicted, either in Mauritius or elsewhere, of an offence connected with dangerous drugs.

(2) Any person who is convicted of an offence under section 29(2), 30, 33, 34, 35, 36, 37, 38 or 39 shall, if aggravating circumstances exist, be liable to double the penalties specified in respect of that offence.

[Amended 30/08 (P 6/09); 36/08]

(3) Notwithstanding subsection (2), any person convicted of an offence under section 29(2) or 30 shall be sentenced to a fine not exceeding 2 million rupees together with penal servitude for a term not exceeding 60 years where it is averred and proved that, having regard to all the circumstances of the case, the person was a drug trafficker.

[Amended 6/07 (P 7/07); 30/08 (P 6/09)]

(4) Without prejudice to the generality of subsection (3), a person shall be deemed to be a drug trafficker where the street value of the drugs, the subject-matter of the offence, exceeds one million rupees or such other value as may be prescribed.

42 Giving false statements or false evidence

(1) Any person who, in connection with any drug offence or for any other purpose relevant to this Act –

- (a) knowingly or recklessly makes a declaration or statement which is false or misleading;
- (b) knowingly produces or makes use of any declaration or document which is false or misleading;
- (c) causes a person, whether directly or indirectly, to make a declaration or statement which is wholly or partly false or misleading;
- (d) causes a person to alter the content of a previous statement or declaration with a view to avoiding the prosecution of another person,

shall commit an offence.

(2) Any person who, in relation to a drug offence –

- (a) gives false or misleading evidence in court;
- (b) causes threats or inducement, or persuades or influences, any witness to give false or misleading evidence in court,

shall commit an offence.

(3) Any person who, whether personally or through another person and in relation to a drug offence, threatens or interferes with a witness or any other person related to the witness, shall commit an offence.

(4) Any person convicted of an offence under subsection (1), (2), or (3) shall be liable to a fine of not less than 10,000 rupees and not exceeding 100,000 rupees together with a term of imprisonment of not less than 2 years and not more than 10 years.

43 Exemption and mitigation of penalties

(1) Any person who has been convicted of a conspiracy to commit any of the offences under section 29(2), 30, 33, 34, 35, 36, 37, 38 or 39 shall be exempted from penalty and absolutely discharged if, having revealed the conspiracy to the police or to a Court, he has made it possible to prevent the commission of the offence and to identify the other persons involved in the conspiracy.

[Amended 30/08 (P 6/09)]

(2) Notwithstanding section 41, the penalty incurred by any person convicted of an offence under that section shall be reduced in such manner as the court thinks just where that person has, before any proceedings, made possible or facilitated the identification of the other guilty persons, or who, after the commencement of proceedings, has made possible or facilitated the arrest of such persons.

44 Additional penalties

A Court which convicts any person of an offence under section 40 may, in addition to any penalty prescribed by that section –

- (a) in the case of a convicted person who is not deemed to belong to Mauritius under the Deportation Act, recommend to the Minister responsible for internal security that he be deported from Mauritius and that Minister may in any such case, without further enquiry, make a deportation order in his case under that Act;
- (b) order that the convicted person be prohibited, for any period not exceeding 10 years after his release from any term of imprisonment imposed upon him, from driving any motor-powered land vehicle, steering any motor-powered marine craft or flying any motor-powered aircraft and, in any such case, direct that any relevant licence or permit issued to the convicted person be impounded or suspended.

45 Inquiry and forfeiture by court

(1) Where a person is brought before any Court on a provisional or formal charge in respect of an offence under section 30 or 39 of this Act, the Court -

- (a) shall order that the person charged shall not dispose of any of his assets or make any withdrawals from any account or deposit at any bank or financial institution until -
 - (i) he shall have been acquitted of that offence;
 - (ii) if convicted of the offence, the Supreme Court shall have made or refused to make an order under subsection (10); or
 - (iii) the Court shall have, on good cause shown, revoked or modified its order under this subsection;
- (b) may order the person charged to file with the Court, within a delay to be specified by the Court, an affidavit setting out all his assets and disclosing all his accounts and deposits at any bank or financial institution.

[Repealed and replaced 29/03]

(2) (a) Where a court makes an order under subsection (1), the Director of Public Prosecutions shall thereupon –

- (i) give public notice of the order in the *Gazette* and in not less than 2 daily newspapers;
- (ii) give notice of the order to all notaries and to the head offices in Mauritius of all registered banks and financial institutions.

- (b) Where any notice has been published under paragraph (a) –
 - (i) any notary who draws up any deed to witness a transaction involving contravention of the order made under subsection (1); and
 - (ii) any bank or financial institution which allows any withdrawal to be made from any account or deposit involving such a contravention,

shall commit an offence and shall on conviction, be liable to a fine not exceeding 5 million rupees and in the case of an individual person, to imprisonment for a term not exceeding 5 years.

(c) Where a person referred to in subsection (1) acts in breach of an order made under that subsection, he shall commit an offence and on conviction shall be liable to a fine not exceeding 5 million rupees and to a term of imprisonment not exceeding 5 years.

[Added 29/03]

(3) Where the person charged under subsection (1) is convicted of an offence under section 30 or 39, the Director of Public Prosecutions shall, after the expiration of the time limited for appeal against that conviction or, in case of such an appeal being made, after that appeal has been determined without the conviction having been quashed, refer the matter for enquiry to the Commissioner appointed under subsection (8).

(4) For the purpose of an enquiry under this section –

- (a) the Commissioner may summon any person, including any financial institution or other body or organisation, to give evidence or to produce any record, book, document or other article or to make any disclosure relating to the possessions of the convicted person or his family;

[Amended 14/09]

- (b) the convicted person shall make a full disclosure of all his possessions and any donation he has made to his family including the production of all documents or other evidence establishing that these possessions have been lawfully acquired or obtained by lawful means;

[Amended 29/03]

- (c) every member of the family of the convicted person who is above the age of 18 years shall make a full disclosure of all donations he has received from him;
- (d) every gift or transfer of money or property, movable or immovable, made by the convicted person to his family or made by any other person on his behalf to his family, shall be deemed to be a donation unless the contrary is proved or the donations, in the case of movables, do not exceed in aggregate value 20,000 rupees or such other amount as may be prescribed;
- (e) any disclosure required to be made may be made, without prejudice to oral testimony, by affidavit;
- (f) no certificate or other document issued by a public officer or other public authority, not being an order, direction or certificate made by a Court, and purporting to establish the public officer's or authority's acknowledgement of the lawfulness of the sources of the income or assets of the convicted person or his family, shall be a bar to the Commissioner investigating into the assets of a trafficker.

[Added 29/03]

(5) (a) Any person who fails to comply with subsection (4)(c) or with a summons issued under subsection (4)(a) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 10 years.

[Amended 30/08 (P 6/09)]

(b) Any person who swears a false affidavit or gives false evidence in the course of an inquiry under this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 10 years.

[Amended 30/08 (P 6/09)]

(c) Where the convicted person fails to comply with subsection (4)(b), he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 10 years.

[Amended 30/08 (P 6/09)]

(d) Where a convicted person disposes of his assets or makes any withdrawals from a bank account in breach of subsection (1)(b), he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 10 years.

[Amended 30/08 (P 6/09)]

(6) The Commissioner shall, on completion of an enquiry, submit a written report to the Director of Public Prosecutions.

(7) The Director of Public Prosecutions may, on receipt of a report, apply to the Supreme Court for an order for the forfeiture of the possessions of the convicted person or any member of his family.

(8) For the purposes of this section –

(a) the Commissioner shall be –

(i) appointed by the Prime Minister;

(ii) a person who took oath to practice at the Bar at least 10 years before his appointment;

(b) the Commissioner may in the discharge of his duties be assisted by such persons not exceeding 2 in number as the Prime Minister may approve.

(9) In determining an application made under subsection (7), the Supreme Court shall hear such evidence as may be necessary, and the report of the Commissioner shall be received in evidence as proof of the matters to which it relates provided that the Court shall not take into account any document or evidence not produced to the Commissioner under subsection (4)(b) but produced to the Court for the purpose of establishing that the properties were lawfully acquired or obtained by lawful means.

[Amended 29/03]

(10) Where the Supreme Court finds that the possessions of the convicted person or of any member of his family or any part thereof are the proceeds of unlawful dealing in dangerous drugs by the convicted person, the Supreme Court shall order the forfeiture of those possessions.

(11) For the purposes of subsection (10), the possessions of the convicted person shall be presumed, unless the contrary is shown upon a balance of probabilities, to be the proceeds of unlawful dealing in dangerous drugs.

(12) Any asset or possession which is the subject of an order under subsection (10) shall be vested in such institution as may be designated by the Minister responsible for the subject of social security.

45A Order to search certain premises

(1) Where the Commissioner has reasonable grounds to believe that there is on specific premises or in any place of business, evidence which may assist him in his investigation, he may, with the concurrence of the Director of Public Prosecutions, apply to the Judge in Chambers for an order allowing the Commissioner, or any person delegated by him, to enter and search the premises or place.

(2) An application under subsection (1) shall be supported by an affidavit by the Commissioner disclosing the reason why the order is being sought.

(3) The Judge shall not make an order under subsection (1) unless he is satisfied that the evidence is necessary for the purposes of the investigation.

(4) No order shall be made under subsection (1) with respect to a law practitioner unless the Judge is satisfied that, having regard to the need to protect legal professional privilege, it is in the public interest that the order be made without requiring the law practitioner to show cause why the order should not be made.

(5) A search pursuant to an order under subsection (1) shall, so far as is practicable, be conducted in the presence of the occupier of the premises or place or his duly authorised agent.

(6) Prior to a search pursuant to an order under subsection (1), the officer effecting the search shall deliver a photocopy of the warrant to the occupier of the premises or place or his duly authorised agent.

(7) Where a search is made pursuant to an order under subsection (1), the officer effecting the search may -

- (a) seize and take possession of any book, document, computer disk or other article;
- (b) inspect, make copies of, or take extracts from, any book, record or document;
- (c) search any person who is on the premises or place, detain him for the purpose of the search, and seize any article found on such person;
- (d) break open, examine, and search any article, safe, container or receptacle.

[Added 29/03]

46 Burden of proof

Notwithstanding any other enactment, where in any proceedings for an offence under this Act, a question arises as to whether any person was or was not authorised to be in possession of any dangerous drug, the burden of proof that such a person was authorised to be in possession of such drug, shall lie on that person.

47 Jurisdiction

(1) Subject to subsection (2), a prosecution for an offence under this Act shall take place, at the sole discretion of the Director of Public Prosecutions, before a Judge without a jury, the Intermediate Court, or the District Court.

(2) A prosecution for an offence under sections 30 and 41(3) shall take place before a Judge without a jury where it is averred that the accused person is a drug trafficker.

- (3) Notwithstanding any other enactment, the Intermediate Court shall have –
- (a) jurisdiction to inflict any fine provided under this Act or imprisonment for a term not exceeding 20 years;
 - (b) power to order sentences of imprisonment imposed under this Act to be served consecutively provided that the terms of such sentences shall not in the aggregate exceed 30 years.

(4) Sections 151, 152, 153 and 197 of the Criminal Procedure Act, sections 50 and 51 of the Reform Institutions Act and the Probation of Offenders Act shall not apply to a conviction for an offence under any of the provisions of this Act other than section 34.

[Amended 20/04; 6/07 (P 7/07)]

- (5) The Court before which a person is convicted of an offence –
- (a) shall, in addition to any penalty imposed by the Court, order any dangerous drug or any article, utensil or any instrument in respect of which the offence was committed or any money obtained from the commission of the offence to be forfeited;
 - (b) may, in addition to any penalty imposed by the Court, order any vehicle or other conveyance used in the unlawful transport or distribution of any dangerous drug to be forfeited;
 - (c) may, in addition to any penalty imposed by the Court, upon the production of a certificate under the hand of the Commissioner of Police, stating that a specified quantity of drugs is required in order to be used for the purpose of training sniffer dogs, order that such quantity from the dangerous drugs forfeited under paragraph (a) shall be so used.

[Added 29/03]

48 Minimum penalty

Where a Court convicts a person of an offence under section 33, 35, 36, 38 or 39, it shall, notwithstanding the other provisions of this Act but subject to the maximum penalty specified in respect of any such offence inflict a fine of not less than 10,000 rupees together with imprisonment for a term of not less than 12 months.

[Amended 30/08 (P 6/09)]

49 Powers of entry and search

The Permanent Secretary, or any police officer not below the rank of inspector of police authorised by the Commissioner of Police may, for the purposes of this Act –

- (a) enter the premises of any authorised person or of any person carrying on the business of a producer, manufacturer, seller or distributor of any dangerous drug;
- (b) require the production of and inspect any book or document required to be kept under this Act or any regulations made under section 60;
- (c) inspect any stock of any dangerous drug.

50 Issue of a search warrant and presumptions

(1) Where a Magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence has been or may be committed against this Act, he may grant a search warrant authorising any police officer named in the warrant, at any time, within one month from the date of the warrant, to enter, with assistants and if need be by force, the premises named in the warrant and to search them and any person found there and, if there is reasonable ground for suspecting that an offence against this Act has been committed, to seize any drug, pipe, utensil, article or related thing found on the premises or in the possession of any such person.

(2) Where upon entry into any premises under subsection (1) it is found that such premises are equipped with such unusual or unusually numerous contrivances or means as are calculated to prevent or obstruct an entry or to enable persons therein to observe or ascertain the approach of any person, or to give alarm or facilitate escape from such premises, or if all doors, windows and means of entry are so bolted or obstructed that, even with the use of force, access to the premises is abnormally delayed, it shall be presumed, until the contrary is proved, that the premises are used for the smoking, inhaling, sniffing or consumption of dangerous drugs and that the occupier, if any, of those premises has facilitated such use.

(3) Where upon entry into any premises under subsection (1) –

- (a) any dangerous drug or any pipe, utensil or thing for use in connection with the smoking, inhaling, sniffing or consumption of dangerous drugs is found therein;
- (b) any person is seen to escape from those premises on the approach or entry of a police officer; or
- (c) any person having authority under the search warrant to enter such premises is unlawfully prevented from or obstructed or delayed in entering or approaching such premises,

it shall be presumed, until the contrary is proved, that the premises are used for the smoking, inhaling, sniffing or consumption of dangerous drugs.

51 Powers of seizure

(1) Where any person is arrested either in pursuance of a warrant for his arrest or of the powers conferred by section 57, any police officer or customs officer may seize and detain any plant or substance reasonably suspected by him to be a dangerous drug and found in the possession of the arrested person or in such circumstances that it may reasonably be inferred that the arrested person was in possession of it shortly before his arrest.

(2) The powers of seizure and detention conferred by subsection (1) shall also extend to any materials, equipment, devices and other movables fit and intended for use in connection with the commission of the offence for which the person is arrested or reasonably suspected of having

been used in its commission and which may be found in the possession of the arrested person or in the circumstances mentioned in that subsection.

(3) Any dangerous drug seized in pursuance of this subsection shall be dealt with in accordance with section 58.

52 Unlawful consignments by post

(1) Where a magistrate is satisfied by information on oath that there is reasonable ground to suspect that an unlawful consignment of dangerous drugs is being forwarded through postal services, he may grant a warrant authorising any police officer or proper officer to carry out, at any time, inspections in the postal services in order to detect that consignment and whenever such inspections disclose a reasonable suspicion that a particular postal package is in fact such a consignment, a police officer or proper officer may proceed to open and detain the consignment for further investigation.

[Amended 17/07]

(2) For the purposes of this section, "proper officer" means the "proper officer" referred to in the Customs Act.

[Added 17/07]

53 Body and luggage searches

(1) Subject to subsection (2), any police officer or customs officer may at any point of entry into Mauritius carry out body searches and searches of luggage whenever he has reason to suspect that a person seeking to enter Mauritius may be concerned in the commission of an offence against this Act.

(2) No woman shall be subjected to body search except by a woman police officer, woman customs officer or a police wardress.

54 Drugs concealed in the body

(1) Where a Magistrate is satisfied by information on oath from a police officer not below the rank of superintendent of police that a person is reasonably suspected of having concealed any dangerous drug inside his body, he may make an order for that person to be submitted to –

(a) such medical examination including X-ray or other tests as may be necessary to detect the substance; and

(b) such medical treatment as may be considered appropriate in the circumstances.

(2) The medical practitioner who conducts any examination under subsection (1)(a) shall forthwith submit an official report thereon to the police officer.

(3) Any person who refuses to submit to such a medical examination shall commit an offence and shall on conviction be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 10 years.

[Amended 30/08 (P 6/09)]

55 Controlled delivery

(1) A police officer not below the rank of superintendent of police may authorise the passage or entry into Mauritius of any consignment of dangerous drugs suspected of being dispatched with a view to the commission of an offence under this Act, for the purpose of identifying the persons involved in the commission of such an offence.

(2) The police officer may, if he thinks fit, cause the consignment to be lawfully intercepted and allowed to proceed upon its way either intact or after seizure of the dangerous drugs contained therein and may also direct their replacement by substances other than dangerous drugs.

(3) The exercise of any of the powers contained in this section shall afford no defence to any person charged with an offence under section 30 or with conspiracy to commit any such offence.

56 Powers of investigation

(1) Where a Judge in Chambers is satisfied by information on oath that there is reasonable ground to suspect that an offence under sections 30, 33, 35, 36 or 39 has been or is likely to be committed, he may issue a warrant authorising, any police officer to –

- (a) tap or place under surveillance, for a period not exceeding 6 months, the telephone lines used by persons suspected of participation in any of those offences;
- (b) have access to the computer systems used by persons suspected of participation in any of the offences referred to and place them under surveillance;
- (c) place a bank account under surveillance when it is suspected of being used for operations related to any of the offences referred to;
- (d) have access to all bank, financial and commercial records that may reasonably concern transactions related to any of those offences.

(2) Notwithstanding any other enactment, no person shall, on grounds of professional secrecy or otherwise refuse to comply with the requirements of a warrant issued under subsection (1).

57 Arrest without warrant and detention

Any police, forest or customs officer may, without warrant arrest any person who has committed or attempted to commit, or is reasonably suspected by any such officer of having committed or attempted to commit an offence under this Act, where that officer has reasonable grounds for believing that the person will abscond unless arrested or where the name and address of that person are unknown and cannot be readily ascertained.

58 Conservation and sample-taking of dangerous drugs

- (1) (a) Any person who effects a seizure under section 5 or 51 shall –
- (i) as soon as they are discovered, place any drugs under seal in the presence of the accused, or if that is impossible, in the presence of 2 witnesses;
 - (ii) secure the drugs and other items of evidentiary value in such manner as to prevent their fraudulent removal;
 - (iii) number each sealed item and keep it in a place of safety in police custody;
 - (iv) write on its wrapping or on a label affixed thereon, the description of the dangerous drugs that it contains, together with an indication of their nature and weight, as well as, where appropriate, the number of the packages in which the dangerous drugs are contained.
- (b) Any such person shall immediately draw up and sign a written report which shall –
- (i) mention the date, place and circumstances of the discovery,
 - (ii) describe the dangerous drugs seized;
 - (iii) specify their weight;
 - (iv) give the number of evidentiary items prepared; and
 - (v) state the place at which the evidentiary items will be deposited.
- (c) The items of evidentiary value shall be stored in appropriate conditions for the prevention of theft and other forms of misappropriation, as well as of accidental deterioration.
- (d) Any subsequent movement of the evidentiary items shall require the preparation of a written report describing it, specifying its purpose and stating either that the evidentiary items and wrappings are unbroken and that their number corresponds to that indicated in the report on the seizure, or that evidentiary items have disappeared or deteriorated and the changes that they have undergone.

(2) If the police officer in charge of an investigation requires the report of an expert in order to determine the nature, composition and content of active principles in any dangerous drugs seized, he shall obtain it as soon as possible after the seizure in order to limit the risks of physical or chemical alteration.

(3) (a) Any dangerous drugs and other items of evidentiary value seized shall be kept in a place of safety in police custody until they are produced in Court.

(b) Where the dangerous drugs seized are not the subject matter of any prosecution, they shall be destroyed forthwith.

(c) The police officer in charge of carrying out the destruction shall certify in a written report that the dangerous drugs have been destroyed.

59 Admissibility of certain evidence

Notwithstanding any other enactment, it shall be competent for any police officer who is or has recently been attached for duty to the Anti Drug and Smuggling Unit to give evidence in any Court upon a prosecution for an offence under this Act as to the street value in Mauritius of any dangerous drug and as to the demand for, availability of and other circumstances pertaining to its sale and distribution and the court may, if it thinks fit, act upon that evidence.

PART V – MISCELLANEOUS

60 Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Regulations made under this Act may provide for the –

(a) prescribing of anything which by this Act may be or is to be prescribed;

(b) amendment of the Schedules;

(c) conferment of exemptions from measures of control as provided by section 3(5);

(d) levying of fees and the issuing of licences.

61 Repeal

The following enactments are repealed –

(a) the Dangerous Drugs Act 1986;

(b) the Psychotropic Substances Act; and

(c) the Dangerous Drugs Act 1995.

(ii) where the offence is in respect of a dangerous drug specified in Part II of Schedule I, to a fine not exceeding one million rupees together with penal servitude for a term which shall not be less than 5 years and not more than 20 years.

(2) Nothing in this section shall render unlawful the act of a police officer, in the execution of his duty for the detection of offences, in offering to buy any dangerous drug.

62 Transitional provisions

(1) All proceedings in respect of offences committed or alleged to have been committed against an enactment repealed by this Act may be commenced or continued as if this Act has not come into operation.

(2) Any certificate, licence, permit or authorisation issued under any enactment repealed by this Act shall remain valid for the period for which the certificate, licence, permit or authorisation was issued.

(3) Any order, application or report made under section 39 of the Dangerous Drugs Act shall be deemed to have been made under section 45 of this Act and shall be dealt with in accordance with this Act as if the order, application or report was made under this Act.

63 –

SCHEDULE I

(sections 2, 3, 6, 7, 12 and 30)

Part I

Amphetamine
Cannabis (also named as Gandia or Indian Hemp)
Dexamphetamine
Fenetylline

Mecloqualone
Methaqualone
Secobarbital

[Amended GN 188/04]

Part II

Acetyl-alpha-methylfentanyl
Alphacetylmethadol
Alpha-methylfentanyl
Beda-hydroxyfentanyl
Beta-hydroxy-3-methylfentanyl
Brolamfetamine
Cannabis Resin
Cathinone
Coca bush
Coca leaf
Cocaine
Concentrate of Poppy Straw
Desmorphine
DET
DMA
DMHP
DMT
DOET
Ecgonine, its esters and derivatives
Eticyclidine
Etorphine
Etryptamine
Heroin
Ketobemidone
Levamphetamine
Levomethamphetamine
(+) – Lysergide
MDMA
Mescaline
Metamphetamine
Metamphetamine Racemate

Methcathinone
4-methylaminorex
3-methylfentanyl
3-methylthiofentanyl
MMDA
MPPP
N-ethyl MDA
N-hydroxy MDA
Opium
Opium Poppy
Oronabinol
Parafluorofentanyl
Parahexyl
PCE
PCPY
PEPAP
PHP
Phencyclidine
Phenmetrazine
PMA
Psilocine
Psilocybine
Psilotsin
Rolicyclidine
STP, DOM
TCP
Tenamphetamine
Tenocyclidine
Thiofentanyl
TMA
Zipeprol

SCHEDULE II

(sections 2, 3, 4, 7, 8, 12, 18, 20, 22)

Acetyldihydrocodeine
Acetylmethadol
Alfentanil
Allylprodine
Alphameprodine
Alphamethadol
Alpha-methylthiofentanyl
Alphaprodine
Anileridine
Benzylmorphine
Betameprodine
Betaprodine
Bezitramide
Buprenorphine

Drotebanol
Ethylmethilthiambutene
Ethylmorphine
Etonitazene
Etoxidine
Fentanyl
Furethidine
Hydrocodone
Hydromorphinol
Hydroxypethidine
Levomethorphan
Levophenacymorphan
Levorphanol
Metazocine

Norcodeine
Norlevorphanol
Normethadone
Normorphine
Norpipanone
Oxycodone
Oxymorphone
Pethidine
Pethidine-Intermediate A
Pethidine-Intermediate B
Pethidine-Intermediate C
Phenadoxone
Phenampromide
Phenazocine

Clonitazene
Codeine
Codoxime
Dextromoramide
Dextropropoxyphene
Diampromide
Diethylthiambutene
Difenoxin
Dihydrocodeine
Dihydromorphine
Dimenoxadol
Dimephepatanol
Dimethylthiambutene
Dioxaphevybutyrate
Diphenoxylate
Dipipanone

Methadone
Methadone-Intermediate
Methyldesorphine
Methyldihydromorphine
Methylphenidate
Metopon
Moramide-Intermediate
Morpheridine
Morphine
Morphine Methobromide
Morphine-N-Oxide
Myrophine
Nicocodine
Nicodicodine
Nicomorphine
Noracymethadol

Phenomorphane
Phenoperidine
Pholcodine
Piminodine
Piritramide
Proheptazine
Propiridine
Propiram
Racemethorphan
Racemoramide
Racemorphan
Sufentanil
Thebacon
Thebaine
Tilidine
Trimeperidine

[Amended GN 188/04]

SCHEDULE III

(sections 2, 3, 4, 7, 8, 12, 18, 22)

Allobarbitol
Alprazolam
Amfepramone
Aminorex
Amobarbital
Barbital
Benzfetamine
Bromazepam
Brotizolam
Butalbital
Butobarbital
Camazepam
Cathine
Chlordiazepoxide
Clobazam
Clobenzofex
Clonazepam
Clorazepate
Clotiazepam
Cloxazolam
Cyclobarbitol
Delorazepam
Diazepam
Estazolam

Ethchlorvynol
Ethinamate
Ethyl Loflazepate
Etilamfetamine
Fencamfarmin
Fenproporex
Fludiazepam
Flunitrazepam
Flurazepam
Glutethimide
Haloxazolam
Ketazolam
Lefetamine
Loprazolam
Lorazepam
Lormetazepam
Mazindol
Medazepam
Mefenorex
Meprobamate
Mesocarb
Methylphenobarbital
Methyprylon
Midazolam

Nimetazepam
Nitrazepam
Nordazepam
Oxazepam
Oxazolam
Pemoline
Pentazocine
Pentobarbital
Phendimetrazine
Phenobarbital
Phentermine
Pinazepam
Prazepam
Pyrovalerone
Secbutabarbitol
Temazepam
Tetrazepam
Tramadol
Triazolam
Vinylbital
Zolpidem
Zopiclone

SCHEDULE IV

(sections 2, 3, 12, 27)

Acetic anhydride
Acetone
Anthranilic acid

Methyl Ethyl Ketone
N-Acetylanthranilic acid
Phenylacetic acid

Ephedrine
Ergometrine
Ergotamine
Ethyl Ether
Hydrochloric acid
Isosafrole
1 phenil-2-propanone
Lysergic acid
propanone

Piperidine
Piperonal
Potassium permanganate
Pseudoephedrine
Safrole
Sulfuric acid
Toluene
3,4 Methylendioxy-phenyl-2

SCHEDULE V
(sections 2, 3)

- 1 Preparations of Acetyldihydrocodeine,
Codeine,
Dihydrocodeine,
Ethylnorphine,
Nicodicodine,
Norcodeine, and
Pholcodine

when compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations.

- 2 Preparations of propiram containing not more than 100 milligrams of propiram per dosage unit and compounded with at least the same amount of methylcellulose.

- 3 Preparations of cocaine containing not more than 0.1 per cent of cocaine calculated as cocaine base and preparations of opium or morphine containing not more than 0.2 per cent of morphine calculated as anhydrous morphine base and compounded with one or more other ingredients and in such a way that the drug cannot be recovered by readily applicable means or in a yield which would constitute a risk to public health.

- 4 Preparations of difenoxin containing, per dosage unit, not more than 0.5 milligram of difenoxin and a quantity of atropine sulphate equivalent to at least 5 per cent of the dose of difenoxin.

- 5 Preparations of diphenoxylate containing, per dosage unit, not more than 2.5 milligrams of diphenoxylate calculated as base and a quantity of atropine sulphate equivalent to at least one per cent of the dose of diphenoxylate.

- 6 *Pulvis ipecacuanhae et opii compositus*
10 per cent opium in powder
10 per cent ipecacuanha root, in powder well mixed with 80 per cent of any other powdered ingredient containing no drug.

- 7 Preparations conforming to any of the formulae listed in this Schedule and mixtures of such preparations with any material which contains no drug.

- 8 Preparations of dextropropoxyphene for oral use containing not more than 135 milligrams of dextropropoxyphene base per dosage unit or with a concentration of not more than 2.5 per cent in undivided preparations, provided that such preparations do not contain any substance controlled under the 1971 Convention on Psychotropic Substances.

SCHEDULE VI
(section 31)

Custody Record

1 Entries shall be made in the Custody Record in respect of all matters relevant to the detention of the arrested person. In particular, the entries shall be made in respect of the following –

- (a) an accurate record of the time and place of –
 - (i) the arrest;
 - (ii) the issue of the direction under section 31 and
 - (iii) each interview, including any interview immediately following his arrest, of the person detained;
- (b) the place or places where the interview takes place;
- (c) the time at which the interview begins and the time at which it ends;
- (d) any break during the interview;
- (e) the names of persons present at the interviews;
- (f) the time and reason for any transfer of the detained person from one place of custody to another as well as the time at which the detention ends;
- (g) any property secured from the person on his arrest or during his detention;
- (h) the name and rank of the police officer upon whose authority any action in relation to the detained person is taken; and
- (i) the ground or grounds, set out in section 31(2), on which the detention is based.

2 The Custody Record shall be opened as soon as practicable after the start of a person's detention under section 31.

3 The person making an entry in the Custody Record shall insert the time at which the entry is made and his signature against the entry made.

4 The Custody Record or copy of the Record shall accompany a detained person to any other place where he is transferred.

5 A copy of the Custody Record shall be supplied to the person detained or his legal representative as soon as is practicable after he or the representative makes a request upon his release from detention or his being taken to court.

6 The person detained shall be allowed to check and made to insert his signature in respect of any entry in the Custody Record.

7 Any entry shall be made in respect of any refusal of the person detained to insert his signature where such signature is required.

8 Entries in the Custody Record shall be made as soon as practicable after the occurrence of the events to which they relate.

9 A police officer not below the rank of Inspector shall be responsible for ensuring the accuracy and completeness of the Custody Record and that the Custody Record or a copy of the Record accompanies the detained person on his transfer.

10 Entries in a computerised Custody Record shall be timed and contain evidence of the computer operator's identity.

SCHEDULE VII

(section 31(5))

Video Recording

1 The video recording of the detained person during his period of detention under section 31 shall be carried out in such manner as to constitute an accurate, continuous and uninterrupted record of the whole period of his detention, including his movements, interviews and statements.

2 When issuing the direction for detention under section 31, the Police Officer shall make arrangements for the video recording of the person detained during the whole of the period of his detention.

3 The Police Officer shall, for the purposes of the video recording, designate a recording officer under whose responsibility and control the video recording shall be conducted.

4 The recording officer shall be responsible to start, without delay and immediately after a direction is issued under section 31, and continue the video recording without any interruption during the whole of the period of detention.

5 The recording officer shall, in respect of the video recording, keep a written record of the following –

- (a) the name of the person detained;
- (b) the name and rank of the recording officer;
- (c) the name of the Police Officer who issued the direction under section 31;
- (d) the names of all the persons involved in the video recording;
- (e) the identification numbers of the video records used for video recording;
- (f) the date, time of commencement, duration and place of –
 - (i) the detention; and
 - (ii) the recording;
- (g) the place at which the video records are kept;
- (h) particulars for the movement of the video records.

6 Where the person detained raises any objection during his period of detention or makes any statement, the whole of his objection or statement shall be recorded.

7 (a) The video record, referred to herein as the master video record, shall be sealed, with a label specifying that the record is a master video record, in the presence of the detained person at the end of his period of detention.

(b) The recording officer shall sign the label and ask the detained person and any third party present to sign the label.

(c) Where the detained person or the third party refuses to sign the label, another person may be asked to sign it.

8 (a) Where more than one video record is used, the recording officer shall ensure that all the video records are properly identified and labelled.

(b) This shall be done by marking the video records with an identification number immediately after they are removed from the recorder.

9 The recording officer shall make arrangements for the video records to be kept securely under lock and key under the responsibility of an officer designated for that purpose.
