

VIRGIN ISLANDS

DRUGS (PREVENTION OF MISUSE) (AMENDMENT)
ACT, 1995

ARRANGEMENT OF SECTIONS

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No. 1 of 1995

**Drugs (Prevention
of Misuse)
(Amendment) Act, 1995**

**Virgin
Islands**

**I Assent
David Mackilligin
Governor
28th September, 1995**

VIRGIN ISLANDS

No. 1 of 1995

An Act to amend the Drugs (Prevention of Misuse) Act, Cap. 178.

[Gazetted 26th October, 1995]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

1. This Act may be cited as the Drugs (Prevention of Misuse) (Amendment) Act, 1995.

Amendment of
section 2 of
Cap. 178

2. Section 2 of the Drugs (Prevention of Misuse) Act, hereinafter referred to as the principal Act, is amended as follows:

(a) in the definition of "cannabis resin" by inserting a comma immediately after the word "purified";

(b) by inserting next after the definition of "controlled drug" the following definition:

" "conveyance" means any ship, vessel, boat, aircraft or other means of transportation however described;"

(c) in the definition of "drug trafficking"

(i) by repealing paragraphs (a) and (b), and substituting the following.

"(a) producing a controlled drug in contravention of section 6 (1) or a corresponding law;

(b) supplying a controlled drug in contravention of section 6 (2) or a corresponding law;

(c) transporting or storing a controlled drug

where possession of the drug is in contravention of section 7 (1) or a corresponding law;"

- (ii) by relettering paragraphs (c) and (d) as paragraphs (d) and (e) respectively.

(d) in the definition of "drug trafficking offence"

- (i) by repealing paragraph (a) and substituting the following:

"(a) an offence under section 5, 6 (1), 6 (2), 7 (1) where subsection (3) of section 7 applies or 7 (2), that is to say, the import, export, production, supply and possession for supply of controlled drugs;"

- (ii) by repealing paragraph (b) and relettering paragraph (c) as paragraph (b);

- (iii) by repealing paragraphs (d), (e), (f) and (g) and substituting the following:

"(c) a conspiracy to commit any of the offences mentioned in paragraphs (a) and (b);

(d) an offence of attempting to commit any of those offences;

(e) an offence of inciting another to commit any of those offences;

(f) aiding, abetting, counselling or procuring the commission of any of those offences;"

- (e) by repealing the definition of "practitioner" and substituting the following:

" "practitioner" means a doctor, a dentist or a veterinary practitioner, except when used in the expression "veterinary practitioner";"

3. Section 5 of the principal Act is amended in paragraph (a) of subsection (2) by repealing the words "paragraph (b) or" and substituting the words "paragraph (b) of".

Amendment of section 5 of the principal Act.

4. Section 6 of the principal Act is repealed and the following section is substituted:

Amendment of section 6 of the principal Act.

"6. (1) Subject to any regulations made under section 9, it shall not be lawful for a person to produce a controlled drug and subject to section 31 and to any regulations made under section 9, it is an offence for a person to

- (a) produce a controlled drug; or
- (b) be concerned in the production of a controlled drug by another.

(2) Subject to any regulations made under section 9, it shall not be lawful for a person to supply or offer to supply a controlled drug to another, and subject to section 31 and to any regulations made under section 9, it is an offence for a person to

- (a) supply or offer to supply a controlled drug to another;
- (b) be concerned in the supply of a controlled drug to another;
- (c) be concerned in the making to another of an offer to supply a controlled drug."

Amendment of
section 7 of the
principal Act.

5. Section 7 of the principal Act is repealed and the following section is substituted:

"7. (1) Subject to any regulations made under section 9, it shall not be lawful for a person to have a controlled drug in his possession, and subject to

- (a) subsection (4),
- (b) any regulations made under section 9, and
- (c) section 31,

it is an offence for a person to have a controlled drug in his possession.

(2) Subject to section 31, a person commits an offence if, with intent to supply a controlled drug to another, he has that drug in his possession whether lawfully or not.

(3) Subject to subsection (1), a person found in possession of the following drugs in quantities of more than

- (a) two grammes of diacetylmorphine (heroin),

- (b) five grammes of cocaine,
- (c) fifty-five grammes of opium,
- (d) three grammes of morphine, or
- (e) fifty grammes of cannabis or cannabis resin,

shall be deemed to be in possession of such controlled drug for the purpose of supplying it to another in contravention of section 6 (2) or for drug trafficking in contravention of section 6 (1) unless the contrary is proved, the burden of proof being on the accused.

(4) In any proceedings for an offence under subsection (1) in which it is proved that the accused had a controlled drug in his possession, it shall be a defence for him to prove that knowing or suspecting it to be a controlled drug, he took possession of it for the purpose of

- (a) preventing another from committing or continuing to commit an offence in connection with that drug, or
- (b) delivering it into the custody of a person lawfully entitled to take custody of it,

and that as soon as possible after taking possession of it he took all such steps as were reasonably open to him to destroy the drug or, as the case may be, deliver it into the custody of a person lawfully entitled to the custody of it.

(5) Subsection (4) shall apply in the case of proceedings for an offence under section 20 consisting of an attempt to commit an offence under subsection (1) as it applies in the case of proceedings for an offence under subsection (1), subject to the following modifications, that is to say,

- (a) for the references to the accused having in his possession, and to his taking possession of, a controlled drug there shall be substituted respectively references to his attempting to get, and to his attempting to take, possession of such a drug; and
- (b) the words from "and that as soon as possible" onwards shall be omitted.

(6) Nothing in subsection (4) or (5) shall prejudice any defence which, apart from those subsections, may be

raised by a person charged with an offence under this section."

Amendment of section 9 of the principal Act.

6. Section 9 of the principal Act is amended

- (a) by repealing subsection (4) and substituting the following:

"(4) If, in the case of a controlled drug, the Minister is of the opinion that it is in the public interest

- (a) for the production supply and possession of that drug to be either wholly unlawful or to be permitted solely for purposes of research or such other special circumstances as the Minister may determine, or

- (b) to prohibit a practitioner, druggist or person lawfully conducting a retail pharmacy business from doing, in relation to that drug, any of the things mentioned in subsection (3) except under a licence or other authority issued by the Minister,

he may, subject to subsection (6), by order designate that drug as a drug to which this subsection applies; and while such an order is in force, subsection (3) shall not apply as regards that drug.";

- (b) in subsection (7) by repealing the word "persons" and substituting the words "a person".

Amendment of section 10 of the principal Act.

7. Section 10 of the principal Act is amended by inserting in paragraph (d) immediately after the word "smoking" the word "of".

Amendment of section 11 of the principal Act.

8. Section 11 of the principal Act is amended

- (a) by repealing "7 (5)" and substituting "7 (4)"; and

- (b) by inserting in paragraph (b) immediately after the words "smoking or" the word "otherwise".

Amendment of section 13 of the principal Act.

9. Section 13 of the principal Act is amended by repealing subsection (1) and substituting the following.

"(1) Without prejudice to any requirement imposed by regulations made pursuant to section 12 (2) (a), the Minister may, by notice in writing served on the occupier of any premises on which controlled drugs are or are propose to be kept, give directions as to the taking of

precautions or further precautions for the safe custody of any controlled drugs of a description specified in the notice."

10. Section 14 of the principal Act is amended by repealing subsection (3) and substituting the following:

Amendment of section 14 of the principal Act.

"(3) The Minister may, at any time, give a direction in writing

- (a) cancelling or suspending any direction given by him under subsection (2); or
- (b) cancelling any direction given by him under paragraph (a) of this subsection which suspends a direction given under subsection (2)."

11. Section 15 of the principal Act is amended by repealing subsections (1), (2) and (3) and substituting the following:

Amendment of section 15 of the principal Act.

"(1) Where a practitioner contravenes any regulations made pursuant to paragraph (h) or (i) of section 12 (2) or the terms of a licence issued under regulations made pursuant to paragraph (i) as aforesaid, the Minister may, subject to subsection (3), give a direction in respect of that practitioner, prohibiting him from

- (a) prescribing, administering and supplying, and
- (b) authorising the administration and supply of,

such controlled drugs as may be specified in the direction.

(2) If the Minister is of the opinion that a practitioner is or has, after the coming into operation of this subsection, been prescribing, administering or supplying or authorising the administration or supply of any controlled drugs in an irresponsible manner, the Minister may, subject to subsection (3), give to that practitioner, a direction in accordance with subsection (1).

(3) Where the Minister proposes to give a direction under subsection (1) or (2) the Minister shall refer the case to the Advisory Council which shall

- (a) afford to the practitioner an opportunity to appear before and be heard by the Advisory Council,
- (b) consider the circumstances of the case so far as can be ascertained by it, and

- (c) report to the Minister as to whether the information before the Advisory Council appears to it to provide reasonable grounds for believing that there has been such conduct by the practitioner as mentioned in subsection (1) or (2),

and the Minister shall not give any such direction as aforesaid unless the Advisory Council reports that the information before it appears to it to provide such reasonable grounds as mentioned in paragraph (c)."

Amendment of
section 16 of
the principal
Act.

12. Section 16 of the principal Act is amended

- (a) by repealing paragraphs (a) and (b) of subsection (1) and substituting the following:

"(a) on summary conviction

- (i) to a fine of one hundred thousand dollars or, where there is evidence of the street value of the controlled drug, three times the street value thereof, whichever is the greater, or
- (ii) to imprisonment for a term not exceeding ten years but not less than three years,

or both such fine and imprisonment;

(b) upon conviction on indictment

- (i) to a fine of two hundred thousand dollars or, where there is evidence of the street value of the controlled drug, three times the street value thereof, whichever is the greater, or
- (ii) to imprisonment for a term not exceeding fifteen years but not less than ten years,

or to both such fine and imprisonment.";

- (b) by repealing paragraphs (a) and (b) of subsection (2) and substituting the following:

"(a) upon summary conviction to a fine of five thousand dollars or to imprisonment for a term of two years or to both such fine and imprisonment;

(b) upon conviction on indictment to a fine of twenty-five thousand dollars or to imprisonment for a term of five years or to both such fine and imprisonment."

13. Section 18 of the principal Act is amended

Amendment of
section 18 of
the principal
Act.

- (a) by repealing subsections (1) and (2) and substituting the following:

"(1) If it appears to the Minister that there exists in any area in the Territory, a social problem caused by the extensive misuse of dangerous or otherwise harmful drugs in that area, the Minister may act in accordance with subsection (2).

(2) The Minister may, by notice in writing, served on any doctor or druggist practicing in or in the vicinity of the area concerned, or on any person lawfully conducting a retail chemist and druggist business at any premises situated in or in the vicinity of that area, require him to furnish to the Minister, with respect to any such drugs as may be specified in the notice and as regards any period so specified, the particulars set out in subsection (3).

(3) The particulars mentioned in subsection (2) are such as may be specified in the notice relating to the quantities in which and the number and frequency of the occasions on which those drugs were,

- (a) in the case of a doctor, prescribed, administered or supplied by him;
- (b) in the case of a druggist, supplied by him; or
- (c) in the case of a person conducting a retail chemist and druggist business, supplied in the course of that business at any premises situated in or in the vicinity of the area as aforesaid, which may be specified in the notice.

(4) A notice under subsection (2)

- (a) may require any such particulars to be furnished in such manner and within such time as may be specified in the notice;
- (b) if served on a chemist and druggist or person conducting a retail chemist and druggist business, may, subject to paragraph (c), require him to furnish the names and addresses of doctors on whose prescriptions any dangerous or otherwise harmful drugs to which the notice relates were supplied;

(c) shall not require any person to furnish any particulars relating to the identity of any person for or to whom any such drug has been prescribed, administered or supplied.";

(b) by renumbering subsections (3) and (4) as subsections (6) and (6), respectively.

Amendment of section 19 of the principal Act.

14. Section 19 of the principal Act is amended by repealing subsections (1) and (2) and substituting the following:

"(1) A person commits an offence if he contravenes any regulations made under this Act, other than regulations made pursuant to section 12 (2) (h) or (i).

(2) A person commits an offence if he contravenes a condition or other term of a licence issued under section 5 or a licence or other authority issued under any regulations made under this Act, not being a licence issued under regulations made pursuant to section 12 (2) (i)."

Amendment of section 22 of the principal Act.

15. Section 22 of the principal Act is amended by inserting immediately after the words "proceeded against" the words "and punished".

Amendment of section 24 of the principal Act.

16. Section 24 of the principal Act is amended

(a) in subsection (2)

(i) by repealing paragraph (b) and substituting the following:

"(b) search any conveyance in which the member of the Police Force suspects that the drug may be found, and for that purpose require the person in the control of that conveyance to stop it; or";

(ii) by repealing sub-paragraph (ii) of paragraph (c) and substituting the following:

"(ii) any conveyance or receptacle in which any controlled drug is found.";

(b) by repealing subsections (3) and (4) and substituting the following:

"(3) In addition to the powers vested in a member of

the Police Force under subsection (2), where any controlled drug is found in any conveyance or receptacle, an officer of customs may seize that conveyance or receptacle.

(4) The master or any person in control of such conveyance shall be deemed to be guilty of an offence under section 7 (2) unless he proves that the controlled drug was in the conveyance without his consent, knowledge or connivance and that he exercised all due diligence to prevent the commission of the offence.";

(c) by repealing subsections (7), (8), (9), (10) and (11) and substituting the following.

"(7) A Magistrate or Justice of the Peace may issue a warrant in accordance with subsection (8) if satisfied by information on oath that there is reasonable ground for suspecting

(a) that any controlled drugs are in the possession of a person on any premises or in any place in contravention of this Act or any regulations made thereunder; or

(b) that there is in the possession of any person on any premises or in any place, a document relating (directly or indirectly) to or connected with a transaction or dealing or intended transaction or dealing which would,

(i) if carried out, be an offence under this Act; or

(ii) if carried out or intended to be carried out in a place outside the Territory, be an offence against the provisions of a corresponding law in force in that place.

(8) The warrant mentioned in subsection (7) may authorise any member of the Police Force at any time or times within one month from the date of issue thereof to

(a) enter, with force if necessary, the premises or place named in the warrant;

(b) search such premises or place and any such persons found therein;

(c) seize and detain

- (i) any controlled drug found on the premises or place or in the possession of any such persons if there is reasonable ground for suspecting that an offence under this Act has been committed in relation to any such controlled drugs; or
- (ii) any document found on the premises or place if there is reasonable ground for suspecting that the document so found is such as is mentioned in paragraph (b) of subsection (7).

(9) A person commits an offence if he

- (a) intentionally obstructs a person in the exercise of his powers under this section;
- (b) being the person in control of a conveyance, fails to stop it when required to do so under subsection (2) (b);
- (c) being a person conveyed in a conveyance, intimidates or prevents the person in control of or any other person operating the conveyance from stopping when required to do so under subsection (2) (b);
- (d) without the permission of a person acting in the exercise of his powers under subsection (2), leaves a conveyance which has been stopped by that person pursuant to subsection (2) (b);
- (e) conceals from a person acting in the exercise of his powers under subsection (1), any such books, documents, stocks or drugs as are mentioned in that subsection; or
- (f) without reasonable excuse (proof whereof shall lie on him) fails to produce any such books documents or stocks of drugs as aforesaid where the production thereof is demanded by a person acting in the exercise of his powers under subsection (1).

(10) No person shall be searched by any person of the opposite sex.

(11) No article of a person's clothing may be removed from his body during a search at any place other than within a police station.

(12) The powers conferred by subsection (1) shall be exercisable also for the purposes of the execution of Part II of the Criminal Justice (International Co-operation) Act, 1993; and subsection (7) (excluding paragraph (a)) shall apply also to offences under section 9 or 10 of that Act, taking references in those provisions to controlled drugs as references to scheduled substances within the meaning of that Part."

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1993

17. Section 24A of the principal Act is repealed and the following section is substituted:

Amendment of
section 24A of
the principal
Act.

"24A.(1) Where any substance seized under the provisions of this Act exceeds a weight of five kilogrammes, the Magistrate or Judge, as the case may be, may order that such portion, as may be specified by him, of the seized controlled drug be retained

- (a) for forensic examination or for other investigation in connection with an offence,
- (b) for use as evidence at a trial for an offence,

and may, in relation to the remaining portion, make an order under subsection (2).

(2) The Magistrate or Judge, as the case may be, after he has satisfied himself

- (a) as to the weight of the remaining portion, and
- (b) that the remaining portion is the same substance as that ordered to be retained under subsection (1),

may order that the remaining portion be destroyed in such manner as he may direct.

(3) An order made under subsection (2) shall be admissible in evidence in any proceedings without further proof and shall be *prima facie* evidence of the facts stated in the order.

18. Section 25 of the principal Act is amended by repealing subsection (2) and substituting the following:

Amendment of
section 25 of
the principal
Act.

"(2) Where any controlled drug is found on any premises searched under section 24 (1), or in any conveyance stopped under section 24 (2), the member of the Police Force who has made the search or stopped the conveyance

may arrest without warrant any person in such premises or in such conveyance whom he has reasonable cause to believe to have committed an offence under this Act."

Amendment of section 26 of the principal Act.

19. Section 26 of the principal Act is amended by repealing subsection (2) and substituting the following:

"(2) Where a captain of any ship belonging to the Royal Navy or any person acting under the command of such captain

- (a) seizes and detains anything under section 24 (2) (c)
 - (i) or any conveyance receptacle under section 24 (2) (c) (ii), or
- (b) arrests any person under section 25 (2),

that captain or any person acting under his command shall take such thing, conveyance, receptacle or person to a police officer as soon as may be practicable."

Amendment of section 29 of the principal Act.

20. Section 29 of the principal Act is amended by deleting subsections (1) to (4) and substituting the following:

"(1) Where a person is convicted of an offence under this Act other than a drug trafficking offence, the court may order forfeiture to the Government of the Territory of any or all of the following.

- (a) any opium pipe or other article;
- (b) the controlled drug in respect of which the offence was committed and all receptacles of any kind found containing the controlled drug,
- (c) any conveyance proved to have contained the opium pipe or other pipe or controlled drug;
- (d) anything shown to the satisfaction of the court to relate to the offence.

(2) Where any conveyance is ordered to be forfeited under subsection (1), the owner of such conveyance may, within fourteen days of such order, make to the court which made the order, a claim for the conveyance to be restored to him.

(3) Where a claim is made to the court under subsection (2) the court may, subject to subsection (4), order that the conveyance shall be restored to the owner thereof on payment by him of any expenses incurred in seizing, transporting and keeping such conveyance for the purposes of this section.

(4) A court shall not make an order under subsection (3) unless it is satisfied that the owner, charterer or master of the conveyance, as the case may be,

(a) did not permit any person convicted of an offence under this Act to use the conveyance for the purposes of transporting any controlled drug in respect of which the offence was committed;

(b) had no knowledge that any person convicted of an offence under this Act would use the conveyance for the purpose of transporting any such controlled drug."

21. Section 30 of the principal Act is amended by repealing subsection (2) and substituting the following:

Amendment of section 30 of the principal Act.

"(2) Subject to subsections (4) and (5) and notwithstanding the provisions of any other law, a certificate of an analyst purporting to be signed by him and stating

(a) that he has analysed or examined a substance, and

(b) the result of such analysis or examination,

is, in any prosecution under this Act, admissible in evidence of the matters stated therein if it is proved by other evidence that the seals or other fastenings of the container of the substance analysed to which the certificate relates, were intact at the time when that container was delivered to him."

22. Section 31 of the principal Act is amended by repealing subsection (1) and substituting the following.

Amendment of section 31 of the principal Act.

"(1) This section applies to offences under sections 6 (1), 6 (2), 7 (1), 7 (2), 8 (2) and 11."

23. The Third Schedule to the principal Act is amended in the first column by repealing "7 (2)" and substituting "7 (1)".

Amendment of the Third Schedule to the principal Act.

Passed by the Legislative Council this 31st day of August, 1995.

K.L. FLAX,
Speaker.

H. A. HODGE,
Clerk of the Legislative Council.