

**FIRST SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 2,824 of 2nd March, 1995.**

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I ASSENT,  
JOHN CHAPPLE,  
GOVERNOR.

1st March, 1995.



**GIBRALTAR**

**No. 5 of 1995.**

**AN ACT to amend the Drugs (Misuse) Act.**

**E**NACTED by the Legislature of Gibraltar.

**Title and commencement.**

1. This Act may be cited as the Drugs (Misuse) (Amendment) Act 1995 and shall come into effect on such day as the Governor may by notice in the Gazette appoint and different days may be so appointed for different purposes.

**Amendment to section 2.**

2. Section 2 of the Drugs (Misuse) Act (hereinafter called “the principal Act”) is amended in subsection (1)–

- (a) by inserting after the definition of “controlled drug” the following new definition–

““Convention State” means a state outside Gibraltar which is a party to the Vienna Convention;”;

- (b) by inserting after the definition of “produce” the following new definition–

“Scheduled Substance” means a substance for the time being specified in Schedule 4;”;

- (c) by omitting the full-stop after the definition of “veterinary practitioner” and substituting therefor a semi-colon;

- (d) by inserting after the definition of “veterinary practitioner” the following new definition --

““Vienna Convention” means the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed in Vienna on 20th December 1988.”.

**Amendment to section 4.**

3. Section 4 of the principal Act is amended–

- (a) in subsection (2) by omitting the word “Governor” and substituting therefor the word “Government”;

- (b) in subsection (4) by omitting the word “Governor” and substituting therefor the word “Government”.

**Amendment to section 5.**

4. Section 5 of the principal Act is amended in subsection (2)(b) by omitting the word “Governor” and substituting therefor the word “Government”.

**Amendment to section 7A.**

5. Section 7A of the principal Act is amended in subsection (6) by omitting the expression “of £2,000” and substituting therefor the expression “at level 5 on the standard scale”.

**Amendment to section 9.**

6. Section 9 of the principal Act is amended—

- (a) in subsection (1)—
  - (i) by omitting the word “Governor” and substituting therefor the word “Government”;
  - (ii) in paragraph (b) by omitting the word “he” and substituting therefor the word “it”;
- (b) in subsection (2)(b) by omitting the word “Governor” and substituting therefor the word “Government”.

**Amendment to section 10.**

7. Section 10 of the principal Act is amended—

- (a) in subsection (1)—
  - (i) by omitting the word “Governor” and substituting therefor the word “Government”;
  - (ii) by omitting the word “him” and substituting therefor the word “it”;
- (b) in subsection (2)(i) by omitting the word “Governor” and substituting therefor the word “Government”.

**Amendment to section 11.**

8. Section 11 of the principal Act is amended in subsection (1)–
- (a) by inserting after the expression “paragraph (a)” the word “of”;
  - (b) by omitting the word “Governor” and substituting therefor the word “Government”.

**New Part IIIA.**

9. The principal Act is amended by inserting after section 11 the following new Part IIIA–

**“PART IIIA.– VIENNA CONVENTION.**

**Manufacture and supply of Scheduled Substance.**

11A.(1) It is an offence for a person–

- (a) to manufacture a Scheduled Substance; or
- (b) to supply such a substance to another person,

knowing or suspecting that the substance is to be used in or for the unlawful production of a controlled drug.

(2) A person guilty of an offence under subsection (1) is liable–

- (a) on summary conviction, to imprisonment for six months or to a fine at level 5 on the standard scale or both;
- (b) on conviction on indictment, to imprisonment for fourteen years or to a fine or both.

(3) The Government may by order make amendment to Schedule 4 (whether by addition, deletion or transfer from one Table in the Schedule to the other):

Provided that no such order shall add any substance to the Schedule unless–

- (a) it appears to the Government to be frequently used in or for the unlawful production of a controlled drug; or
- (b) it has been added to the Annex to the Vienna Convention under Article 12 of that Convention.

**Regulations about Scheduled Substances.**

11B.(1) The Government may by regulations make provision—

- (a) imposing requirements as to the documentation of transactions involving Scheduled Substances;
  - (b) requiring the keeping of records and the furnishing of information with respect to such substances;
  - (c) for the inspection of records kept pursuant to the regulations;
  - (d) for the labeling of consignments of Scheduled Substances;
  - (e) requiring that Scheduled Substances may not be manufactured in Gibraltar except in accordance with a licence issued by the Government.
- (2) Regulations made by virtue of subsection (1)(b) may, in particular, require—
- (a) the notification of the proposed exportation of substances specified in Table I in Schedule 4 to such countries as may be specified in the regulations; and
  - (b) the production, in such circumstances as may be so specified, of evidence that the required notification has been given;

and for the purposes of section 79 of the Imports and Exports Act any such substance shall be deemed to be exported contrary to a restriction for the time being in force with respect

to it under this Act and that section if it is exported without the requisite notification having been given.

- (3) Regulations made under this section may make different provision in relation to the substances specified in Table I and Table II in Schedule 4 respectively and in relation to different cases or circumstances.
- (4) A person who fails to comply with a requirement imposed by the regulations or, in purported compliance with such requirement, furnishes information which he knows to be false in a material particular is guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for six months or to a fine at level 4 on the standard scale or both;
  - (b) on conviction on indictment, to imprisonment for two years or to a fine or both.
- (5) Information obtained pursuant to regulations made under this section shall not be disclosed except for the purposes of criminal proceedings or of proceedings under the provisions of the Drug Trafficking Offence Act 1995 relating to the confiscation of the proceeds of, or benefits from, drug trafficking.

**Offences on Gibraltar registered ships.**

- 11C. Anything which would constitute a drug trafficking offence under this Act if done on land in Gibraltar shall constitute that offence if done on a ship registered in Gibraltar.

**Ships used for illicit traffic.**

- 11D.(1) This section applies to a ship registered in Gibraltar and a ship registered in a state outside Gibraltar which is party to the Vienna Convention (a “Convention state”).
- (2) A person is guilty of an offence if on a ship to which this section applies, wherever it may be, he—

- (a) has a controlled drug in his possession; or
- (b) is in any way knowingly concerned in the carrying or concealing of a controlled drug on the ship,

knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to section 5(1) or the law of a state outside Gibraltar.

- (3) A certificate purporting to be issued by or on behalf of the government of a state to the effect that the importation or exportation of a controlled drug is prohibited by the law of that state shall be evidence of the matter stated.
- (4) A person guilty of an offence under this section is liable-
  - (a) in the case where the controlled drug is a Class A drug-
    - (i) on summary conviction, to imprisonment for six months or to a fine at level 5 on the standard scale or both;
    - (ii) on conviction on indictment, to imprisonment for life or to a fine or both;
  - (b) in the case where the controlled drug is a Class B drug-
    - (i) on summary conviction, to imprisonment for six months or to a fine at level 4 on the standard scale or both;
    - (ii) on conviction on indictment, to imprisonment for fourteen years or a to fine or both;
  - (c) in the case where the controlled drug is a Class C drug-
    - (i) on summary conviction, to imprisonment for three months or to a fine at level 4 on the standard scale or both;

- (ii) on conviction on indictment, to imprisonment for five years or to a fine or both.

**Enforcement powers.**

- 11E.(1) The powers conferred on an enforcement officer by Schedule 5 are exercisable in relation to any ship to which section 11C or 11D applies for the purpose of detecting and the taking of appropriate action in respect of the offences mentioned in those sections.
- (2) Those powers shall not be exercised outside of the territorial waters of Gibraltar in relation to a ship registered in a Convention state except with the authority of the Collector of Customs, and he shall not give his authority unless that state has in relation to that ship—
    - (a) requested the assistance of Gibraltar for the purpose mentioned in subsection (1); or
    - (b) authorised Gibraltar to act for that purpose.
  - (3) In giving his authority pursuant to a request or authorisation from a Convention state the Collector of Customs shall impose such conditions or limitations on the exercise of the powers as may be necessary to give effect to any conditions or limitations imposed by that state.
  - (4) The Collector of Customs may, either on his own motion or in response to a request from a Convention state, authorise a Convention state to exercise, in relation to a Gibraltar ship, powers corresponding to those conferred on enforcement officers by Schedule 5 but subject to such conditions or limitations, if any, as he may impose.
  - (5) Subsection (4) is without prejudice to any agreement made, or which may be made, on behalf of Gibraltar whereby Gibraltar undertakes not to object to the exercise by any other state in relation to a Gibraltar ship of powers corresponding to those conferred by Schedule 5.



- (6) The powers conferred by Schedule 5 shall not be exercised in the territorial waters of any state outside Gibraltar without the authority of the Collector of Customs, and he shall not give his authority unless that state has consented to the exercise of those powers.

**Jurisdiction and prosecutions.**

11F(1) Proceedings under this Part or Schedule 5 in respect of an offence on a ship may be taken, and the offence may for all incidental purposes be treated as having been committed, in Gibraltar.

- (2) No such proceedings shall be instituted except with the consent of the Attorney General.

- (3) Without prejudice to subsection (2), no proceedings for an offence under section 11D alleged to have been committed outside the territorial waters of Gibraltar on a ship registered in a Convention state shall be instituted except in pursuance of the exercise with the authority of the Collector of Customs of the powers conferred by Schedule 5 and section 3 of the Territorial Waters Jurisdiction Act 1878, as it applies in Gibraltar, shall not apply to those proceedings.”.

**Amendment to section 17.**

10. Section 17 of the principal Act is amended—

- (a) by inserting after the figure “17” the figure “(1)”;
- (b) by inserting after subsection (1), as now so designated, the following new subsection—

“(2) Where the affairs of a corporate entity are managed by its members, subsection (1) shall have application in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the entity.”.

**Amendment to section 18.**

11. Section 18 of the principal Act is amended—

- (a) in subsection (1) by omitting the words “A police officer, revenue officer or other person authorised in that behalf by a general or special order of the Governor” and substituting therefor the words “A customs or police officer or other person appointed for this purpose, either generally or specifically, by the Government”;
- (b) in subsection (2) by inserting the words “customs or” before the word “police” in the three places where that word appears;
- (c) in subsection (3) by omitting the words “police officer or revenue officer” and substituting therefor the words “customs or police officer”.

**Amendment to section 21.**

12. Section 21 of the principal Act is amended—

- (a) in subsection (1) by omitting the expression “and section 13” and substituting therefor a comma and the expression “section 13 , section 11A, section 11B and section 11D”;
- (b) in subsection (3) by omitting the word “Governor” and substituting therefor the word “Government”.

**Amendment to section 23.**

13. Section 23 of the principal Act is amended in subsection (1)—

- (a) by omitting the word “Governor” in the two places where it occurs and substituting therefor the word “Government”;
- (b) by omitting the word “him” and substituting therefor the word “it”.

**Amendment to section 26.**

14. Section 26 of the principal Act is amended by omitting the word “Governor” in each place where it appears and substituting therefor in such place the word “Government”.

**Amendment to section 27.**

15. Section 27 of the principal Act is amended by omitting the word “Governor” in each place where it occurs and substituting therefor in each such place the word “Government”.

**Amendment to Schedule 3.**

16. Schedule 3 to the principal Act is amended—

- (a) by omitting the word Governor in each place where it occurs and substituting therefor in each such place the word “Government”;
- (b) in paragraph 1(1) by omitting the word “he” and substituting therefor the word “it”.

**Amendment to Schedule 2.**

17. Schedule 2 to the principal Act is amended—

- (a) by omitting the figure “£200” wherever it appears and substituting therefor in each such place the expression “an amount at level 4 on the standard scale”;
- (b) by omitting the figure “£400” wherever it appears and substituting therefor in each such place the expression “an amount at level 5 on the standard scale”.

**New Schedules 4 and 5.**

18. The principal Act is amended by inserting after Schedule 3 the following two new schedules—

**“SCHEDULE 4**

Section 2

**SUBSTANCES USEFUL FOR MANUFACTURING CONTROLLED  
DRUGS**

**TABLE I**

**EPHEDRINE  
ERGOMETRINE  
ERGOTAMINE**

**LYSERGIC ACID1-PHENYL-2-PROPANONE  
PSEUDOEPHEDRINE**

The salts of the substances listed in this Table whenever the existence of such salts is possible.

**TABLE II**

**ACTIC ANHYDRIDE  
ACETONE  
ANTHRANILIC ACID  
ETHYL ETHER  
PHENYLACETIC ACID  
PIPERIDINE**

The salts of the substances listed in this Table whenever the existence of such salts is possible.

**SCHEDULE 5**

Section 11E

**ENFORCEMENT POWERS IN RESPECT OF SHIPS**

**Preliminary.**

1. (1) In this Schedule “an enforcement officer” means—

- (a) a customs or police officer;
- (b) any other person of a description specified in an order made for the purposes of this Schedule by the Government.

(2) In this Schedule “the ship” means the ship in relation to which the powers conferred by this Schedule are exercised.

**Power to stop, board, divert and detain.**

2. (1) An enforcement officer may stop the ship, board it and, if he thinks it necessary for the exercise of his functions, require it to be taken to the Port of Gibraltar and detain it there.

(2) Where an enforcement officer is exercising his powers with the authority of the Collector of Customs given under section 11E(2) the officer may require the ship to be taken to a port in the Convention state in question

or, if that state has so requested, in any other country or territory willing to receive it.

(3) For any purpose falling within sub-paragraphs (1) and (2), an enforcement officer may require the master or any member of the crew of the ship to take such action as may be necessary.

(4) If an enforcement officer detains the ship he shall serve on the master a notice in writing stating that it is to be detained until the notice is withdrawn by the service on him of a further notice in writing signed by an enforcement officer.

**Power to search and obtain information.**

3.(1) An enforcement officer may search the ship, anyone on it and anything on it including its cargo.

(2) An enforcement officer may require any person on the ship to give information concerning himself or anything on the ship.

(3) Without prejudice to the generality of those powers an enforcement officer may—

- (a) open any containers;
- (b) make tests and take samples of anything on the ship;
- (c) require the production of documents, books or records relating to the ship or anything on it;
- (d) make photographs or copies of anything whose production he has power to require.

**Powers in respect of suspected offence.**

4. If an enforcement officer has reasonable grounds to suspect that an offence mentioned in section 11C or 11D has been committed on a ship to which that section applies he may—

- (a) arrest without warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence; and

- (b) seize and detain anything found on the ship which appears to him to be evidence of the offence.

**Assistants.**

5. (1) An enforcement officer may take with him, to assist him in exercising his powers—

- (a) any other persons; and
- (b) any equipment or material .

(2) A person whom an enforcement officer takes with him to assist him may perform any of the officer's functions but only under the officer's supervision.

**Use of reasonable force.**

6. An enforcement officer may use reasonable force, if necessary, in the performance of his functions.

**Evidence of authority.**

7. An enforcement officer shall, if required, produce evidence of his authority.

**Protection of officers.**

8. An enforcement officer shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under this Schedule if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

**Offences.**

9.(1) A person is guilty of an offence if he—

- (a) intentionally obstructs an enforcement officer in the performance of any of his functions under this Schedule;
- (b) fails without reasonable excuse to comply with a requirement made by an enforcement officer in the performance of those functions; or

(c) in purporting to give information required by an officer for the performance of those functions—

- (i) makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular; or
- (ii) intentionally fails to disclose any material particular.

(2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

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Passed by the Gibraltar House of Assembly on the 27th day of February, 1995.

D.FIGUERAS,

Clerk to the Assembly.