

**THE NARCOTIC DRUGS AND PSYCHOTROPIC
SUBSTANCES ACT, 2021**

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GOVERNMENT OF ZAMBIA

ACT

No. 35 of 2021

Date of Assent: 19th May, 2021

An Act to provide for the functions of the Drug Enforcement Commission; revise and consolidate the law relating to drugs and precursor chemicals; provide for special measures relating to the prevention, treatment and rehabilitation of victims of drug abuse; domesticate the Convention on Psychotropic Substances 1971, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 and the United Nations Convention against Transnational Organised Crime, 2003 repeal and replace the Narcotic Drugs and Psychotropic Substances Act, 1993, and provide for matters connected with, or incidental to, the foregoing.

[20th May, 2021

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Narcotic Drugs and Psychotropic Substances Act, 2021.

Short title

2. In this Act, unless the context otherwise requires—

Interpretation

“administer” has the meaning assigned to the word in the Medicines and Allied Substances Act, 2013;

Act No. 3 of
2013

“analogue” means a substance not listed in the Schedules to this Act whose chemical structure is substantially similar to a drug of abuse that stimulates psychoactive effects;

	<p>“appropriate authority” means a relevant public body, statutory body or person, having powers or regulatory functions under any other written law designated by the Minister;</p>
Act No. 3 of 2012	<p>“associate” has the meaning assigned to the word in the Anti-Corruption Act, 2012, and includes a friend;</p>
Act No. 3 of 2013	<p>“authorised prescriber” has the meaning assigned to the words in the Medicines and Allied Substances Act, 2013;</p> <p>“authorisation” means an approval issued by the Authority or Committee to cultivate, manufacture, produce, distribute import, export, trade, package, re-package, transit, remove, divert, possess, consume, administer or deal with a drug;</p>
Act No. 3 of 2013	<p>“Authority” means the Zambia Medicines Regulatory Authority established under the Medicines and Allied Substances Act, 2013;</p>
Act No. 7 of 2017	<p>“bank” has the meaning assigned to the word in the Banking and Financial Services Act; 2017;</p>
Cap. 1	<p>“child” has the meaning assigned to the word in the Constitution;</p>
Cap. 1	<p>“Commission” means the Drug Enforcement Commission established under the Constitution;</p> <p>“Commission on Narcotic Drugs” means a Commission on Narcotic Drugs under the United Nations responsible for making drug policies and supervising the application of International Drug Treaties;</p>
Act No. 33 of 2021	<p>“Committee” means the National Cannabis Coordinating Committee established under the Cannabis Act, 2021;</p> <p>“consume” means to inject into one’s body, sniff, chew, drink, smoke or administer a narcotic drug or psychotropic substance, and “consumption” shall be construed accordingly;</p> <p>“controlled delivery” means the technique of allowing illicit or suspect consignments of drugs or substances substituted for them, to pass out of, through or into the territory of one or more countries with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences;</p>

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“conviction” includes a conviction by a court outside the Republic and a conviction whether a conditional or unconditional discharge is ordered;

“Conventions” means the—

(a) Convention on Psychotropic Substances which entered into force on 16th August, 1976, and was acceded to by Zambia on 28th May, 1993;

(b) United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which entered into force on 11th November, 1990, and was ratified by Zambia on 28th May, 1993; and

(c) United Nations Convention against Transnational Organised Crime which entered into force on 29th September, 2003, and was acceded to by Zambia on 24th April, 2005;

“Council” means the Health Professions Council of Zambia established under the Health Professions Act, 2009;

Act No. 24
of 2009

“court” means means a court of competent jurisdiction or as otherwise specified in the Act;

“cultivation” means the growing of a plant which can be used or consumed as a narcotic drug or psychotropic substance or from which a narcotic drug or psychotropic substance can be extracted and the word “cultivate” shall be construed accordingly;

“Deputy Director-General” means a person appointed as a Deputy Director-General under section 9;

“Director-General” means a person appointed as Director General under section 7;

“Director of Public Prosecutions” means the person appointed as Director of Public Prosecutions under the Constitution;

Cap. 1

“document” has the meaning assigned to the word in the Statistics Act, 2018;

Act No. 13
of 2018

“drug” means a narcotic drug or psychotropic substance;

“drug abuser” means a person who uses a drug or analogue—

- (a) without a medical prescription; or
- (b) for a purpose other than medical, scientific or research;

“drug dependant person” means a person who —

- (a) as a result of repeated administration of a drug to that person, demonstrates impaired control in relation to the use of that drug;
- (b) exhibits drug seeking behaviour that suggests impaired control; or
- (c) when the administration of the drug ceases, suffers or is likely to suffer mental or physical distress or disorder;

Act No. 23 of
2011

“educational institution” has the meaning assigned to the words in the Education Act, 2011;

Cap. 1

“Emoluments Commission” means the Emoluments Commission established under the Constitution;

Act No. 24 of
2009

“health facility” has the meaning assigned to the words in the Health Professions Act, 2009;

Act No. 24 of
2009

“health practitioner” has the meaning assigned to the words in the Health Professions Act, 2009;

Act No. 24 of
2009

“health professional” has the meaning assigned to the words in the Health Professions Act, 2009;

Act No. 34 of
2021

“industrial hemp” has the meaning assigned to the words in the Industrial Hemp Act, 2021;

Act No. 23 of
2011

“learner” has the meaning assigned to the word in the Education Act, 2011;

Cap. 1

“local authority” has the meaning assigned to the words in the Constitution;

“manufacture” in relation to drugs, includes all processes by which the drugs, may be obtained, refined, transformed or prepared;

Act No. 24 of
2009

“medical doctor” means a person registered as a medical doctor under the Health Professions Act, 2009;

Act No. 6 of
2019

“mental patient” has the meaning assigned to the words in the Mental Health Act, 2019;

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“narcotic drug” means a natural or synthetic substance set out in the Second Schedule to this Act;	
“oath” has the meaning assigned to the word in the Constitution;	Cap. 1
“precursor chemical” means a substance that is requisite in the manufacture of a narcotic drug or psychotropic substance as set out in the Fifth Schedule to this Act;	
“prescription” has the meaning assigned to the word in the Medicine and Allied Substances Act, 2013;	Act No. 3 of 2013
“private body” means a voluntary organisation, non-governmental organisation, political party, charitable institution, company, partnership, club or any other person or organisation which is not a public body;	
“property” has the meaning assigned to the word in the Forfeiture of Proceeds of Crime Act, 2010;	Act No. 19 of 2010
“psychotropic substance” means a natural or synthetic substance set out in the Third Schedule to this Act;	
“public officer” has the meaning assigned to the words in the Constitution;	Cap. 1
“relative” has the meaning assigned to the word in the Anti-Corruption Act, 2012;	Act No. 3 of 2012
“repealed Act” means the Narcotic Drugs and Psychotropic Substances Act;	Cap. 96
“securities” has the meaning assigned to the word in the Securities Act, 2016;	Act No. 41 of 2016
“State institution” has the meaning assigned to the words in the Constitution;	Cap. 1
“Staff Board” means the Staff Board of the Commission constituted under section 5;	
“tainted property” has the meaning assigned to the words in the Forfeiture of Proceeds of Crime Act, 2010;	Act No. 19 of 2010
“trafficking” means—	
(a) being involved directly or indirectly in the unlawful buying or selling of narcotic drugs or psychotropic substances and includes the commission of an offence under this Act in circumstances suggesting that the offence was being committed in connection with buying or selling; or	

- (b) being found in possession of narcotic drugs or psychotropic substances in amounts or quantities that the Minister may, by statutory instrument, declare to be trafficking;
- “treatment order” means an order made under section 79;
- Act No. 24 of 2009 “treatment and rehabilitation centre” means a health facility registered under the Health Professions Act, 2009, used for the treatment or rehabilitation of a drug abuser or drug dependant person;
- Cap. 1 “youth” has the meaning assigned to the word in the Constitution; and
- Act No. 13 of 2011 “Zambia Qualifications Authority” means the Zambia Qualifications Authority established under the Zambia Qualifications Authority Act, 2011.

PART II

THE DRUG ENFORCEMENT COMMISSION

- Establishment of Commission
Cap. 1 **3.** (1) The Commission established under the Constitution is responsible for the administration of this Act.
- (2) The First Schedule applies to the Commission.
- Functions of Commission **4.** (1) The functions of the Commission are to—
- (a) prevent, investigate and control the supply and demand of a drug and precursor chemicals;
- (b) prevent and investigate money laundering and related offences;
- (c) provide counselling and rehabilitation services to drug addicts in consultation with the ministry responsible for health;
- (d) develop strategies for the prevention of abuse of drugs and ensure the treatment and rehabilitation of victims of drug abuse with particular emphasis on special measures for children and youths;
- (e) co-operate with other institutions in investigating, prosecuting, preventing and combating drug trafficking and prohibited activities relating to drugs or precursor chemicals so as to implement an integrated approach to the eradication of drug trafficking and prohibited activities relating to drugs or precursor chemicals;

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- (f) consult, co-operate and exchange information with appropriate bodies regionally or internationally that are authorised to conduct inquiries or investigate cases of drug trafficking and other transnational crimes;
 - (g) promote and coordinate policies for the control of drug trafficking, drug abuse and money laundering; and
 - (j) maintain a national database on drug trafficking, abuse, money laundering and other related information.
- (2) The Commission may, in implementing its functions—
- (a) examine the practices and procedures of State institutions and private bodies in order to facilitate the discovery of opportunities of drug trafficking and prohibited activities relating to drugs;
 - (b) advise State institutions and private bodies on methods of preventing drug trafficking and prohibited activities relating to drugs, and on changes in methods of work or procedures of the State institutions and private bodies compatible with the effective performance of their duties, which the Commission considers necessary to reduce the occurrence of drug trafficking and prohibited activities relating to drugs;
 - (c) disseminate information on the dangerous effects of drug trafficking and prohibited activities relating to drugs on society; and
 - (d) enlist and foster public confidence and support against drug trafficking and prohibited activities relating to drugs.
- (3) The Commission may establish specialised units to investigate and deal with matters that the Commission considers appropriate for purposes of this Act.

5. (1) There is constituted a Staff Board for the Commission which consists of seven members from the Commission appointed by the Minister.

Constitution
of Staff
Board

(2) The Minister shall appoint the Chairperson and the Vice-Chairperson of the Staff Board.

(3) The Director responsible for legal services shall be the Secretary of the Staff Board.

- (4) The First Schedule applies to the Staff Board.
- Functions of Staff Board
- 6.** (1) The functions of the Staff Board are to—
- (a) advise the Director-General on matters relating to recruitment, appointment and termination of appointment, promotion, resignation, transfer, discipline and welfare of an officer in the Commission.
 - (b) advise the Director-General on the proper usage of financial and material resources of the Commission;
 - (c) examine the security of the officers of the Commission and recommend appropriate security measures for consideration and implementation by the Commission; and
 - (d) consider any matter that may be referred to the Staff Board by the Director-General.
- (2) The Director-General may on the recommendation of the Staff Board, vary a decision, in the interest of the Commission.
- Director-General
- 7.** (1) The President shall appoint, as a public officer, the Director-General who shall be the chief executive officer responsible, subject to the general and specific directions of the President, for the day-to-day administration of the Commission.
- (2) A person qualifies to be appointed as Director-General if that person—
- (a) holds a bachelor's degree or an equivalent qualification in economics, finance, accounting, banking, law or other field relevant to the Act which is accredited or recognised and validated by the Zambia Qualifications Authority; and
 - (b) has a minimum of ten years' experience at a senior management level in law enforcement
- (3) The Director-General may resign on giving three months' notice, in writing, to the President.
- Powers of Director-General
- 8.** (1) The Director-General may, in the performance of the Commission's functions under this Act—
- (a) authorise an officer of the Commission to conduct an inquiry or investigation into alleged or suspected offences under this Act;
 - (b) require the chief executive officer, controlling officer or controlling body of a State institution to produce or furnish, within a time that may be specified by the

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Director-General or an investigating officer, a document or certified true copy of a document which is in that person's possession or under that person's control and which the Director-General considers necessary for the conduct of an investigation into alleged or suspected offences under this Act; or

(c) require a person to produce or furnish any documentation or a certified true copy of a document, where applicable, or to answer, to the best of that person's knowledge and belief, questions with respect to the whereabouts or existence of a document or record that may be relevant to an investigation.

(2) Despite any written law to the contrary, the Director-General may, where the Director-General has reasonable grounds to believe that a person who is the subject of an investigation in respect of an offence under this Act is likely to leave the Republic, require the person to surrender that person's travel document or any other document in that person's possession.

(3) The Commission shall, where a person surrenders that person's travel document under subsection (2), return the document to the person after the investigation of the offence is completed, or if no criminal proceedings are to be instituted.

(4) A person who fails to comply with the request of the Director-General under subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units, or to imprisonment for a term not exceeding two years.

9. (1) The President shall appoint, as a public officer, a Deputy Director-General of the Commission.

Deputy
Director-
General

(2) A person qualifies to be appointed as Deputy Director-General if that person—

(a) holds a bachelor's degree or an equivalent qualification in economics, finance, accounting, banking, law or other field relevant to the Act which is accredited or recognised and validated by the Zambia Qualifications Authority; and

(b) has a minimum of ten years' experience at a senior management level in law enforcement.

(3) The Deputy Director-General shall assist the Director-General in performing the Director-General's functions under this Act.

(4) Whenever the office of the Director-General is vacant or the Director-General is absent from duty or unable for any other reason to perform the functions of that office, the Deputy Director-General shall, except where the President otherwise directs, act as Director-General.

(5) The Deputy Director-General may resign on giving three months' notice, in writing, to the President.

Directors,
investigating
officers and
other staff

10. (1) The Director-General may appoint, as public officers, Directors, investigating officers and other staff of the Commission that may be necessary for the performance of the functions under this Act.

(2) An investigating officer has powers of a police officer.

(3) The Commission may, in the exercise of its functions, engage the services of advisors and experts that it considers necessary.

Identity card

11. (1) The Director-General shall issue to an investigating officer of the Commission an identity card which shall be evidence of that investigating officer's appointment.

(2) An investigating officer shall, in performing any function under this Act—

(a) be in possession of the identity card under subsection (1);
and

(b) show the identity card to a person who requests to see it or is subject to an investigation under this Act.

Oath and
declaration
of assets on
appointment
Cap. 5

12. (1) The Director-General, Deputy Director-General, Directors, investigation officers and other staff of the Commission shall, on appointment, take an oath in accordance with the Official Oaths Act.

(2) The Director-General, Deputy Director-General, Directors, investigating officers and other staff of the Commission shall before taking office under this Act and after every five years thereafter—

(a) in the case of the Director-General and Deputy Director-General, submit to the Chief Justice a written declaration in the prescribed form of all the assets they own or liabilities owed to them and;

(b) in the case of investigating officers and other staff of the Commission, submit to a Magistrate a written declaration in the prescribed form of all the assets they own or liabilities owed to them

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13. (1) The Commission may guide a State institution or private body on practices and procedures that are necessary to prevent, reduce or eliminate the occurrence of drug trafficking and prohibited activities relating to drugs and the implementation of special measures with regard to children or youth. Guidance by Commission

(2) A State institution or private body shall, not later than ninety days from the date of receipt of the guidance from the Commission under subsection (1), effect the necessary changes in its practices and procedures.

(3) A State institution or private body that considers that the changes in practices and procedures contained in the guidance from the Commission are impracticable or disadvantage the effective discharge of the State institution or private body functions shall, within thirty days of the receipt of the instructions, make representations to the Director-General, in writing.

(4) The Commission may, after considering the representations of a State institution or private body made under subsection (3), confirm, vary or cancel the guidance given to the State institution or private body.

(5) A State institution or private body may, appeal to the Minister against a decision of the Commission made under subsection (4).

14. (1) The Commission may, after an investigation into an alleged offence under this Act, make recommendations that the Commission considers necessary to an appropriate authority. Report and recommendations by Commission

(2) An appropriate authority shall, within thirty days of the date of receipt of the recommendation of the Commission under subsection (1), make a report to the Commission on the action taken by the appropriate authority.

PART III
OFFENCES AND PENALTIES

15. (1) A person shall not engage in the trafficking of a drug or precursor chemical. Prohibition of trafficking in drug or precursor chemical

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to imprisonment for a term not less than one year but not exceeding twenty five years.

16. (1) A person shall not, without lawful authority, import or export a drug or precursor chemical set out in the Second, Third and Fifth Schedules. Prohibition of import or export of drug or precursor chemical

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

Prohibition
of trade in
drug or
precursor
chemical

17. (1) A person shall not trade in a drug or a precursor chemical without lawful authority.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty-five years without the option of a fine.

Prohibition
of possession
of drug or
precursor
chemical

18. (1) A person shall not, without lawful authority, have in that person's possession or under that person's control a drug or precursor chemical.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to imprisonment for a term not exceeding fifteen years.

(3) Despite subsection (2), where a drug is cannabis or *catha edulis* commonly referred to as *khat* or *miraa*, a person is liable, on admission, to a fine not exceeding one thousand two hundred penalty units.

Cap. 88

(4) The admission of guilt procedure under subsection (3) shall be as provided in the Criminal Procedure Code.

Prohibition
of cultivation
of plant for
drug
purposes

19. (1) A person shall not, without lawful authority, cultivate a plant which can be used or consumed as a drug.

(2) A person who contravenes subsection (1), commits an offence and is liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both.

Prohibition
of unlawful
manufacture
of drug or
precursor
chemical

20. (1) A person shall not unlawfully manufacture or carry out a process for the manufacture of a drug or precursor chemical.

(2) A person who contravenes subsection (1), commits an offence and is liable, on conviction, to imprisonment for a term not less than two years but not exceeding twenty five years, without the option of a fine.

Prohibition
of
possession,
manufacture,
etc. of drug,
precursor
chemical,
equipment or
material

21. (1) A person shall not without lawful authority, produce, manufacture, import, export, transport, offer, sell, distribute, deliver, consign, dispatch, offer to purchase or possess a drug, precursor chemical, equipment or material for the cultivation, production or manufacture of a drug.

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(2) A person who contravenes subsection (1), commits an offence and is liable, on conviction, to imprisonment for a term not less than one year but not exceeding fifteen years, without the option of a fine.

22. (1) A person shall not, without lawful authority, consume or administer on another person a drug or precursor chemical.

Prohibition of consumption or administration of drug

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years.

23. (1) A person shall not, by force, deceit or any other means, induce another person to take a drug.

Prohibition of inducing person to take drug

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to imprisonment for a term not exceeding ten years.

24. (1) A person shall not, with intent to deceive, obtain a drug or a prescription for a drug from an authorised prescriber without disclosing to that authorised prescriber the particulars of the drug or prescription for the drug issued to the person by a different authorised prescriber within the preceding thirty days.

Prohibition of double doctoring

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding one year, or to both.

25. (1) A person shall not, without lawful authority, have in the person's possession or control an instrument or utensil used in administering a drug.

Prohibition of unlawful possession of instrument or utensil for administering drug

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to imprisonment for a term not exceeding ten years.

26. (1) A person who occupies or controls premises shall not use or permit those premises to be used for the illicit consumption, administration, preparation, set out in the Fourth Schedule, manufacture or trade in drugs or precursor chemicals.

Prohibition of use of premises for unlawful administration etc of drug or precursor chemical

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to imprisonment for a term not exceeding five years.

Prohibition
of unlawful
supply, etc
of drug or
precursor
chemical

27. (1) A person shall not, without lawful authority, supply to or procure for another person a drug or precursor chemical or advertise for sale a drug or precursor chemical.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to imprisonment for a term not exceeding five years.

Prohibition
of financing
of offence
under Act

28. (1) A person shall not—

(a) invite another person to provide or make available money or property for an illegal activity; or

(b) provide or make available to another person money or property knowing that the money or property shall be used for an illegal activity.

(2) A person who contravenes this section commits an offence and is liable, on conviction, to imprisonment for a term not exceeding fifteen years.

Prohibition
of unlawful
use of
property for
commission
of offence

29. (1) A person shall not, directly or indirectly, deal in or use any property within or outside the Republic for the purpose of committing an offence under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to imprisonment for a term not exceeding ten years.

Prohibition
of
possession
of tainted
property

30. (1) A person shall not knowingly acquire or have in the person's possession or control tainted property.

(2) A person shall not, directly or indirectly, whether on that person's behalf or on behalf of another person, knowingly use or cause to be used, or receive any tainted property.

(3) A person who contravenes this section commits an offence and is liable, on conviction, to imprisonment for a term not exceeding ten years.

Concealment
of tainted
property

31. (1) A person shall not—

(a) convert, transfer or dispose of any property knowing that the property is tainted property or conceal or disguise the illicit origin of the property for the purpose of or of helping any other person who is involved in the commission of an offence to evade the consequences of that person's action; or

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(b) conceal or disguise the true nature, source, location, disposition, movement or ownership of or rights with respect to tainted property.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to imprisonment for a period not exceeding ten years.

32. (1) A person commits an offence if that person, with intent to defraud or to conceal the commission of an offence under this Part or to obstruct an investigating officer in the investigation of an offence—

Concealment
of offence

(a) destroys, alters, mutilates or falsifies a book, document, valuable security, account, computer system, disk, computer printout or other electronic device which belongs to, or is in the possession of, or is received by that person or that person's employer, or an entry in the book, document, account or electronic device, or is privy to that act;

(b) makes or is privy to the making of any false entry in any book, document, account or electronic device; or

(c) omits or is privy to the omission of any information from any book, document, account or electronic device.

(2) A person convicted of an offence under subsection (1) is liable, to imprisonment for a term not exceeding two years.

33. (1) A person shall not—

(a) impersonate an officer of the Commission or pretend to have any of the powers of an officer under this Act or under any authorisation or warrant issued under this Act; or

Impersonation
and
procurement
of officer

(b) pretend to procure an officer of the Commission to do or refrain from doing anything in connection with the duties of that officer.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

General penalty	<p>34. A person who is convicted of an offence under this Part for which no penalty is provided is liable—</p> <p>(a) on conviction, to imprisonment for a term not exceeding ten years or to a fine not exceeding one million penalty units, or to both;</p> <p>(b) on a second or subsequent conviction, to imprisonment for a term of not less than ten years but not exceeding fifteen years; and</p> <p>(c) in addition to any other penalty imposed under this Act, to forfeiture to the State of any pecuniary resource, property, advantage or profit received in the commission of an offence under this Act.</p>
Effect of conviction	<p>35. A person convicted of an offence under this Part shall, by reason of the conviction, be disqualified for a period of five years from the date of the conviction, from being elected or appointed to, or from holding or continuing to hold, an office or position in a State institution.</p>
Offence by body corporate or unincorporate body	<p>36. Where an offence under this Act is committed by a body corporate or unincorporate body, with the knowledge, consent or connivance of the director, manager shareholder or partner, that director, manager, shareholder or partner of the body corporate or unincorporate body commits an offence and is liable, on conviction, to the penalty specified for that offence.</p>
Grounds for aggravation	<p>37. (1) A court shall, in determining the nature and extent of a penalty to be ordered in relation to a person convicted of an offence under this Part, take into account whether—</p> <p>(a) the convict—</p> <ul style="list-style-type: none"> (i) belonged to an organised criminal syndicate; (ii) participated in other illegal activities facilitated by the offence; (iii) used violence or a firearm; (iv) committed the offence in the exercise of a public office or duty; (v) added any drug or precursor chemical which aggravated the danger of the drug or psychotropic substance to a user; (vi) made use or took advantage of a child or person with a physical or mental disability in committing the offence; or (vii) has a previous conviction relating to the offence;

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- (b) the offence was committed—
- (i) by an officer or a law enforcement officer;
 - (ii) by a health professional or person responsible for combating drug abuse or trafficking in drugs;
 - (iii) in an educational institution, a health facility, a social service facility or in any other establishment where learners or students resort for educational, sports or social activities, or in the immediate vicinity of the institution, facility or establishment; or
 - (iv) in a penal institution or a military establishment;
- (c) the narcotic drug or psychotropic substance was supplied or offered to a child or a person with a physical disability or a mental patient undergoing treatment; or
- (d) the drug supplied caused death or seriously impaired the health of a person.

(2) For the purposes of subsection (1) —

“law enforcement officer” means an officer of—

- (a) the Zambia Police Service, established under the Constitution; Cap. 1
- (b) the Anti-Corruption Commission established under the Constitution; Cap. 1
- (c) the Drug Enforcement Commission; and
- (d) any other investigative institution that the Minister may, by statutory instrument, designate; and

“organised criminal syndicate” means a structured group of three or more persons existing for a period of time in concert with the aim of committing an offence under this Act or any other law, in order to obtain, directly or indirectly, a financial or other material benefit.

38. (1) A court may, where a person is convicted of an offence under this Part, order the restriction of the movement of that person within the Republic for a prescribed term. Alternative sentence

(2) A court may, where a person is convicted of an offence under this Part, and it appears to the court that it would be appropriate, in the interest of justice and not contrary to the broader public interest to do so —

(a) order the surrender and suspension of the convict's passport, and in the case of a non-citizen, withdraw the convict's visa, deport or prohibit the convict's re-entry into the Republic;

(b) order —

(i) the disqualification, cancellation or suspension of any right in the Republic to operate a vehicle, vessel or aircraft used by the convict in connection with the commission of the offence;
or

(ii) the disqualification to hold public office in the Republic by the convict;

(c) order the suspension of any licence or registration entitling the convict to carry on any trade or business carried on by the convict in connection with the commission of the offence; or

(d) recommend to the appropriate professional body the suspension or disqualification of the convict's right to practice any profession practiced by the convict in connection with the commission of the offence, for a term that the court may consider appropriate.

(3) Where a non-citizen is convicted of an offence under this Part, the court may, in addition to ordering the penalty provided for the offence or alternative sentence in this section, order the withdrawal of the person's visa, deportation or prohibit the person's re-entry into the Republic.

Suspension
and
revocation
of
suspended
sentence

39. (1) A court may order suspension of the whole or any part of the penalties imposed on a person, on such terms and conditions considered necessary to ensure that the person does not commit a similar offence, except that it is in the interest of justice and not contrary to the broader public interest to make an order, where a person convicted of an offence under this Part is—

(a) below the age of eighteen years;

(b) a first offender;

(c) a drug abuser; or

(d) a drug dependent person.

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(2) A court may, where a person fails, without reasonable excuse, to abide by the terms and conditions of a suspension order under subsection (1), revoke the order.

PART IV
DIVERSION

40. (1) A person who intends to cultivate, manufacture, produce, distribute, import, export, trade, package, repackage, transit, remove, divert, possess, consume, administer, research on, or otherwise deal with a drug or precursor chemical shall apply to the Authority or Committee where applicable for authorisation in accordance with this Act and the Medicines and Allied Substances Act, 2013, Dangerous Drugs Act and the Cannabis Act, 2021.

Application
for
authorisation

Act No. 3 of
2013
Cap. 95
Act No. 33
of 2021

(2) The Authority or Committee shall, where it grants an authorisation, notify the Commission of the grant of authorisation.

41. (1) A person may bring a drug or precursor chemical into the Republic in transit if the drug or precursor chemical is in transit from a country from which it may lawfully be exported to a country into which it may lawfully be imported.

Drug or
precursor
chemical in
transit

(2) Despite subsection (1), where the drug or precursor chemical comes from a country which is not party to the Convention, it shall be accompanied by the documents authorising the export or diversion.

(3) An investigating officer may seize and detain a drug or precursor chemical in transit—

- (a) where there are reasonable grounds to believe that the document authorising export or diversion accompanying the drug or precursor chemical is false, or that it has been obtained by fraud or wilful misrepresentation of a material particular;
- (b) where the drug or precursor chemical is not accompanied by a document authorising an export or diversion by reason of the fact that the drug comes from a country not party to the Convention; or
- (c) where there are reasonable grounds to believe that the drug or precursor chemical is being conveyed in an unlawful manner or for an unlawful purpose or is in transit for the purpose of being imported into another country in contravention of the laws of that country.

- (4) This section shall not apply to—
- (a) a drug or precursor chemical in transit by post or air if the aircraft passes over the Republic without landing; or
- (b) to quantities of a drug or precursor chemical that may reasonably form part of the medical stores of any ship or aircraft.

Release of seized or detained drug or precursor chemical

42. The Director-General, Deputy Director-General or an investigating officer authorised by the Director-General in that behalf, may release a drug or precursor chemical seized or detained under section 41 where the Director-General or investigating officer determines that—

- (a) the document authorising the export or diversion is valid and was not obtained by fraud or wilful misrepresentation; or
- (b) the drug or precursor chemical is being conveyed in a lawful manner or for a lawful purpose.

Removal permit

43. (1) A person shall not, except under, and in accordance with an authorisation issued by the Authority—

- (a) remove a drug or precursor chemical in transit from the conveyance by which it is brought into the Republic; or
- (b) move or transfer into any part of the Republic any drug or precursor chemical after its removal from a conveyance.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(3) Despite subsection (1), the Authority may, authorise the temporary removal for safe custody of quantities of drugs or precursor chemical that the Authority may determine from an aircraft or ship which is in transit in the Republic.

Prohibition of altering nature of, or tampering with, drug or precursor chemical in transit

44. (1) A person shall not subject or cause a drug or precursor chemical in transit to be subjected to any process which may alter its nature, or wilfully open or break or otherwise tamper with any package containing a drug, or precursor chemical, except under and in accordance with an authorisation issued by the Authority.

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(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

45. (1) A person shall not, without authorisation, cause or procure a drug or precursor chemical in transit through the Republic to be diverted to a destination other than that to which it was originally consigned.

Prohibition
of diversion
of drug or
precursor
chemical

(2) In the case of a drug in transit accompanied by a document authorising the export or the diversion, of that drug to the country to which the drug or precursor chemical was originally consigned shall be the country of destination.

(3) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

46. A person who intends to divert a drug or precursor chemical in transit to a destination other than that to which it was originally consigned may, with the authorisation of the Authority and in consultation with the Commission, divert a drug or precursor chemical.

Application
for diversion
certificate

47. (1) Subject to subsection (2), this Part does not apply to a drug or precursor chemical in the form of a medicinal preparation—

Exemption
of medicinal
preparation
in
possession
of traveller

(a) in the possession of a person who arrives in the Republic by land, air or water from any place outside the Republic as is reasonably required for the use by the person; and

(b) which is *bona fide* supplied to the person by or on the prescription of a medical doctor residing outside the Republic in accordance with the law of the country in which the medicinal preparation was supplied.

(2) A person in possession of a drug or precursor chemical in the form of a medicinal preparation under subsection (1) shall, as soon as practicable on arrival, declare the person's possession of the medicinal preparation to an officer and shall submit to a medical examination that may be required of that person.

Application,
grant,
modification
etc. of
authorisation,
permit or
certificate

48. The Minister responsible for health may, on recommendation from the Authority and the Commission, prescribe, by statutory instrument, in relation to an authorisation, issued under this Part—

- (a) the criteria and procedure for applying for an authorisation and the grant, variation, renewal, transfer and revocation of the authorisation;
- (b) the terms and conditions attaching to an authorisation and the grant, variation, refusal, renewal, transfer or revocation of an authorisation; and
- (c) any other matters that are necessary or incidental to the effective regulation of authorisations.

PART V

INVESTIGATIONS

Investigations

49. (1) A person who has information or reasonable grounds to believe that another person has engaged or is engaging in trafficking or a prohibited activity involving a drug or precursor chemical shall inform the Director-General.

(2) The Director-General may investigate a matter under this Act on receipt of information or on the Director-General's own initiative.

(3) The Director-General may refer an offence that comes to its notice in the course of an investigation under subsection (2) to any other appropriate authority.

(4) A person who provides information under subsection (1) is entitled to protection as a whistle blower in accordance with section 71.

Examination
of
information

50. (1) The Director-General shall, on receipt of information under section 49, examine it and decide whether or not an investigation in relation to the allegation contained in the information is warranted.

(2) The Director-General may, in deciding whether or not to investigate the allegation, determine if—

- (a) the conduct to which the allegation relates constitutes an offence under this Act; or
- (b) the allegation is frivolous or vexatious.

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(3) The Director-General shall, where the Director-General determines that an investigation into an allegation is warranted, carry out the investigation.

(4) The Director-General may, for purposes of performing the functions under this section—

(a) make a preliminary inquiry that the Director-General considers necessary; and

(b) consult any other appropriate authority.

(5) The Director-General shall inform a person under section 49(1), in writing, of the decision of the Commission in relation to the allegation.

51. (1) The Director-General may, by notice, in writing, require a person under investigation or any other person who the Director-General has reason to believe may have information or documents relevant to an investigation to—

Power to require attendance before Director-General

(a) attend before the Director-General as may be specified in the notice;

(b) answer questions with respect to any matter or supply any information that may be relevant to the investigation; or

(c) produce for inspection any documents which are specified in the notice.

(2) Subsection (1) shall not affect a person's rights under any other written law relating to privilege.

52. (1) Where the Director-General has reasonable grounds to suspect that in, or on, any premises there is concealed or deposited any property liable to forfeiture under this Act, or as to which an offence under this Act is reasonably suspected to have been committed, or any book or document directly or indirectly relating to, or connected with, any dealing or intended dealing, whether within or outside the Republic, in respect of any property liable to seizure or forfeiture under this Act, or which would, if carried out, be an offence under this Act, the Director-General may, by order in writing, authorise an investigating officer or police officer to—

Power of entry, search and seizure

(a) enter the premises and search for, seize and detain the property, book or document;

- (b) search any person who is in, or on, the premises, and detain that person or remove the person to any place in order to facilitate the search;
 - (c) arrest any person who is in, or on, the premises in whose possession or control of any suspected drug or precursor chemical or any property liable to seizure or forfeiture under this Act is found, whom the officer reasonably believes to have concealed or deposited the property;
 - (d) break open, examine and search any article, container or receptacle; and
 - (e) stop, search and detain any conveyance.
- (2) An investigating officer under subsection (1) may, if it is necessary to do so—
- (a) break open any outer or inner door or window of any premises;
 - (b) forcibly enter the premises or any part of it;
 - (c) remove by force any obstruction to entry, search, seizure and removal; or
 - (d) detain any person found in, or on, the premises until the premises is searched.
- (3) A drug or precursor chemical seized under subsection (1) shall be presented to a public analyst for analytical and scientific examination.

Search,
seizure and
inspection

- 53.** (1) An investigating officer may, with a warrant, at any time—
- (a) enter and search any premises or any other premises, including a private dwelling, where information or documents which may be relevant to an investigation may be kept;
 - (b) search any person on the premises if there are reasonable grounds for believing that the person has personal possession of any document or article that has a bearing on the investigation, except that a person shall only be searched by a person of the same sex;

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- (c) examine any document or article found on the premises that has a bearing on the investigation;
 - (d) require information to be given about any document or article by—
 - (i) the owner of the premises;
 - (ii) the person in control of the premises;
 - (iii) any person who has control of the document or article; or
 - (iv) any other person who may have the information;
 - (e) take extracts from, or make copies of, any book or document found on the premises that has a bearing on the investigation;
 - (f) use any computer system on the premises, or require assistance of any person on the premises to use that computer system to—
 - (i) search any data contained in, or available from, the computer system;
 - (ii) reproduce any record from the data;or
 - (iii) seize any output from the computer for examination and copying; or
 - (g) attach and, if necessary, remove from the premises for examination and safeguarding any document or article that appears to have a bearing on the investigation.
- (2) An investigating officer who removes any document or article from any premises in accordance with subsection (4)(g) shall—
- (a) issue a notice of seizure for the document or article to the owner of, or person in control of, the premises; and
 - (b) return the document or article as soon as practicable after achieving the purpose for which it was removed.
- (3) A person shall not—
- (a) delay or obstruct an investigating officer, in the performance of the investigating officer's functions;

(b) refuse to give an investigating officer any reasonable assistance that the investigating officer may require for the purpose of exercising that investigating officer's powers; or

(c) give an investigating officer false or misleading information in answer to an inquiry made by the investigating officer.

(4) A person who contravenes subsection (3) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to a term of imprisonment not exceeding two years, or to both.

(5) An investigating officer shall furnish the Director-General with a written report and any other information relating to an inspection that the Director-General may require.

(6) Nothing in this section requires a person to disclose or produce information or a document if the person would in an action in a court be entitled to refuse to disclose or produce the information or document.

Power to
intercept
communication

Act No. 2 of
2021
Act No. 22
of 2009

Undercover
and
controlled
delivery
operations

54. An investigating officer may intercept any communication or postal article reasonably suspected to contain any information or substance which is likely to be relevant for the purpose of an investigation into an offence under this Act, in accordance with the Cyber Security and Cyber Crimes Act, 2021 and the Postal Services Act, 2009.

55. (1) Where the Director-General suspects on reasonable grounds that a person has committed, or is about to commit, an offence under this Act, the Director-General may give approval, in writing, for—

(a) a controlled delivery to be carried out; and

(b) specified persons or classes of persons to carry out or participate in the controlled delivery.

(2) Despite any other written law, the activities which may be undertaken in the course and purposes of a controlled delivery include—

(a) allowing any vehicle, vessel, aircraft or other means of transport to enter or leave the Republic;

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(b) allowing any—

- (i) drug, analogue, precursor chemical, equipment or material or other items in or on the vehicle, vessel, aircraft or other means of transport; or
- (ii) tainted property to enter or leave the Republic or be delivered or collected in the Republic;

(c) using force that may be reasonable in the circumstances to enter and search the vehicle, vessel, aircraft or other means of transport;

(d) placing a tracking device on board the vehicle, vessel, aircraft or other means of transport; and

(e) allowing any person who has possession or custody of the drug, analogue, precursor chemical, equipment or material or other thing to enter or leave the Republic.

(3) Where the Director-General suspects on reasonable grounds that a person has committed, or is about to commit, an offence under this Act, the Director-General, may give approval, in writing, for—

(a) undercover operations to be carried out for a specified period; and

(b) specified persons or classes of persons to carry out or participate in the undercover operations for purposes of gathering evidence relating to the commission of the offence.

(4) The Director-General may renew the approval given under subsection (3) for a period not exceeding three months.

(5) A drug, analogue, precursor chemical, equipment, material or other item imported into the Republic in the course of an approved undercover operation or controlled delivery shall, when no longer required for the purposes of the enforcement of this Act, be disposed of.

(6) Despite any other written law, an authorised participant in an undercover operation or a controlled delivery incurs no criminal liability by taking part in it in accordance with the terms of approval.

Power of
arrest

56. The Director-General or an investigating officer authorised in that behalf by the Director-General may arrest a person, without a warrant, if the Director-General or an investigating officer has reasonable grounds to believe that the person has committed or is about to commit an offence under this Act.

Power to
use firearm

57. (1) An investigating officer may, subject to subsections (2) and (3), use a firearm issued to that investigating officer against —

(a) a person in lawful custody charged with or convicted of an offence under this Act if that person is escaping or attempting to escape;

(b) a person who, by force, rescues or attempts to rescue another person from lawful custody;

(c) any person who, by force, prevents or attempts to prevent the lawful arrest of the person or of another person, except that the investigating officer shall not use a firearm—

(i) as authorised under paragraph (a), unless the investigating officer has reasonable grounds to believe that the investigating officer cannot otherwise prevent the escape and unless the investigating officer gives a warning to the person that the investigating officer is about to use the firearm against that person and that person does not heed the warning; or

(ii) as authorised under paragraph (b) or (c), unless the investigating officer has reasonable grounds to believe that the person or any other person is in danger of grievous bodily harm and that the investigating officer cannot otherwise effect the arrest or prevent the rescue.

(2) An investigating officer shall not, in the presence of the investigating officer's superior, use a firearm against any person except under the orders of that superior.

(3) The use of a firearm under this section shall, as far as possible, be to disable and not to kill.

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(4) Authority vested in an investigating officer under subsection (1) shall be in addition to and not in substitution for any authority to use a firearm vested in the investigating officer by any other written law.

58. (1) Where, in the course of an investigation into an offence under this Act, an investigating officer has reasonable grounds to suspect that any movable or immovable property is derived or acquired from trafficking or from an illegal activity, is the subject matter of an offence or is evidence relating to an offence, the investigating officer shall, with a warrant, seize the property.

Seizure of
property

(2) An investigating officer who seizes any property pursuant to subsection (1) shall prepare and sign a list of all the movable or immovable property seized under that subsection and of the places in which the property is found.

(3) An investigating officer shall serve a copy of the list under subsection (2) on the owner of the property or on the person from whom the property was seized, not later than thirty days from the date of seizure.

59. (1) An investigating officer shall effect a seizure by removing the movable property from the custody or control of the person from whom it is seized and placing it under the custody of another person or authority and at a place as the officer may determine.

Custody
and release
of seized
property

(2) An investigating officer shall, where it is not practicable or otherwise not desirable to effect the removal of any property under subsection (1), leave it at the premises in which it is seized under the custody of that person that the investigating officer may determine.

(3) An investigating officer shall, where property is seized under subsection (1), make a record in writing specifying in detail the circumstances of, and the reason for, the seizure of the property and subsequent leaving of the property at the premises.

60. (1) The Director-General may, by written notice to a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed under this Act, or against whom a prosecution for an offence is instituted, direct that the person shall not dispose of, or otherwise deal with, any property specified in the notice without the consent of the Director-General.

Restriction
on disposal
of property

(2) A notice issued under subsection (1) may be served by delivering it personally to the person to whom it is addressed or may, where the Director-General is satisfied that the person cannot be found, or is not in the Republic, be served on or brought to the knowledge of that person in a manner that the Director-General may direct.

(3) A notice issued under subsection (1) shall have effect from the time of service and shall continue in force for a period of nine months or until cancelled by the Director-General, whichever is earlier, except that the Director-General may issue a fresh notice on the expiry of the previous one for a further and final term of six months to facilitate the conclusion of an investigation.

(4) A person who, having been served with or having knowledge of a notice issued under subsection (1), disposes of or otherwise deals with any property specified in the notice other than in accordance with the consent of the Director-General commits an offence and is liable, on conviction, to imprisonment for a term not exceeding five years.

(5) A person aggrieved with the directive of the Director-General issued under subsection (1) may, within thirty days from the date of receipt of the notice, appeal to the High Court.

Restriction
on disposal
of property
by third
party

61. (1) The Director-General may, where the Director-General has reasonable grounds to believe that a third party is holding any property, including money in a bank account for or on behalf of, or to the order of, a person who is under investigation, serve a notice on the third party directing that the third party shall not dispose of, or otherwise deal with, any property specified in the notice without the consent of the Director-General.

(2) A notice issued under subsection (1) shall be served on the third party to whom it is directed and on the person being investigated.

(3) The Director-General may, in issuing a notice under this section, impose conditions that the Director-General may determine.

(4) A notice issued under subsection (1) shall have effect from the time of service on the person to whom it is addressed and shall continue in force for a period of nine months unless cancelled by the Director-General, whichever is earlier, except that the Director-General may issue a fresh notice on the expiry of the previous one for a further final term of six months to facilitate the conclusion of an investigation.

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(5) A third party on whom a notice is served under subsection (1) who disposes of, or deals with, the property specified in the notice without the consent of the Director-General commits an offence and is liable, on conviction, to imprisonment for a term not exceeding five years.

(6) A third party on whom a notice is served under this section shall not dispose of, or otherwise deal with, the property specified in the notice except in accordance with the terms of the notice.

(7) A person aggrieved with the directive of the Director-General issued under subsection (1) may appeal to the High Court.

62. The disposal of recovered, seized and forfeited drugs or precursor chemicals shall be in a manner and in accordance with any relevant written law.

Disposal of recovered, seized and forfeited drug or precursor chemical

63. The powers of the Director-General under this Part may be exercised by the Director-General in person or by a member of staff of the Commission that may be specified by the Director-General acting in accordance with the Director-General's special or general instructions.

Delegation of powers

64. (1) A person shall not—

General offences

- (a) knowingly make, or cause to be made, to the Commission, false testimony or a false report in any material particular on any offence or matter under investigation;
- (b) destroy, alter, conceal or remove any book, document, record or evidence that the person believes may be relevant to an investigation or proceeding under this Act;
- (c) destroy, alter, mutilate or falsify any valuable security, account, computer system, disk, computer printout or other electronic device or any entry in any book, document, account or electronic device;
- (d) knowingly mislead the Director-General, the Deputy Director-General or any investigating officer or other staff of the Commission by giving any false information or statement or making a false allegation;

- (e) obstruct, insult, assault, hinder or delay an investigating officer in the lawful exercise of the powers conferred on that investigating officer under this Act;
- (f) refuse or fail, without reasonable cause, to give to the Director-General or an investigating officer on request, any document or information required for purposes of this Act;
- (g) fail to comply with any lawful demand of the Director-General, Deputy Director-General or an investigating officer under this Act;
- (h) fail to produce, conceal or attempt to conceal any document or book in relation to which there are reasonable grounds to believe is used to commit an offence;
- (i) destroy anything to prevent the seizure of any property or document or securing of the property or document; or
- (j) without lawful authority or reasonable excuse, disclose to another person who is the subject of an investigation under this Act that the person is under investigation or the details of any investigation;
- (k) while at any Drug Enforcement Commission premises, conduct oneself in a riotous, indecent, disorderly or insulting manner.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or imprisonment for a term not exceeding two years, or to both.

PART VI

EVIDENCE, PRESUMPTIONS AND OTHER MATTERS

Factual
presumptions
relating to
possession
of drug or
precursor
chemical etc.

65. Where in the prosecution of a person for an offence under this Act it is proved that the following was found on a child, any animal, vehicle, vessel or aircraft and that the accused person was at the time on or in charge of the animal, vehicle, vessel or aircraft or in any place under the control or supervision of the accused person, or on the accused person, it shall be presumed, until the contrary is proved, that the accused person was found in possession of the drug, plant, instrument, utensil, precursor chemical, equipment, material or analogue:

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- (a) a drug;
- (b) a plant which can be used or consumed as a drug or from which a drug can be extracted;
- (c) a precursor chemical, equipment or material for the unlawful cultivation, production or manufacture of a drug;
- (d) an instrument or utensil used in administering a drug; or
- (e) any other thing used for the commission of an offence under this Act.

66. Where in the prosecution of an offence under this Act, it is proved that a sample which was taken from any drug or precursor chemical possess particular properties, it shall be presumed, until the contrary is proved, that the drug or precursor chemical possesses the same properties as the sample.

Factual presumptions relating to samples

67. (1) Where in the prosecution of a person for an offence under section 18 it is proved that the accused person was found in unlawful possession of a drug or precursor chemical, it shall be presumed, until the contrary is proved, that the possession was for the purpose of trafficking.

Factual presumptions relating to purpose of supply of drug or precursor chemical

(2) For the purposes of this Act, where a person has in the person's possession whether for the purpose of importing into or exporting from the Republic or not; or imports into or exports from the Republic a prescribed quantity of a drug or precursor chemical, it shall be presumed until the contrary is proved, that the possession, import, export, intended import or intended export, is for the purpose of trafficking.

68. Where a substance is mixed with a drug or precursor chemical, the weight of the substance after measuring shall be the total weight of the drug or precursor chemical unless the contrary is proven.

Factual presumption relating to weight of a drug, or precursor chemical

69. A certificate purporting to be issued by, or on behalf of, a foreign state to the effect that the import or export of a drug, precursor chemical, equipment, material, instrument or utensil 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 therein.

Proof of prohibited import or export of drug, precursor chemical, equipment, material, instrument or utensil

Grant of
indemnity
by Director
of Public
Prosecutions
Act No. 20
of 2010

70. (1) Subject to the Plea Negotiations and Agreements Act, 2010, the Director of Public Prosecutions may, at any time, with a view to obtaining at a trial the evidence of any person directly or indirectly concerned with or privy to an offence under Part IV, tender indemnity to that person on condition that the person makes a full and true disclosure of all facts or circumstances within that person's knowledge relating to the offence and to every other person involved in the commission of the offence, whether as principal or in any other capacity, together with the delivery up of any document or thing constituting evidence or corroboration of the commission of the offence by the person to be charged or the accused person.

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(2) A court shall record in the manner prescribed by the Criminal Procedure Code the evidence on oath of a person accepting indemnity under subsection (1) and shall transmit the record of the evidence to the Director of Public Prosecutions.

(3) A person accepting indemnity under this section shall be examined as a witness at the trial.

(4) Where a person who has accepted indemnity under this section has, either by wilfully concealing anything material to the case, or by giving false evidence, not complied with the condition on which the indemnity was made, that person may be prosecuted for the offence in respect of which the indemnity was tendered or for any other offence of which the person appears to be guilty of in connection with the same matter.

(5) A person to whom indemnity is made under subsection (1) who, in the opinion of the court has made a true and full disclosure of all things as to which that person is lawfully examined shall be entitled to receive a certificate of indemnity under the hand of the Director of Public Prosecutions stating that the person has made a true and full disclosure of all things as to which the person was examined, and the certificate shall be a bar to any legal proceedings against the person in respect of all those things.

Protection
of whistle
blowers
Act No. 4 of
2010

71. (1) The Public Interest Disclosure (Protection of Whistle blowers) Act, 2010, shall apply in relation to the protection of whistle blowers and other related matters.

(2) Despite subsection (1), where it appears to the Director-General that as a result of assisting the Commission or the court, the safety of a witness, expert, victim or other person may be prejudiced or the witness, expert, victim or other person may be subject to threats, intimidation or harassment, the Director-General shall make arrangements that are necessary to protect—

(a) the safety of such witness, expert or victim; or

(b) any other person from threats, intimidation or harassment.

(3) For the purposes of subsection (2), “assisting the Commission or court” includes—

(a) appearance or impending appearance before the Commission or the court to give evidence or produce a document or other thing;

(b) production or proposed production of a document or other thing to the Commission or the court under this Act; or

(c) assisting or having assisted the Commission or the court in some other manner in accordance with the provisions of this Act.

(4) The Director-General may, in providing the arrangements under subsection (2), collaborate with other law enforcement agencies and authorities.

(5) The law enforcement agencies and authorities shall, as far as reasonably possible, assist the Director-General in the provision of arrangements for the protection of the persons under subsection (2).

(6) Subject to subsection (1), in any trial for an offence under this Act, a witness shall not be obliged to—

(a) disclose the identity or address of an informer or person assisting or who assisted the Commission in an investigation into an alleged or suspected offence under this Act; or

(b) state any matter which may disclose the identity or address of an informer or person referred to in paragraph (a).

(7) Where any document which is in evidence or liable to inspection in any civil or criminal proceeding under this Act contains any entry or passage in which an informer is named or described or which might lead to the person's discovery, the court before which the proceedings is held shall cause that entry or passage to be concealed from view or to be obliterated in a manner that, in the opinion of the court, shall not disclose the identity of the informer.

(8) An action or proceeding, including disciplinary action, shall not be instituted or maintained against a witness, expert, victim or other person who, in good faith, assists, or discloses information to, the Commission or the court.

(9) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Forfeiture of
proceeds of
illegal
activity
Act No. 19
of 2010

72. (1) The Forfeiture of Proceeds of Crime Act, 2010, shall apply in relation to the seizure and forfeiture of any proceeds or property acquired through drug trafficking or prohibited activities involving drugs or precursor chemical by any person and any other related matters.

(2) Any property which is forfeited to the State in terms of subsection (1) may be disposed of by the Commission in accordance with the Public Finance Management Act, 2018.

Act No. 1 of
2018
Affidavit
evidence

73. For the purposes of any proceedings in respect of an offence under this Act, the court may admit affidavit evidence, at any stage of the proceedings and the same shall be *prima facie* evidence, except that the deponent may be summoned for cross-examination.

Tampering
with seized
or forfeited
property,
substance or
sample

74. (1) A person shall not, without lawful authority, use, take or dispose of any property drug or precursor chemical or any sample thereof which is seized or forfeited under this Act.

(2) A person shall not tamper with, or falsify the results of, any analysis with the intention of interfering with the proper course of justice.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable, on conviction, to imprisonment for a term not exceeding three years.

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PART VII

DRUG ABUSE PREVENTION, TREATMENT AND REHABILITATION

- 75.** The Commission shall, in consultation with an appropriate authority, develop and implement strategies for carrying out national campaigns to educate the public on the dangers relating to abuse of drugs or precursor chemicals and other substances. National awareness campaigns
- 76.** A person shall not operate a drug treatment and rehabilitation centre without authority from the Council. Prohibition of operation of drug treatment or rehabilitation centre without authority
- 77.** A person is eligible to undergo treatment at a treatment and rehabilitation centre or health facility if — Eligibility for treatment and rehabilitation
- (a) the person is charged with an offence, under this Act or any other written law;
 - (b) the person walks in voluntarily;
 - (c) the person is brought in by another person;
 - (d) the person's drug dependency contributed to the commission of an offence;
 - (e) the facts alleged in connection with the offence, combined with any previous criminal record of the person and any other relevant information available to the court, indicate that it is likely that the person shall be sentenced to imprisonment for a minimum term of one year;
 - (f) the person is a child in conflict with the law who is drug dependent; or
 - (g) the person satisfied any other criteria as may be prescribed under this Act.
- 78.** The Commission may refer a person to a health facility to undergo treatment and rehabilitation if the person is a drug dependent person. Referral to health facility for treatment and rehabilitation
- 79.** (1) A court may, where it convicts a person for an offence under this Act and it is satisfied that the person is addicted to a drug order that the person be sent to a treatment and rehabilitation centre. Treatment order

(2) A person who is sent to a treatment and rehabilitation centre under subsection (1) shall have the time spent at the treatment and rehabilitation centre taken into account for the purposes of remission of a sentence imposed by the court.

Imposition
of final
sentence

80. (1) As soon as may be reasonably practicable after the termination of a treatment programme of a person, the person shall be brought before the court to be dealt with in accordance with this section.

(2) A court shall, where it terminates a treatment programme of a person, reconsider the person's initial sentence, taking into consideration—

(a) the nature of the person's participation in the treatment programme; and

(b) any sanctions that are imposed on the person during the treatment programme.

(3) A court shall, after considering a person's initial sentence, determine the person's final sentence—

(a) by making an order setting aside the initial sentence and discharging the person, either unconditionally or conditionally, on conditions that the court may impose;

(b) by making an order setting aside the initial sentence deferring the passing of sentence and releasing the person conditionally on conditions that the court may impose;

(c) by making an order setting aside the initial sentence and imposing instead any sentence that it could have been imposed for the offence to which the initial sentence related; or

(d) by making an order confirming the initial sentence.

(4) Where a person is discharged unconditionally under subsection (3)(a), the conviction in respect of the offence concerned shall not form part of the person's criminal record.

(5) The final sentence determined for a person in relation to an offence is not to be greater than the initial sentence imposed on the person in relation to that offence.

PART VIII
GENERAL PROVISIONS

81. A court shall not grant bail in respect of an offence under section 15, 16 or 17. Bail

82. (1) Where property which is seized under this Act is subject to speedy and natural decay, and it is proved on oath to a magistrate that in fact or according to reasonable suspicion, the property was used in, or in connection with, the commission of an offence by or in respect of which an offence is committed, the court may order that the property be sold or otherwise disposed of but shall order the proceeds of that sale to be paid into the general revenues of the Republic. Disposal of abandoned and perishable goods

(2) Where it is proved on oath or on reasonable suspicion to a magistrate that any abandoned property was used in, or in connection with, the commission of an offence by or in respect of which an offence was or has been committed or was about to be committed remains unclaimed for a period of six months or more, the court may order that the property be sold or otherwise be disposed of and shall order that the proceeds of that sale be paid into the general revenues of the Republic.

83. (1) Where any property is seized under this Act, the property shall become forfeited immediately on the expiration of the period of six months if— Forfeiture of property where no proceedings or claim

(a) no prosecution for any offence under any written law is instituted with regard to the property;

(b) no claim in writing is made by any person that the person is lawfully entitled to the property or that it is not liable to forfeiture under this Act; or

(c) no proceedings are commenced by the Commission, within six months from seizure, for the forfeiture of the property.

(2) The Director-General may, where within six months from the date of the seizure of any property under this Act, a claim in writing is made by any person in terms of subsection (1)(b)—

(a) may order the release of the property to the claimant if the Director-General is satisfied that there is no dispute as to the ownership of the property and that it is not liable to forfeiture; or

(b) if the Director-General is satisfied that there is a dispute as to the ownership of the property or is doubtful as to the person who owns it, or whether it is liable to forfeiture, the Director-General shall, within fourteen days after the expiry of the period of six months, refer the claim to the High Court for its decision.

(3) This section shall be without prejudice to the power of an officer or police officer to release from seizure any property under section 52.

Disposal
and
destruction
of seized
substances

84. (1) Unless the conservation of the drug or precursor chemical is essential for the proceedings, a court shall order the immediate destruction of the drug or precursor chemical.

(2) Drugs or precursor chemicals that are usable in the pharmaceutical industry or another industry, depending on the nature of the substance may be disposed of by their supply to a public or private body authorised to utilise or export them.

(3) If the conservation of a drug or precursor chemicals is deemed essential for the proceedings, their disposal or destruction shall be carried out as soon as the decision ordering their confiscation becomes final.

(4) Any cases of disposal and destruction shall be certified by a report stating precisely which sealed containers have been disposed of or destroyed and the labels on the containers or the particulars entered on their wrappings, if any, shall be annexed to the report, which shall be signed by all the persons who took part in, or were present at, the disposal or destruction.

Mutual
legal
assistance
Cap. 98

85. The Mutual Legal Assistance in Criminal Matters Act applies to offences under this Act, except where the provisions of that Act are inconsistent with this Act.

Sentence for
previous
offenders

86. A person convicted on a second or subsequent offence for trafficking is liable to imprisonment for a term of not less than ten years.

Extraditable
offences
Cap. 94

87. An offence under this Act shall be deemed to be an extraditable offence for the purposes of the Extradition Act.

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88. The Commission may, by statutory instrument, make Rules for the — Rules

- (a) appointment and termination of appointment of staff of the Commission;
- (b) disciplinary control of persons holding or acting in any office; and
- (c) practice and procedure of the Commission in the exercise of its functions under this Act.

89. (1) The Minister may, on the recommendation of the Commission, make Regulations for the better carrying out of the provisions of this Act. Regulations

(2) Despite the generality of subsection (1), the Regulations made under subsection (2) may provide for—

- (a) the prevention of the commission of offences under this Act;
- (b) the amendment of the Schedules;
- (c) the procedure for lodging and dealing with complaints;
- (d) the procedure for declaration of interest and assets by the Director-General, Deputy Director-General and officers of the Commission;
- (e) anti-trafficking strategies in private and public bodies and special measures for children and youths;
- (f) the form of oaths to be declared under this Act;
- (g) the establishment, composition, tenure, procedure and any other matters in respect of committees;
- (h) the establishment and management of treatment and rehabilitation centres; and
- (i) generally the carrying into effect of the purposes of this Act.

90. The Narcotic Drugs and Psychotropic Substances Act, 1993, is repealed.

Repeal of
Cap. 96
Act No. 37
of 1993

Savings and
transitional
provisions

91. (1) The Director-General under the repealed Act shall continue to be an officer or employee of the Commission, as if appointed or employed under this Act.

(2) The service of members of staff of the Commission under the repealed Act shall be treated as continuous service.

(3) Nothing in this Act affects the rights and liabilities of any person employed or appointed by the Commission before the commencement date.

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FIRST SCHEDULE

(Sections 3 (2) and 5 (4))

ADMINISTRATION OF COMMISSION AND STAFF BOARD

PART I

STAFF BOARD OF COMMISSION

1. A member of the Staff Board shall hold office for a term of two years and may be reappointed for a further term of two years.

Tenure of office of member
2. (1) The Staff Board may, for the purpose of performing its functions under this Act, establish committees as it considers necessary and delegate to any of those committees functions that the Staff Board considers fit.

Committees

(2) Subject to any specific or general direction of the Board, a committee may regulate its own procedure.
3. (1) A person who is present at a meeting of the Staff Board or any committee at which any matter is the subject of consideration, and in which matter that person or that person's relative or associate is directly or indirectly interested in a private capacity shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Staff Board or the committee otherwise directs, take part in any consideration or discussion of, or vote on any question relating to that matter.

Disclosure of interest

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.
4. (1) A person shall not, without the consent, in writing, given by or on behalf of the Committee, otherwise than in the course of the duties of that person, publish or disclose to any other person, the contents of any document, communication or information, which relates to, or which has come to the knowledge of that person in the course of that person's duties under this Act.

Prohibition of publication or disclosure of information to unauthorised persons

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Immunity **5.** An action or other proceeding shall not lie or be instituted against a member of the Staff Board, a member of a committee of the Staff Board or a member of staff of the Staff Board for or in respect of an act or thing done or omitted to be done in good faith in the exercise or performance of any of the powers, functions or duties conferred under this Act.

PART II

FINANCIAL PROVISIONS

Funds of
Commission **6.** (1) The funds of the Commission consists of monies as may—

- (a) be appropriated to the Commission by Parliament;
- (b) be paid to the Commission by way of grants or donations; and
- (c) otherwise vest in or accrue to the Commission.

(2) The Commission may, subject to the approval of the Minister responsible for finance—

- (a) accept monies by way of grants or donations from any source within or outside Zambia; and
- (b) raise by way of loans or otherwise, such monies as it may require for the performance of the Commission's functions.

(3) There shall be paid from the funds of the Commission—

- (a) the emoluments of the staff of the Commission;
- (b) such reasonable travelling and other allowances for the members of the staff at rates that the Emoluments Commission may, on the recommendation of the Minister, determine; and
- (c) any other expenses incurred by the Commission in the performance of its functions under this Act.

(4) The Commission may, subject to the approval of the Minister, invest in a manner that it considers appropriate funds of the Commission which it does not immediately require for the discharge of its functions.

Financial
year **7.** The financial year of the Commission shall be a period of twelve months ending on 31st December in each year.

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Substances*

8. (1) The Commission shall cause to be kept proper books of account and other records relating to its accounts. Accounts and audit

(2) The accounts of the Commission shall be audited annually by the Auditor-General or an auditor appointed by the Auditor-General.

(3) The Auditor-General's fees shall be paid by the Commission.

9. (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Commission shall submit to the Minister a report concerning its activities during that financial year. Annual report

(2) The report referred to in subparagraph (1) shall include information on the financial affairs of the Commission and there shall be appended to that report—

(a) an audited statement of financial position;

(b) an audited statement of comprehensive income; and

(c) such other information as the President may require.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subparagraph (1), lay the report before the National Assembly.

SECOND SCHEDULE

*(Section 2 and 16)***Narcotic Drugs**

- Acetorphine
- Acetyl alpha methyl fentanyl
- Alphacetylmethadol
- Alpha methylfentanyl
- Acetyldihydrocodeine
- Acetylmethadol
- Alfentanil
- Allylprodine
- Alphameprodine
- Alphamethadol
- Alphamethylthiofentanyl
- Alphaprodine
- Anileridine
- Beta hydroxyfentanyl
- Beta hydroxy methyl 3 fentantayl
- Benzethidine
- Benzylmorphine
- Betacetylmethadol
- Betameprodine
- Betamethadol
- Betaprodine
- Bezitramide
- Coca (leaf)
- Cocaine
- Clonitazene
- Codeine
- Codoxime
- Concentrate of poppy straw
- Desomorphine
- Dextromoramide
- Dextropropoxyphene
- Diampromide
- Diethylthiambutene
- Difenoxin
- Dihydrocodeine
- Dihydroetorphine
- Dihydromorphine
- Dimenoxadol
- Dimepheptanol

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Substances*

- Dimethylthiambutene
- Dioxaphetyl butyrate
- Diphenoxylate
- Dipipanone
- Drotebanol
- Ecgonine, its esters and derivatives
- Ethylmethylthiambutene
- Ethylmorphine
- Etonitazene
- Etorphine
- Etoxadine
- Fentanyl
- Furethidine
- Heroin
- Hydrocodone
- Hydromorphanol
- Hydromorphone
- Hydroxypethidine
- Isomethadone
- Ketobemidone
- Levomethorphan
- Levomoramide
- Levophenacymorphan
- Levorphanol
- Metazocine
- Methadone
- Methadone intermediate (4 cyano 2 dimethylamino 4, 4 diphenylbutane)
- Methyl-desorphine
- Methyl-dihydromorphone
- Methyl 3 fentanyl
- Methyl 3 thio fentanyl
- Metopon
- Moramide
- Morpheridine
- Morphine
- Morphine methobromide
- MPPP
- Para fluorofentanyl
- PEPAP
- Thiofentanyl and
- Other pentavalent nitrogen morphine

Derivatives

- Morphine N oxide
- Myrophine
- Nicocodine
- Nicodicodine
- Nicomorphine
- Norcodeine
- Noracymethadol
- Norlevorphanol
- Normethadone
- Normorphine
- Norpipanone
- Opium
- Oripavine
- Oxycodone
- Oxymorphone
- Pethidine
- Pethidine intermediate A (4 cyano 1 methyl 4 phenyl piperidine)
- Pethidine intermediate B (4 phenylpiperidine 4 carboxylic acid ethyl ester)
- Pethidine intermediate C (1 methyl 4 phenylpiperidine-4 carboxylic acid)
- Phenadoxone
- Phenampromide
- Phenazocine
- Phenomorphan
- Phenoperidine
- Pholcodine
- Piminodine
- Piritramide
- Proheptazine
- Properidine
- Propiram
- Racemethorphan
- Racemoramide
- Racemorphan
- Remifentanil
- Sufentanil
- Thebacon
- Thebaine
- Tilidine
- Trimeperidine

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Substances*

THIRD SCHEDULE

(Section 2 and 16)

Psychotropic Substances

- Allobarbitol
- Alprazolam
- Aminorex
- Amobarbitol
- Amphetamine
- Amphepramone
- Barbitol
- Benzphetamine
- Brolamphetamine
- Bromazepam
- Brotizolam
- Buprenorphine
- Butalbital
- Butobarbitol
- Camazepam
- Cathine
- Cathinone
- Chlordiazepoxide
- Clobazam
- Clonazepam
- Clorazepate
- Clotiazepam
- Cloxazolam
- Cyclobarbitol
- Delorazepam
- DET
- DMA
- DMHP
- DMT
- Dexamphetamine
- Diazepam
- DOET

- Estazolam
- Etizolam
- Ethchlorvynol
- Ethinamate
- Etilamphetamine
- Eticyclidine
- Ethyl loflazepate
- Etryptamine
- Fencamfamine
- Fenetylline
- Fenproporex
- Flualprazolam
- Fludiazepam
- Flurazepam
- Flunitrazepam
- Glutethimide
- Halazepam
- Haloxazolam
- Ketazolam
- Levamphetamine
- Loprazolam
- Lorazepam
- Lormetazepam
- (+)-Lysergide
- Mazindol
- Mecloqualone
- Medazepam
- MDA
- MDMA
- Mefenorex
- MMDA
- Meprobamate
- Mescaline
- Methyl-4-aminorex
- Mesocarb
- Methcathinone
- Methamphetamine
- Methamphetamine racemate
- Methaqualone

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Substances*

- Methylphenidate
- Methylpheno barbital
- Methylprylon
- Midazolam
- N-ethyl MDA
- N-hydroxy MDA
- Nimetazepam
- Nitrazepam
- Nordazepam
- Oxazepam
- Oxazolam
- Parahexyl
- Pemoline
- PMA
- Pentazocine
- Pentobarbital
- phenazepam
- Phencyclidine
- Phendimetrazine
- Phenmetrazine
- Phenobarbital or Phenobarbitone
- Phentermine
- Pinazepam
- Pipradrol
- Prazepam
- Products of Cannabis containing more than 0.3 percent Delta-9-Tetrahydrocannabinol, (THC)
 - (i) Herbal products known as Marijuana;
 - (ii) Cannabis resins or hashish cake;
 - (iii) Cannabis oil or hashish oil; and
 - (iv) any other cannabis products
- Psilocine, psilocin
- Psilocybine
- Pyrovalerone
- Rolicyclidine
- Secobarbital
- STP, DOM
- Temazepam
- TMA

- Tenamphetamine
- Tenocyclidine
- Tetrahydrocannabinol
- Tetrazepam
- Triazolam
- Vinylbital
- Zipeprol
- The isomers, unless specifically excepted, of the drugs in these Schedules whenever the existence of such isomers is possible within the specific chemical designation;
- The esters and ethers, of the drugs in these Schedules whenever the existence of such esters or ethers is possible.

The salts of the drugs listed in these Schedules, including the salts of esters, ethers and isomers as provided above whenever the existence of such salts is.

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Substances*

FOURTH SCHEDULE

(Section 26(1))

PREPARATIONS

Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
- (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
- (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
- (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

FIFTH SCHEDULE

(Section 2 and 16)

PRECURSOR CHEMICALS

- 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 sulphuric acid and hydrochloric acid.

DIVISION I

(Table I of the 1988 Convention)

Ephedrine	N-acetylanthranilic acid
Ergometrine	Isosafrole
Ergotamine	3, 4 methylenedioxyphenyl
Lysergic acid	2 propanone
1-phenyl-2-propanone	Piperonal
Pseudoephedrine	Safrole

DIVISION II

(Table II of the 1988 Convention)

Acetic anhydride	Hydrochloric acid
Acetone	Methyl ethyl ketone
Anthranilic acid	Potassium Permanganate
Ethyl ether	Sulphuric acid
Phenylacetic acid	Toluene
Piperidine	
