



ILLICIT DRUGS CONTROL ACT

Chapter 10.15

2016 Revised Edition



ILLICIT DRUGS CONTROL ACT

Arrangement of Sections

Section

PART 1 - PRELIMINARY	5
1 Short title	5
2 Interpretation	5
PART 2 - OFFENCES	7
3 Unlawful import or export of illicit drugs	7
4 Unlawful possession, manufacture, cultivation, use and supply	7
5 Controlled chemicals and equipment	8
6 International traveller’s exemption	8
7 Exemption	8
8 Designated forensic laboratory	9
PART 3 - INVESTIGATION, SEARCH AND SEIZURE	9
DIVISION 1 – POWERS OF POLICE OFFICERS	9
9 Covert monitoring	9
10 Use of tracking devices	10
11 Controlled delivery	10
12 Power to search vehicles or craft	11
13 Power to search a person	11
14 Internal concealment	12
15 Search of female	12
DIVISION 2 – POWERS OF CUSTOMS OFFICERS	13
16 Boarding, search and detention of craft.....	13
17 Access to customs area.....	13

18	Search and examination of baggage	14
19	Questioning and searching persons	14
20	Arrest without warrant	14
21	Entry and search without warrant	14
22	Entry and search with warrant	14
DIVISION 3 – WARRANTS		15
23	Search Warrants.....	15
24	Search and seizure without warrant in emergencies	16
DIVISION 4 – ENFORCEMENT POWERS		16
25	Assistance.....	16
26	Use of force	16
27	Evidence of authority	16
28	Protection of officers.....	16
29	Offences against officers.....	17
30	Protection of informers and undercover officers	17
31	Authorised Officers.....	18
DIVISION 5 – POST SEIZURE PROCEDURES		18
32	Disposal and storage of seized illicit drugs	18
33	Forfeiture.....	19
PART 4 - EVIDENTIARY MATTERS		19
34	Factual presumption relating to samples	19
35	Proof of prohibited import or export of an illicit drug under foreign law	19
36	Scientific analyst certificate	19
37	Offence of interfering with evidence	20
PART 5 - OTHER MATTERS		20
38	Regulations.....	20
SCHEDULE 1		21
ILLICIT DRUGS		21
SCHEDULE 2		25
CONTROLLED CHEMICALS		25
SCHEDULE 3		26
CONTROLLED EQUIPMENT		26
ENDNOTES		27



ILLICIT DRUGS CONTROL ACT

AN ACT TO CONTROL ILLICIT DRUGS, CONTROLLED CHEMICALS AND EQUIPMENT¹

Commencement [18th of August, 2003]

PART 1 - PRELIMINARY

1 Short title

This Act may be cited as the Illicit Drugs Control Act.

2 Interpretation²

In this Act, unless a contrary intention appears —

“**authorised officer**” means a person or any one of a class of persons authorised by the Minister of Police or the Minister responsible for revenue and customs;³

“**controlled chemical**” means any controlled chemical listed in Schedule 2 or anything prescribed by way of regulation to be a controlled chemical;

“**controlled delivery**” means the investigative technique described in section 11 for gathering evidence to identify any person involved in any offence or to facilitate prosecution of that offence;

“**controlled equipment**” means anything listed as such in Schedule 3 or anything prescribed by way of Regulation to be controlled equipment;

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

“**cultivate**” includes harvesting and the separation of opium, coca leaves, cannabis and its extracts from the plants from which they are obtained;

“**customs area**” means any place appointed under the Customs and Excise laws to be a customs area for the deposit of goods subject to customs control by the Minister responsible for revenue and customs by notice in writing;

“**document**” means —

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

“**evidence in relation to commission of an offence**” shall not be restricted to evidence that is to be produced in Court;

“**goods**” includes all kinds of moveable personal property including any living thing;

“**illicit drug**” means any drug of Class A or Class B listed in Schedule I or anything prescribed by regulation to be an illicit drug;⁴

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

“**Minister**” means the Minister of Police;

“**monitor**” means to maintain regular surveillance over a period of time;

“**place**” includes any land or any other premises;

“**premises**” includes the whole or any part of a structure, building, craft or vehicle;

“**property**” means currency and all other personal property of every description, whether situated in Tonga or elsewhere and whether tangible or intangible, and includes an interest in any such property;

“**supply**” includes distribute, give and sell;

“**tracking device**” means a device capable of transmitting a signal to a receiver for the purpose of indicating the location of the device;

“**utensils**” includes any article associated with the manufacture or use of an illicit drug or controlled chemical;

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

PART 2 - OFFENCES

3 Unlawful import or export of illicit drugs⁵

Any person who knowingly without lawful excuse, the proof of which shall lie on him, imports or exports any illicit drug commits an offence and shall be liable upon conviction —

- (a) in respect of a Class B drug in the quantity of less than 28 grams, to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 1 year or both;⁶
- (b) in respect of a Class B drug in the quantity of 28 grams or more, to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 7 years or both;⁷
- (c) in respect of a Class A drug, to a fine not exceeding \$1,000,000 or imprisonment for a term not exceeding 30 years or both.

4 Unlawful possession, manufacture, cultivation, use and supply⁸

Any person who knowingly without lawful excuse, the proof of which shall lie on him —

- (a) possesses, manufactures, cultivates, uses or supplies an illicit drug; or
- (b) engages in any dealings with any other person for the import, export, possession, manufacture, use, cultivation, supply, transfer, transport, offer or sale of an illicit drug,

commits an offence and shall be liable upon conviction —

- (i) in respect of a Class B drug in the quantity of less than 28 grams, to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 1 year or both;⁹

- (ii) in respect of a Class B drug in the quantity of 28 grams or more, to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 7 years or both;¹⁰
- (iii) in respect of a Class A drug, to a fine not exceeding \$1,000,000 or imprisonment for a term not exceeding 30 years or both.

5 Controlled chemicals and equipment

Any person who without lawful excuse, the proof of which shall lie on him, imports, exports, possesses, manufactures, or supplies any controlled chemical or controlled equipment —

- (a) knowing that the chemical or equipment is to be used in, or for, the commission of an offence against section 4; or
- (b) being reckless as to whether that chemical or equipment is to be used in or for the commission of an offence against section 4,

commits an offence and shall be liable upon conviction to a fine not exceeding \$750,000 or imprisonment for a term not exceeding 25 years or both.

6 International traveller's exemption

Notwithstanding anything contained in this Act, any person undergoing treatment of a medical condition, who is entering, leaving or transiting through Tonga, may possess such quantities of an illicit drug that have been lawfully prescribed or supplied to that person or a person under their care for the purpose of treating a medical condition for a period of not more than one month:

Provided that such person shall have written authority from the doctor by whom he is being treated.

7 Exemption

- (1) Any person whose lawful occupation or profession requires the possession, supply or use of an illicit drug, controlled chemical or controlled equipment is exempted from the offences under this Act provided that such possession, supply, or administration is for the specific purpose of their lawful occupation.
- (2) Any import, export, possession manufacture or use of any illicit drug, controlled chemical or controlled equipment by the Ministry of Health shall be exempt from any offence under this Act and a certificate signed by the Minister of Health shall be evidence in any court that the illicit drug, controlled chemical or controlled equipment described therein was exempt.

8 Designated forensic laboratory

The Minister may, by notice published in the Gazette, designate secure premises as a forensic laboratory for the testing, analysis, storage and destruction of any illicit drug, controlled chemical or controlled equipment in relation to the investigation of offences or to any court proceeding.

PART 3 - INVESTIGATION, SEARCH AND SEIZURE

DIVISION 1 – POWERS OF POLICE OFFICERS

9 Covert monitoring

- (1) If a police officer of or above the rank of sergeant or an officer in charge of a police station, suspects on reasonable grounds that a person has committed, is committing or is about to commit an offence under this Act, that officer may for the purpose of investigation —
 - (a) if the circumstances are such that time does not allow for a written application, make an oral application to a Magistrate for express authority to enter a place and covertly monitor and record, by any means, the conduct and communications, including telecommunications, of any person; or
 - (b) make a written application to a Magistrate's Court for express authority to enter a place and covertly monitor and record, by any means, the conduct and communications including telecommunications, of the person.
- (2) Every application, whether in writing or made orally, shall include —
 - (a) the facts relied upon;
 - (b) a description of the manner by which it is proposed to monitor the person;
 - (c) the name and address of the suspects if known and, if not known, then the premises, or place or device where it is intended to monitor the person;
 - (d) the identity of any person who may be required to provide assistance for the purpose of giving effect to the authority to monitor covertly; and
 - (e) the period for which the authority to monitor is requested.
- (3) An authority to monitor covertly issued under subsection (1) —
 - (a) authorises any police officer and any person identified under paragraph (b) of this subsection to enter, by force if necessary, any place specified in the authority;
 - (b) shall identify any person who is required to provide assistance, for the purpose of giving effect to the authority to monitor covertly; and

- (c) enables any police officer in charge to obtain assistance from any person identified under paragraph (b) of this subsection for the purpose of giving effect to the authority to monitor covertly.
- (4) An authority to monitor covertly given following oral application under subsection (1)(a) shall be valid for 48 hours unless extended following a written application.
- (5) Any person who without reasonable excuse fails to provide such assistance as may be required under the terms of the authority to monitor covertly commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000 or to imprisonment not exceeding 6 months or both.

10 Use of tracking devices

- (1) If a police officer, of or above the rank of sergeant or officer in charge of a police station considers it necessary for the investigation of an offence against this Act, he may authorise the placing of a tracking device in or on any place, vehicle, craft or goods.
- (2) If the placing, service or retrieval of the tracking device requires entry onto or into private property or business premises, the officer responsible shall apply to the Magistrate's Court for authority to enter.
- (3) Any person who without the written approval of the Minister —
 - (a) possesses, uses or manufactures any tracking device; or
 - (b) engages in any dealing with any other person for the import, export, manufacture, supply, transport, offer or sale of any tracking device,commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to 2 years imprisonment or both.

11 Controlled delivery

- (1) If a police officer of or above the rank of sergeant or officer in charge of a police station suspects on reasonable grounds that any person has committed, is committing or is about to commit an offence against this Act, he may give written approval for —
 - (a) a controlled delivery to be carried out; and
 - (b) named persons to carry out or participate in the controlled delivery.
- (2) Notwithstanding any law to the contrary, activities which may be undertaken in the course of and for the purposes of a controlled delivery include the following —
 - (a) allowing any craft or vehicle to enter, leave or transit through Tonga;
 - (b) allowing delivery of any —

- (i) illicit drug, controlled chemical or controlled equipment, in or on the craft or vehicle; or
- (ii) property suspected to be involved directly or indirectly with any offence under this Act,

and the officer may, for the purpose of investigating the matter, leave or replace any portion of that illicit drug, controlled chemical or controlled equipment —

- (c) using such force as may be reasonable in the circumstances to enter and search the craft or vehicle;
- (d) placing a tracking device on board the craft or vehicle; or
- (e) allowing any person who has possession, custody or control of the illicit drug, controlled chemical or controlled equipment to enter, leave or transit through Tonga.

12 Power to search vehicles or craft

- (1) This section applies if a police officer has reasonable cause to suspect that there is in or on any vehicle or craft —
 - (a) an illicit, controlled chemical or controlled equipment;
 - (b) evidence relating to an illicit drug, controlled chemical or controlled equipment; or
 - (c) any other evidence relating to any offence under this Act.
- (2) The police officer may —
 - (a) stop and detain any vehicle or craft for the purpose of searching it or any occupants or goods;
 - (b) search any person in that vehicle or craft and detain that person for such period as may be reasonably necessary to complete the search; and
 - (c) search any goods carried within the vehicle or craft.
- (3) Any person who fails or refuses to comply with an officer's request under this section commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or imprisonment not exceeding 12 months or both.

13 Power to search a person

- (1) If a police officer has reasonable cause to suspect that any person has committed an offence under this Act he may detain and search that person.
- (2) The police officer may seize anything found on the person relating to the commission of an offence under this Act.

14 Internal concealment

- (1) If a police officer has reasonable cause to suspect that a person is transporting an illicit drug or controlled chemical by concealing it inside that person's body, the officer may detain that person for the purpose of search.
- (2) A police officer detaining any person under this section shall —
 - (a) clearly inform the detained person of the reason for the detention;
 - (b) arrange for the attendance of a medical practitioner who shall ask the detained person for consent to undergo a medical examination; and
 - (c) in the event that the detained person refuses to consent to a medical examination under paragraph (b), apply to the Magistrate's Court for a detention and medical examination order.
- (3) A detention and medical examination order issued under subsection (2)(c) shall —
 - (a) authorise the detention of that person for a period not exceeding 10 days;
 - (b) direct the detained person to submit to such medical examination as a medical practitioner considers may reasonably be necessary to establish whether the person is internally concealing an illicit drug or controlled chemical; and
 - (c) authorise a medical practitioner to carry out such examination and to provide such medical treatment as may be reasonable and appropriate in the circumstances.
- (4) No action shall lie against a medical practitioner for any act done by him under this section unless it can be proved that such act was done maliciously and without reasonable justification.
- (5) Any police officer who obtains a detention and medical examination order under subsection (2)(c) may apply to the Magistrate's Court, before the detention order has expired, for an extension of the detention order.
- (6) A police officer may seize any illicit drug or controlled chemical found under this section.
- (7) If no illicit drug or controlled chemical is found following the medical examination the detained person shall be released.
- (8) A customs officer shall have the same powers as a police officer under subsections (1) to (5) if the person is in any place subject to customs control.

15 Search of female

A female shall not be searched except by a female police officer.

DIVISION 2 – POWERS OF CUSTOMS OFFICERS**16 Boarding, search and detention of craft**

- (1) A customs officer may stop and board a craft —
 - (a) while the craft is within the territorial waters;
 - (b) while the craft is within the contiguous zone; or
 - (c) outside the territorial waters of any country if the craft is registered in Tonga,
if the officer has reasonable grounds to suspect that the craft is carrying illicit drugs, controlled chemicals or controlled equipment.
- (2) A customs officer may when he considers it necessary direct the craft be taken to a suitable place in Tonga and detained for the purpose of search.
- (3) A customs officer may search a craft boarded under subsection (1) or detained under subsection (2) and any person on board, and undertake tests and take samples of anything on the craft.
- (4) A customs officer may question any person on board the craft or require the production of any documents relating to the craft or anything on the craft and may seize and copy any documents produced.
- (5) A customs officer may seize anything found on the craft which appears to him to be evidence of an offence under this Act.
- (6) A customs officer may remain on the craft for such time as he thinks necessary for the purpose of searching the craft.
- (7) If a craft fails to stop at the request of a customs officer it may be pursued into international waters and such action as is necessary may be undertaken to stop the craft.
- (8) The master or commander of the craft shall provide any customs officer who remains on board the craft with suitable food and accommodation without charge.
- (9) For any of the purposes in this section, a customs officer may direct the master, a member of the crew or any person on board to take any necessary action.
- (10) A master, commander or any person who contravenes any subsection of this section commits an offence and shall be liable to a fine not exceeding \$250,000 or imprisonment not exceeding 10 years or both and in addition the Court may order that the craft be forfeited.

17 Access to customs area

A customs officer may refuse any person access to —

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

18 Search and examination of baggage

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

- (a) has arrived in, or is intending to depart from, the Kingdom as a passenger or a crew member of a craft;
- (b) is the master or commander of a craft that has arrived in, or is about to depart from, the Kingdom; or
- (c) is arriving in, departing from or within a customs area.

19 Questioning and searching persons

(1) A customs officer who has reasonable cause to suspect that an offence has been committed under this Act, may stop, question, detain and search any person if that person —

- (a) has arrived in, or is intending to depart from the Kingdom as a passenger or a crew member of a craft;
- (b) is the master or commander of a craft that has arrived in, or is about to depart from, the Kingdom; or
- (c) is arriving in, departing from or within a customs area.

(2) A customs officer may seize any thing found which appears to him to be evidence relating to the commission of an offence under this Act.

20 Arrest without warrant

A customs officer who has reasonable cause to suspect that a person has committed an offence under this Act, may arrest the person without warrant and shall deliver the person as soon as practicable into the custody of the police who shall deal with him as if he had made the arrest without warrant.

21 Entry and search without warrant

A customs officer may, at any time and without a search warrant, enter and search any place within a customs area.

22 Entry and search with warrant

(1) If a customs officer has reasonable cause to suspect that an offence has been committed under this Act and that there is evidence relating to the

commission of such an offence in or on any place, the officer may make application by information on oath to a Magistrate for a warrant.

- (2) The Magistrate may issue a warrant authorising the officer to —
 - (a) enter with such force as may be reasonable and search the place in accordance with the warrant;
 - (b) search and detain for the purposes of the search —
 - (i) any person found at or in the place;
 - (ii) any person whom the officer suspects is about to enter or leave the place; or
 - (iii) goods in the apparent control of any person at that place; and
 - (c) seize and remove any evidence relating to the commission of an offence under this Act.

DIVISION 3 – WARRANTS

23 Search Warrants

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

- (iii) any property which the officer suspects may have been derived from an offence under this Act.

24 Search and seizure without warrant in emergencies

- (1) A police officer may exercise any of the powers in section 23 without a warrant, if the grounds for obtaining a warrant under that section exist and the officer suspects on reasonable grounds, that —
 - (a) it is necessary to do so in order to prevent the concealment, loss or destruction of anything connected with an offence under this Act; and
 - (b) the circumstances are of such seriousness and urgency as to require the immediate exercise of the power without the authority of a warrant.
- (2) A police officer may, for the purposes of this section, stop any vehicle or craft where the officer suspects on reasonable grounds that anything connected with an offence under this Act is upon or in the vehicle or craft.
- (3) A police officer shall report to a Magistrate any action which he has taken under this section.

DIVISION 4 – ENFORCEMENT POWERS

25 Assistance

In exercising any power conferred by this Act, a police officer, customs officer or authorised officer may have with him and use such assistance as the officer considers necessary.

26 Use of force

A police officer, customs officer or authorised officer may use such force as is necessary in the performance of his duties.

27 Evidence of authority

A police officer, customs officer or authorised officer shall, on request, produce his identification and authority in the exercise of any powers under this Act.

28 Protection of officers

A police officer, customs officer or authorised officer shall not be liable in any civil or criminal proceedings for anything done in the performance of the officer's duties under this Act if the act was done in good faith and on reasonable grounds.

29 Offences against officers

Any person who —

- (a) wilfully obstructs, assaults, intimidates or threatens a police officer, customs officer or authorised officer in the performance of any duty under this Act;
- (b) without reasonable excuse resists arrest or fails to comply with any lawful request made by a police officer, customs officer or authorised officer in the performance of any duty under this Act; or
- (c) in purporting to give information required by a police officer, customs officer or authorised officer in the performance of his duties under this Act —
 - (i) makes a statement he knows to be false in a material particular;
 - (ii) recklessly makes a statement which is false in a material particular; or
 - (iii) intentionally fails to disclose any material particular,

commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or a term of imprisonment not exceeding 3 years or both.

30 Protection of informers and undercover officers

- (1) Subject to subsection (3), no witness in any proceedings under this Act shall be obliged —
 - (a) to disclose —
 - (i) the name or address of any informer or undercover police officer, customs officer or authorised officer, who has given information with respect to an offence against this Act; or
 - (ii) the name and address of any person who has assisted with the enforcement of any provision of this Act;
 - (b) to answer any question if the answer would lead, or would tend to lead, to the discovery of the name, address or identity of such informer or undercover officer, where the informer or officer is not a witness in the proceedings.
- (2) If any record which is in evidence or liable to inspection in any proceedings contains an entry in which any such informer or undercover officer is named or described or which might lead to his discovery, such entry shall be concealed from view or obliterated so far as may be necessary to protect the information or person from discovery.
- (3) If in any proceedings before the Court under this Act, the Court, after full enquiry into the case, is satisfied that an informer or undercover officer wilfully made any material statement which he knew to be false or did not

believe to be true, the Court may permit enquiry and full disclosure concerning the informer or undercover officer.

- (4) If in any other proceedings the Court is of the opinion that justice requires disclosure of the name of an informer or another person who assisted in any investigation or proceedings under this Act, the Court may permit enquiry and full disclosure concerning that informer or person.

31 Authorised Officers

- (1) The Minister or the Minister responsible for revenue and customs may in writing authorise a suitably qualified and trained person —
 - (a) in the Kingdom who is not a police officer or customs officer; and
 - (b) from another country, whether or not he is a police officer or customs officer in that country,to be an authorised officer.
- (2) The authorisation shall be made for a specified period not exceeding 3 years, and may be renewed for a period not exceeding 3 years.
- (3) The Minister or the Minister responsible for revenue and customs may revoke an authorisation for any of the following reasons —
 - (a) incapacity;
 - (b) neglect of duty;
 - (c) misconduct;
 - (d) if the authorised officer gives written notice to the Minister or the Minister responsible for revenue and customs that he wishes the authorisation to be revoked; or
 - (e) in any other circumstances where, in the opinion of the Minister or the Minister responsible for revenue and customs, the authorisation is no longer necessary.
- (4) When the person ceases to be an authorised officer, all articles and documents received by him in relation to the authorisation shall be surrendered to the Minister or the Minister responsible for revenue and customs.

DIVISION 5 – POST SEIZURE PROCEDURES

32 Disposal and storage of seized illicit drugs

- (1) If scientific analysis of a sample of a seized substance or article indicates that it is an illicit drug, controlled chemical or controlled equipment, the analyst shall forward a copy of the scientist's certificate to the Commander of Police.

- (2) Where the Court orders the forfeiture or destruction of any illicit drug, controlled chemical or controlled equipment, it shall be disposed of only —
- (a) by delivery —
 - (i) to the Ministry of Health for use exclusively in meeting the lawful medical or scientific needs; and
 - (ii) the Ministry of Police for training needs; or
 - (b) by incineration, or such other means as ordered by the Court.

33 Forfeiture

Where a person is convicted of an offence under this Act all articles, goods or property if any, in respect of which the offence was committed and in the possession of such person, shall be forfeited in addition to any penalty imposed under this Act.

PART 4 - EVIDENTIARY MATTERS

34 Factual presumption relating to samples

If in any prosecution for an offence against this Act it is proved that a sample which was taken from any seized substance or article possesses a particular property, it shall be presumed that any substance or article from which it was taken possesses the same properties, unless the contrary is proved.

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

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

36 Scientific analyst certificate

- (1) In any proceedings under this Act, the production of a certificate purporting to be signed by a scientific analyst shall be *prima facie* evidence of the facts therein stated.
- (2) Such a certificate shall only be admissible under subsection (1) if a copy of the scientific analyst's certificate has been served by or on behalf of the prosecution on the accused or his counsel at least 28 days before the hearing at which the certificate is to be tendered in evidence and at the same time the accused has been served with a written notice that the prosecution does not propose to call the analyst as a witness.

- (3) The accused shall give written notice to the prosecution at least 21 days before the hearing that he requires the person who made the analysis to be called by the prosecution as a witness.

37 Offence of interfering with evidence

Any person who —

- (a) unlawfully interferes with, uses, takes or disposes of a seized substance or article or any sample thereof; or
- (b) unlawfully interferes with or falsifies any evidence with the intention of interfering with the course of justice,

commits an offence and shall be liable upon conviction to a term of imprisonment not exceeding 10 years.

PART 5 - OTHER MATTERS

38 Regulations

The Minister may, with the consent of Cabinet, make regulations for the proper and efficient administration of this Act.

SCHEDULE 1*(Section 2)***ILLCIT DRUGS¹¹**

The following drugs, designated by their international non-proprietary names or the names used in international conventions in force their isomers, esters and ethers, their salts, including the salts of any such isomer, ester or ether, and any preparations including any such substances are illicit drugs unless exempted by law —

CLASS A

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

Acetorphine	Acetyl-alpha-methyl- fentanyl	Methyl-3fentanyl Methyl-3thio —
	Alphacetylmethadol	fentanyl
Desomorphine	Alpha-methylfentanyl	MPPP
Etorphine	Beta-hydroxyfentanyl	Para-fluorofentanyl
Heroin	Beta-hydroxy-methyl-3- fentanyl	PEPAP
Ketobemidone		Thiofentanyl

(FROM SCHEDULE I OF THE CONVENTION ON
PSYCHOTROPIC SUBSTANCES, 1971)

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

(FROM SCHEDULE I OF THE CONVENTION ON NARCOTIC DRUGS, 1961)

Acetylmethadol	Ethylmethyl- thiambutene	Normorphine
Alfentanil	Etonitazene	Norpipanone
Allylprodine	Etoxidine	Opium
Alphameprodine	Fentanyl	Oxycodone
Alphamethadol	Furethidine	Oxymorphone
Alphamethylthio- fentanyl	Hydrocodone	Pethidine
Alphaprodine	Hydromorphinol	Pethidine
Anileridine	Hydromorphone	intermediate A (4-cyano-1 methyl —

Benzethidine	Hydroxypethidine	4-phenyl-piperidine)
Benzylmorphine	Isomethadone	Pethidine
Betacetylmethadol	Levomethorphan	intermediate B
Betamerprodine	Levomoramide	(4-phenylpiperidine-4 —
Bethamethadol	Levophenacymorphan	carboxylic acid
Betaprodine	Levorphanol	ethylester)
Bezitramide	Metazocine	Pethidine
Clonitazene	Methadone	intermediate C
Coca (leaf)	Methadone intermediate	(1-methyl-4 —
Cocaine	(4-cyano-2-dimethyl-	phenylpiperidine —
Codoxime	amino-4, 4-diphenyl	4-carboxylic acid)
Concentrate of poppy	butane)	Phenadoxone
straw	Methyldesorphine	Phenampromide
Dextromoramide	Methyldihydromorphine	Phenazocine
Diampromide	Metopon	Phenomorphane
Diethylthiambutene	Moramide	Phenoperidine
Difenoxin	Morpheridine	Piminodine
Dihydromorphine	Morphine	Piritramide
Dimenoxadol	Morphine methobromide	Proheptazine
Dimepheptanol	and other pentavalent	Properidine
Dimethylthiambutene	nitrogen morphine	Racemethorphan
Dioxaphetyl butyrate	derivatives	Racemoramide
Diphenoxylate	Morphine-N-oxide	Racemorphan
Dipipanone	Myrophine	Sufentanil
Drotebanol	Nicomorphine	Thebacon
Fegonine	Noracymethadol	Thebaine
its esters and	Norlevorphanol	Tilidine
derivatives	Normethadone	Trimeperidine

(FROM SCHEDULE II OF THE CONVENTION OF NARCOTIC DRUGS, 1961)

Acetyldihydrocodeine	Ethylmorphine	Pholcodine
Codeine	Nicodicodine	Propiram
Dextropropoxyphene	Nircodeine	
Dihydrocodeine	Norcodeine	

(FROM SCHEDULE II OF THE CONVENTION ON PSYCHOTROPIC SUBSTANCES, 1971)

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

(FROM SCHEDULE III OF THE CONVENTION ON PSYCHOTROPIC SUBSTANCES, 1971)

Amobarbital	Cathine	Pentazocine
Buprenorphine	Cyclobarbital	Pentobarbital
Butalbital	Glutethimide	Flunitrazepam

(FROM SCHEDULE IV OF THE CONVENTION ON
PSYCHOTROPIC SUBSTANCES, 1971)

Allobarbitol	Ethinamate	Methylprylon
Alprazolam	Ethyl loflazepate	Midazolam
Aminorex	Etilamphetamine	Nimetazepam
Amphetamine	Fencamfamin	Nitrazepam
Barbitol	Fenproporex	Nordazepam
Benzphetamine	Fludiazepam	Oxazepam
Bromazepam	Flurazepam	Oxazolam
Brotizolam	Halazepam	Pemoline
Butobarbitol	Haloxazolam	Phendimetrazine
Camazepam	Ketazolam	Phenobarbitol
Chlordiazepoxide	Lefetamine	Pentermine
Clobazam	Loprazolam	Pinazepam
Clonazepam	Lorazepam	Pipradrol
Clorazepate	Lormetazepam	Prazepam
Clotiazepam	Mazindol	Pyrovalerone
Clozazolam	Medazepam	Secbutabarbitol
Delorazepam	Mefenorex	Temazepam
Diazepam	Meprobamate	Tetrazepam
Estazolam	Mesocarb	Triazolam
Ethchlorvynol	Methylpheno-barbitol	Vinylbital

OTHER ILLICIT DRUGS

Ketamine

Khat

Gamma-hydroxybutyrate (GHB)

Gamma-butyrolactone (GBL)

1, 4-butanediol (tetramethylene glycol)

Anabolic and androgenic substances

Growth hormones

4-bromo 2, 5 dimethoxyamphetamine (Bromo DMA)

CLASS B^{12b}

Cannabis and Cannabis resin

Cannabis fruit

Cannabis plant (whether fresh, dried, or otherwise) – that is, any part of any plant of the genus cannabis

Cannabis seed

Cannabis oil.

SCHEDULE 2*(Section 2)***CONTROLLED CHEMICALS**

The following substances designated by their international non-proprietary or the names used in international conventions and the salts of these substances, with the exception of the salts from sulphuric and hydrochloric acid are controlled chemicals —

(FROM THE ANNEX TO THE UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, 1988)

Ephedrine	N-acetylanthranilic acid
Ergometrine	Isosafrole
Ergotamine	3, 4 methylenedioxyphenyl —
Lysergic acid	2-propanone
1-phenyl-2propanone	Piperonal
Pseudoephedrine	Safrole
Norephedrine	
Acetic anhydride	Hydrochloric acid
Acetone	Methylethyl
Anthranilic acid	Ketone
Ethylether	Potassium permanganate
Phenylacetic acid	Sulphuric acid
Piperidine	Toluene

SCHEDULE 3

(Section 2)

CONTROLLED EQUIPMENT

Encapsulating machines

Tabletting machines

Rotary evaporators

Laboratory equipment with a capacity of 25 litres or above and related condensers, separating funnels and heating apparatus.

ENDNOTES

¹ **Act 7 of 2003**; commencement 18 August 2003

Amending Acts	Commencement
Act 15 of 2009	26 July 2013
Act 18 of 2012	27 November 2012
Act 16 of 2015	4 December 2015

² Amended by Act 15 of 2009

³ References to the Chief Commissioner of Revenue have been changed, in exercise of law revision powers to the Minister responsible for revenue and customs to accord with the replacement of former customs laws by, inter alia, the Customs and Exercise Management Act 2007

⁴ Amended by Act 18 of 2012

⁵ Substituted by Act 18 of 2012

⁶ Amended by Act 16 of 2015

⁷ Amended by Act 16 of 2015

⁸ Substituted by Act 18 of 2012

⁹ Amended by Act 16 of 2015

¹⁰ Amended by Act 16 of 2015

¹¹ Amended by Act 18 of 2012

¹² Inserted by Act 18 of 2012