



# LESOTHO

# Government Gazette

## EXTRAORDINARY

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Vol. LIII

Tuesday – 27th May, 2008

No. 34

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**Published by the Authority of His Majesty the King**  
Price: M52.50

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ACT NO. 5 OF 2008

### **Drugs of Abuse Act 2008**

An Act to repeal the Dangerous Medicines Act of 1973, to ensure the availability of certain drugs for exclusive medical, scientific and related purposes, while preventing their abuse; to prevent the diversion from lawful trade of controlled chemicals, controlled equipment and controlled materials for use in the unlawful manufacture of such drugs; to render drug trafficking and related conduct as serious criminal offences and to ensure that offenders or suspects are brought to justice; to render certain conduct by drug users as criminal offences, to provide for the treatment and rehabilitation of drug-abusing or dependent offenders; to establish the Lesotho Narcotics Bureau; and for related matters.

Enacted by the Parliament of Lesotho.

### **PART I - PRELIMINARY**

#### **Short title and commencement**

1. This Act may be cited as the Drugs of Abuse Act, 2008 and shall come into operation on a date to be appointed by the Minister by notice published in the Gazette.

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## Extended application of the Act

2. (1) Notwithstanding the provisions of any other law, this Act applies to the entire territory of Lesotho, including any free trade zone.
- (2) Part III of the Act applies to an act committed -
- (a) inside or outside Lesotho on board a Lesotho vessel or Lesotho aircraft;
  - (b) outside Lesotho by-
    - (i) a Lesotho citizen or any person ordinarily resident in Lesotho;
    - (ii) a body corporate incorporated in or carrying on business in Lesotho; or
    - (iii) any other person, relating to the supply or possible supply by that person of any drug of abuse, analogue, controlled chemical, or item of controlled equipment or controlled material to a person in Lesotho.

## Interpretation

3. (1) In this Act, unless the context otherwise indicates -

“acquire” includes to acquire by way of purchase, exchange, lease or hire;

“analogue” means any substance not listed in a Schedule to this Act whose chemical structure is substantially similar to any drug of abuse whose psychoactive effects it simulates;

“animal” includes fish, birds, invertebrates or other fauna;

“authorised officer” means a person or class of persons exempt from the application of this Act or Part of this Act by the Minister pursuant to section 98;

“Bureau” means Lesotho Narcotics Bureau established under section 58;



“cannabis” means any part of the cannabis plant (including the seeds and leaves) from which cannabis resin has not been extracted;

“cannabis plant” means any plant of the genus cannabis;

“cannabis resin” means the separated resin, whether crude or purified, obtained from the cannabis plant;

“coca bush” means the plant of any species erythroxylon;

“competent professional” means a clinical psychologist, psychiatrist, psychiatric nurse and psychiatric social nurse;

“controlled chemical” means a substance listed in Schedule 4, and includes a controlled chemical preparation and a controlled toxic chemical inhalant;

“controlled equipments” means anything listed as such in Schedule 5, Division 2;

“controlled delivery” means the investigative technique of allowing an unlawful or suspect consignment of a drug of abuse, an analogue, a controlled chemical, an innocuous substitute substance, an item or controlled equipment or controlled material, or property believed to be derived indirectly from any offence, to pass into, through or out of Lesotho under the supervision of an authorised officer, with a view to gathering evidence to identify any person involved in any serious offence, or to facilitate prosecution of that offence;

“controlled material” means anything listed as such in Schedule 5 Division 1;

“court” means the court of competent jurisdiction;

“cultivate” includes planting, sowing, scattering the seed, growing, nurturing, tending or harvesting, and also includes the separation of opium, coca leaves, cannabis and cannabis resin from the plant from which they are obtained;

“data” means representations, in any form, of information or concepts;

“dentist” means any person who is registered and entitled under the laws of Lesotho to practice the profession of dentistry;

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“document” means any record of information, and includes -

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;
- (c) anything from which sounds, images or writings can be produced, with or without the aid of anything else; or
- (d) a map, plan, drawing, photograph or other similar thing;

“drug abuser” in relation to a drug of abuse or analogue, means any person who uses it -

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

“drug dependent person,” in relation to a drug of abuse or analogue, means any person who has a condition such that -

- (a) administration of the drug to him or her results in the person demonstrating impaired control in relation to the use of that drug, or drug-seeking behaviour suggesting such impaired control; or
- (b) cessation of the administration of the drug is likely to result in the person experiencing symptoms of mental or physical distress or disorder;

“drug of abuse” means a prohibited drug, a high-risk drug, or a risk drug, and includes a preparation;

“encapsulating machine” means any device which may be used to fill shells, capsules or their containers with a drug of abuse or analogue in whatever physical form;

“foreign State” means -

- (a) any country other than Lesotho; and
- (b) every constituent part of such country, including a territory, dependency or protectorate, which administers its own laws relating to drugs of abuse, analogues, controlled equipments and controlled materials;

“free trade zone” means an area designated as such in a foreign country where goods can be shipped and stored without paying duties until they pass from the zone;

“high-risk drug” means a substance listed in Schedule 2;

“inspector” means any person appointed pursuant to section 64;

“institution” means a hospital, nursing home or other institution used for the accommodation, treatment and care of persons suffering from physical or mental conditions;

“international drug control conventions” means the Single Convention on Narcotic Drugs done at New York on 30 March 1961, as amended by the 1972 Protocol amending the Single Convention done at Geneva on 25 March 1972; the Convention Against Psychotropic Substances done at Vienna on 21 February 1971; the United Nations convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances done at Vienna on 20 December 1988; and any other international convention to which Lesotho may become party to after the commencement of this Act relating in whole or in part to the control of drugs of abuse, controlled chemicals or controlled equipment;

“legal person” means a company incorporated under the laws of Lesotho;

“Lesotho aircraft” means an aircraft -

- (a) registered in Lesotho in accordance with the Civil Aviation Act;
- (b) owned by or in possession or control of a person or legal entity ordinarily having a principal place of busi-

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ness in Lesotho;

- (c) owned by or in the possession or control of a Lesotho airline, the Government of Lesotho or an authority of the Government; or
- (d) owned by or in the service of Lesotho Defence Force, including an aircraft that is being commanded by or piloted by a member of that Force in the course of that member's duties as a member;

“Lesotho vessel” means a ship registered in and operating in the territorial waters of another state but owned by a citizen of Lesotho or a person having a principal place of business in Lesotho;

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

“Minister” means the Minister responsible for health;

“medical practitioner” means any person who is registered and entitled under the laws of Lesotho to practice the profession of medicine;

“open individual authorisation” means an authorization permitting an operator to export from Lesotho such quantities of such controlled chemicals, equipment or materials to such countries or regions during such periods as may be specified in the authorisation;

“operator” means any person who carries on a business of the manufacture, acquisition or supply of -

- (a) a drug of abuse, intended for medical, scientific use or other lawful use;
- (b) a controlled chemical or any item of controlled equipment, intended for lawful use, or a related business, such as import, export, transit or acting as a broker, but

excludes person carrying on a business of customs agent, warehouse deposits or carrier when acting solely in that capacity;

“opium poppy” means the plant of the species of *papaver somniferum*;

“permit” means a permit of the kind referred to in section 14, 15, 16, 17 or 18;

“person” means any natural or legal person;

“pharmacist” means any person who is registered and entitled under the laws of Lesotho to practice the profession of pharmacy;

“place” includes any land (whether vacant, enclosed or built upon, or not), and any premises;

“practitioner” means –

- (a) a dentist, medical practitioner or veterinary surgeon;
- (b) any person who is entitled under the laws of Lesotho to practice any other profession whose members may lawfully prescribe, dispense or administer any drug of abuse;

“premises” includes the whole or any part of a structure, building, aircraft, or vessel;

“prescribed” means prescribed by regulations;

“prescription” means a written direction by a practitioner that a stated amount of a drug of abuse be dispensed for the person named on it;

“preparation” means a solution or mixture, in whatever physical state, containing -

- (a) a drug of abuse; or
- (b) a controlled chemical;

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“proceedings” means any procedure conducted by or under the supervision of a judge, magistrate or judicial officer however described in relation to any alleged or proven offence, or property derived from such offence, and includes an inquiry, investigation, or preliminary or final determination of facts;

“prohibited drug” means a substance listed in Schedule 1;

“property” means real or personal property of every description, whether situated in Lesotho or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property;

“property derived from an offence” means any property derived or realised directly or indirectly from an offence against Part III and includes, on a proportional basis, property into which any property derived or realised directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the offence was committed;

“record” means any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system or other device;

“risk drug” means a substance listed in Schedule 3;

“Secretariat” means Drugs and Narcotics Secretariat established under section 61;

“serious offence” means an offence against a provision of -

- (a) Division 1 of Part III;
- (b) any other law in Lesotho for which the maximum penalty is death, or imprisonment or other deprivation of liberty for a period of not less than 24 months;
- (c) a law of a foreign State, in relation to acts or omissions, which, had they occurred in Lesotho, would have constituted an offence for which the maximum penalty is death, or imprisonment or other deprivation of liberty for a period of not less than 24 months including an

offence of a purely fiscal character;

“supply” includes sale, consignment, despatch, transport, delivery, distribution, dispensing, as well as offer to supply;

“tableting machine” means any device which may be used to compact or mould a drug of abuse or analogue into a solid tablet;

“transit” means the physical transfer of any drug of abuse, analogue, controlled chemical or controlled material into and or out of Lesotho -

- (a) whether it is passing through Lesotho Customs; and
- (b) where Lesotho is neither its country of origin nor destination;

“treatment” includes medical treatment, therapy, or admission to an education or rehabilitation programme, which is aimed at -

- (i) preventing drug abusers from further abusing drugs; and
- (ii) assisting drug-dependent persons to overcome their dependence;

“treatment centre” means a hospital, nursing home, hostel, health facility or other institution that the Minister may designate from time to time as an approved treatment centre to provide treatment for persons who are drug abusers or drug dependent.

“undercover operations” means operations (which may include conduct which apart from this Act is illegal), for the purpose of providing persons who may have committed, be committing or be about to commit a serious offence with an opportunity to manifest evidence thereon;

“veterinary surgeon” means any person who is registered and entitled under the laws of Lesotho to practice the profession of veterinary medicine.

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PART II - REGULATION OF DRUGS OF ABUSE, AND CONTROLLED CHEMICALS, EQUIPMENT AND MATERIALS USED TO MAKE THEM

*Division 1 - Classification and Scheduling of Drugs of Abuse and Controlled Chemicals*

**Classification of drugs of abuse and controlled chemicals**

4. (1) Each of the drugs of abuse to which this Act applies is classified by the Schedule in which it appears under its international non-proprietary name or, if it lacks such a name, under its scientific name.

(2) Different measures of control are specified in this Act for different drugs of abuse according to the classification so adopted, with the strictest measures being applied in relation to drugs of abuse listed in Schedule 1, less strict measures in relation to those listed in Schedule 2, and the least strict in relation to those listed in Schedule 3.

**Preparations**

5. (1) Preparations shall be subject to the same measures of control under this Act as the drugs of abuse or controlled chemicals they contain, and where any preparation contains two or more constituent drugs of abuse, it shall be subject to the measures governing the most strictly controlled constituent.

(2) The Minister may, by regulations made under section 108, exempt any preparation containing -

- (a) a drug of abuse listed in Schedule 2 or 3 from such measure of control provided in this Act, if the Minister is satisfied that -
  - (i) the preparation is compounded in such a way as to present no negligible risk of abuse; and
  - (ii) the drug of abuse cannot be readily recovered from it in a quantity liable to present such a risk;
- (b) a controlled chemical, if the Minister is satisfied that it



is in such a state that the chemical cannot easily be used for the illicit manufacture of a drug of abuse.

(3) The Minister shall not exempt any preparation pursuant to subsection (2) -

- (a) insofar as it relates to the manufacture, import or export preparations containing high-risk or risk drugs, or the making and keeping of records relating to such activities;
- (b) except to the extent, if any to which it may be exempted under any international drug control convention applicable to the particular preparation or class of preparation.

(4) The Minister shall maintain a register of the preparations exempted under this section, specifying in relation to each such preparation, each control measure from which it is exempted.

### **Amendment of Schedules**

6. (1) The Minister may, by regulations made under Section 108 and in accordance with subsection (2), amend any Schedule to this Act by, adding or deleting a drug of abuse, controlled chemical or item of controlled equipment or controlled material to or from the relevant Schedule or, in the case of a drug of abuse, by transferring it from one Schedule to another.

(2) In deciding whether to, and if so, how to amend Schedule 1, 2 or 3 in relation to any drug of abuse, the Minister shall have regard to:

- (a) in the case of a drug of abuse controlled chemical, whether any international drug control convention to which Lesotho may from time to time be a party applied to it, and if so, to its classification under the relevant convention;
- (b) any recommendation made to the Minister concerning classification of that drug of abuse by any body exercising public interest supervisory functions in Lesotho

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in relation to pharmacists or practitioners;

- (c) the extent to which any likely public detriment associated with the actual or potential abuse of the drug in Lesotho might outweigh any likely public benefit associated with its actual or potential medical or scientific use in Lesotho.

(3) For the avoidance of doubt, the Minister's powers under subsection (1) -

- (a) subject to paragraph (b), extend to transferring any drug of abuse listed in Schedule 2 or 3 to Schedule 1 and vice versa; and
- (b) shall not be exercised in relation to any such drug if to do so would have the effect of reducing controls below the minimum regulatory or control requirements for that substance established by the international drug control conventions.

### *Division 2 - Registration, Licencing and Permit System*

#### **Requirements for registration, licencing etc, of controlled chemicals, equipments and materials operators**

7. (1) To ensure that there is no significant risk that controlled chemicals, equipments and materials may be diverted from lawful use to the unlawful manufacture of any drug of abuse in Lesotho or elsewhere, the Minister, by regulations, may determine in relation to any operator or class of operators which control measure or combinations of measures specified in subsection (2) shall apply for the purpose of this Division.

(2) The control measures or combination of control measures which the Minister may determine shall apply for the purposes of subsection (1) are -

- (a) registration, pursuant to section 8;
- (b) the grant of a licence, pursuant to section 12; or

- (c) in the case of import and export activities, registration or licencing, plus -
  - (i) an open individual authorisation to the operator by the Minister under section 19 for all such activities; the Minister may by later written notice, restrict the open authorisation temporarily or indefinitely, to one for such activities, involving such chemicals, equipment or materials or countries as the Minister may specify in the notice;
  - (ii) a permit for each intended import or export transaction, or for each transit or redirection, issued under section 15 or 16;
  - (iii) an export permit for each intended export transaction, conditional on the prior receipt of an import certificate issued by the competent authorities of the country of intended import; or
  - (iv) a pre-export notification made by the operator to the Minister in accordance with the prescribed form, within a prescribed period before each export transaction.

(3) In determining under subsection (2) which control measures shall apply in which cases, the Minister shall take into account -

- (a) the likely quantities and ultimate uses (lawful or unlawful) of the controlled chemicals, equipment or materials involved;
- (b) in the case of transit or export, the countries or regions to which any such chemicals, equipment or materials are likely to be destined, particularly if they are the ones in which drugs of abuse or the raw materials for making them are believed to be illicitly produced.

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(4) No person shall manufacture, import, export, acquire, supply or possess any controlled chemical equipment or materials except pursuant to and in accordance with the relevant control measures determined by the Minister under subsection(2).

(5) Any person who contravenes this section commits an offence and on conviction is liable to imprisonment for a period not less than 10 years, a fine not less than M20,000 or both, and in the case of a legal person a fine not less than M250,000.

(6) The Minister may attach such terms and conditions to any control measures as he or she thinks fit, including ones which limit or prohibit imports or exports of specified chemicals or specified quantities thereof, whether to or from specified countries, person or classes, or during specified periods, or not.

(7) The Minister may by regulations, exempt any operator or class of operators other than those whose business includes the manufacture, import or export of any controlled chemical, equipment or material from the operation of this section, if satisfied that to do so would not give rise to any significant risk of unlawful diversion.

(8) This section does not apply to the following classes of persons in relation to the following activities, except to the extent if any to which their activities include the import or export of any controlled chemical, equipment or material -

- (a) a pharmacist, acting in accordance with the norms and standards of the pharmacy profession, in the ordinary course of compounding and dispensing a preparation containing a drug of abuse for medical, scientific or related purposes;
- (b) any person who holds a licence issued under this Act to manufacture a preparation containing a drug of abuse of which a controlled substance is an essential ingredient, in the ordinary course of such manufacture;
- (c) any person engaged in the conduct of scientific education or research in a laboratory which is attached to a

university or hospital, and the activities of whom are recognised by the Minister, in the ordinary course of such education or research.

### **Registration of controlled chemicals, equipment and material operators**

8. (1) An operator who is required to be registered for the purposes of this Act in respect of the manufacture, import, export, acquisition, supply or possession of any controlled chemical, equipment or material shall before undertaking any such activity and from the day on which this Act enters into force, notify the Minister in writing -

- (a) of the full name, private and business addresses of the operator;
  - (b) of the activity for which registration is sought;
  - (c) if the operator is a company, the full name and residential address of each director and of the company secretary;
  - (d) if the operator will engage in the activity under a business name, that name;
  - (e) of each controlled chemical or item of controlled equipment or material for which registration is sought;
  - (f) of the address of each place where the controlled chemical, equipment or material is to be stored;
  - (g) whether the person (and, if a company, any director or the company secretary) has ever been convicted in Lesotho or elsewhere for a serious offence or any offence however described relating to trafficking in drugs, controlled chemicals, equipment or material; and
  - (h) such other particulars as may be prescribed.
- (2) Subject to subsection (3), on receipt of a notification made in

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accordance with subsection (1), the Minister shall register the operator, include particulars of the notification in the register, and give notice of registration to the operator.

(3) The Minister may refuse to register an operator if the operator, in the case of a company, any director or the company secretary has ever been convicted of any offence referred to in subsection (1)(g).

### **Requirements of licences and permits for drugs of abuse operators**

9. (1) Subject to subsection (2), no person shall -

- (a) cultivate any cannabis plant; or
- (b) manufacture, acquire, or administer to another person, any drug of abuse or analogue,

unless the person is an operator and is acting pursuant to and in accordance with the terms and conditions of a licence granted by the Minister under section 12.

(2) Where a person is convicted of an offence against subsection (1) by virtue of the person having separated cannabis or cannabis resin from the cannabis plant, the penalty in all cases of natural persons, shall be imprisonment for a period not less than 5 years or fine of not less than M20,000 or both.

(3) Subsection (1) does not apply -

- (a) to professional supply or administration by an authorised person pursuant to section 28(1);
- (b) to a person having custody of an animal under veterinary treatment; and
- (c) to an analogue for the purpose of personal treatment of a medical condition supplied by an authorized person pursuant to section 28(1).

(4) No operator shall -

- (a) import, export, bring into Lesotho in transit, or redirect from Lesotho while in transit, any drug of abuse or controlled chemical, equipment or material; or
- (b) acquire or possess it for the purpose of so importing, exporting or bringing it into Lesotho in transit;

except pursuant to and in accordance with any terms or conditions of -

- (a) a licence issued by the Minister under section 12 authorising the applicant to carry out such activities in general; and
- (b) a separate import, export, transit or redirection permit, authorising the applicant to carry out the specific transaction which is the subject of the permit application.

(5) Subsection 3(a) shall not apply in relation to any drug of abuse in transit by post or forming part of the medical stores of any ship or aircraft.

(6) Any person who contravenes this section commits an offence and is liable on conviction to imprisonment not less than 5 years or a fine not less than M20,000 or both.

### **Carrying of drugs of abuse by international travellers**

10. Notwithstanding anything contained in this Act, any person undergoing treatment of a medical condition, who is entering, leaving or passing through Lesotho, may possess such quantities of a drug of abuse (where prescribed) as may be reasonably expected for the purposes of such treatment.

### **Application for operators licence**

11. (1) An operator who is required by this Act to be licenced shall apply in writing to the Minister for the grant of a licence and the application shall specify -

- (a) the full name, private and business address of the applicant;

- 
- (b) each activity to which the application relates;
  - (c) if the applicant is a company, the full name and residential address of each director and the company secretary;
  - (d) if the applicant proposes to engage in the activity under a business name, that name;
  - (e) the drug of abuse, controlled chemical, equipment or material to which the application relates;
  - (f) the address of each -
    - (i) place where the proposed activity would be carried out; and
    - (ii) premises where the drug of abuse, controlled chemical, equipment or controlled material would be stored;
  - (g) the security arrangements that would be implemented at each address;
  - (h) the name, residential address and qualifications of each person under whose supervision the activity would be carried out; and
  - (i) such other particulars as may be prescribed.
- (2) An application for licence shall be accompanied by -
- (a) a plan of each of the relevant premises, indicating where the drug of abuse, controlled chemical, equipment or material would be stored, and the location and nature of any security devices; and
  - (b) a prescribed fee.



**Grant of licence**

12. Where an application has been made in accordance with section 11, the Minister may grant a licence if satisfied that -

- (a) the applicant and in the case of the company, each director and the company secretary -
  - (i) has never been convicted in Lesotho or elsewhere for any serious offence, or any offence however described relating to a drug of abuse, controlled chemical, equipment or material;
  - (ii) is otherwise a fit and proper person to hold a licence;
- (b) the applicant proposes to engage in the activity;
- (c) all places and premises at or in which the activity is to be undertaken are in fit condition and are appropriate;
- (d) the security arrangements and devices proposed at each relevant place and premises are appropriate and sufficient;
- (e) the activity will at all times be carried out under the supervision of a person who is a fit and proper person to carry out that supervision; and
- (f) where the activity relates to a drug of abuse, the activity will be carried out exclusively for medical or scientific purposes.

**Contents and conditions of licences**

13. (1) A licence issued by the Minister under section 12 shall specify -

- (a) the full name and address of the licensee;
- (b) each activity to which the licence relates;
- (c) the drug of abuse, controlled chemical, equipment or

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- material to which the licence relates;
- (d) the address of each place and premises at which -
    - (i) the licensed activity is to be carried out; and
    - (ii) the drugs of abuse, controlled chemical, equipment or materials is to be stored;
  - (e) such terms and conditions as are necessary and reasonable for ensuring the proper-
    - (i) carrying out and supervision of the licensed activity;
    - (ii) establishment, maintenance and preservation of records relating to that activity;
    - (iii) reporting to the Minister in relation to the carrying out of that activity;
    - (iv) maintenance and security of all places and premises at or in which the licenced activity will be carried out;
  - (f) in the case of any licence to import, export or bring to Lesotho in transit a drug of abuse, controlled chemical, equipment or material, the condition that a separate import, export or transit permit be first obtained in relation to any such transaction before it takes place;
  - (g) such other particulars as may be prescribed.

### **Application for import, export or transit permits**

14. (1) An application for an import, export or transit permit shall be made in writing to the Minister and shall specify -
- (a) the full name and address of the importer, exporter, carrier, consignee and, if known, of any ultimate consignee;

- (b) in the case of a proposed import, export or transit of a drug of abuse:
  - (i) its international non-propriety name or failing this, its name as listed in Schedule 2 or 3, together with its trade name, if any; and
  - (ii) its pharmaceutical dosage form;
- (c) in the case of a proposed import, export or transit of a controlled chemical, as specified in Schedule 4 and trade name;
- (d) in the case of a proposed export of a drug of abuse, the intended point of entry in the foreign State of intended import;
- (e) the quantity, mass, and volume or volume percent in mixture of any drug of abuse, controlled chemical or material that is the subject of the proposed operation;
- (f) a description of the quality and type of any controlled equipment that is the subject of operation;
- (g) the date, or period within which, the planned import, export or transit is to take place;
- (h) the planned transport route, if known, including the planned point of entry or exit from Lesotho; and
- (i) in the case of a proposed import of a drug of abuse to a bonded warehouse, the identity and address of the warehouse.

(2) The import permit (by whatever name described) issued by the government of a foreign state of intended import shall, in the case of a proposed export of drug of abuse, be attached to the application for export permit.

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## Grant of import, export or transit permit

15. (1) The Minister may, on written application made in accordance with section 14 by a registered or licenced importer or exporter, grant an import, export or transit permit in relation to a specified import or export transaction involving a drug of abuse, controlled chemical, equipment or material.

(2) An import, export or transit permit granted pursuant to subsection(1) may allow import, export or transit of not more than one consignment.

(3) The Minister shall not grant an export permit in relation to any consignment of a drug of abuse to a bonded warehouse in a foreign state, unless the competent authority of that state has certified on the import permit referred to in subsection 14(2) that it has approved the import to a bonded warehouse.

(4) An import, export permit or transit permit shall specify -

- (a) the full name and address of the registered or licensed operator to whom it is granted;
- (b) the name (including any international non-propriety name and trade name), quantity and form of any drug of abuse, controlled chemical, equipment or material for which it is granted;
- (c) in the case of an import permit -
  - (i) the name and address of the importer;
  - (ii) the number and date of any required import permit, affirming that the import of the drug of abuse or preparation has been authorised;
  - (iii) the intended point of entry into Lesotho; and
  - (iv) if the import consignment is intended for a bonded warehouse and is not prohibited under subsection (3), that the consignment is to be so imported;

- (d) the period during which import, transit or export is to be effected;
- (e) in the case of an intended import to a bonded warehouse-
  - (i) any subsequent withdrawal from the bonded warehouse shall require a permit from the Minister in consultation with the Director of Customs; and
  - (ii) if the withdrawal is intended for a foreign destination, a separate export permit shall be first obtained prior to export;
- (f) such terms and conditions as the Minister may consider necessary and reasonable; and
- (g) such other particulars as may be prescribed.

### **Re-export permit**

16. (1) The Minister may, on production by a licensed operator of a valid import authorisation issued by an authority in a foreign state to which it is proposed to redirect a drug of abuse or controlled chemical, issue a re-export permit in respect of the drug or chemical in transit.

- (2) A re-export permit shall specify -
  - (a) the full name and address of the registered or licensed operator granted it;
  - (b) the name (including any international non-proprietary name and trade name), quantity and form of any drug of abuse, controlled chemical or item of controlled equipment or controlled material for which it is granted;
  - (c) the name and address of the immediate consignee, and if known, of the ultimate consignee;

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- (d) the number and date of any required import permit affirming that the import of the drug of abuse or controlled chemical or item controlled equipment or controlled material has been authorized;
  - (e) the intended point of entry in the foreign state of import;
  - (f) if the export consignment is intended for a bonded warehouse and is not prohibited under subsection (3) , that the consignment is to be exported; and
  - (g) the period during which re-export is to be effected;
  - (h) in the case of an intended re-export to a bonded warehouse, a condition that any subsequent withdrawal from the bonded warehouse shall require a permit from the Minister if the withdrawal is intended for a foreign destination, a separate export permit shall be first obtained prior to export;
  - (i) such terms and conditions as the Minister may consider necessary and reasonable; and
  - (j) such other particulars as may be prescribed.

(3) The Minister shall not issue a re export permit under subsection (1) unless he or she is satisfied that the drug of abuse or controlled chemical is to be sent to the new country of destination in a lawful manner and for a proper purpose.

#### **Permit in relation to first-aid kits**

17. (1) The Minister may, on written application made in the prescribed form, grant a permit to include a drug of abuse in a first-aid kit for medical use during international flights or voyages.

(2) a permit to include a drug of abuse in a first-aid kit shall specify -

- (a) the full name and address of the authorised person;
- (b) the name and maximum quantity of the drug of abuse that may be kept in the first aid kit at any one time;
- (c) such terms and conditions as are necessary and reasonable to ensure the proper use and safe keeping of the drug of abuse; and
- (d) such other particulars as may be prescribed.

### **Permits in relation to programmes for medical and scientific purposes**

18. (1) The Minister, may on written application made in the prescribed form, grant a permit to conduct a programme for scientific or strictly limited medical purposes that would require the import, possession or use of -

- (a) a drug of abuse; or
  - (b) an analogue.
- (2) An application to conduct such a programme shall specify -
- (a) the full name, address, academic, professional or other relevant qualifications of the applicant;
  - (b) the drug of abuse or analogue in relation to which the permit is sought;
  - (c) the strength and form in which the drug of abuse or analogue is to be used;
  - (d) the maximum quantity of the drug of abuse or analogue to be possessed at any one time, and the total quantity to be possessed during the period of the programme;
  - (e) details of the manner in which the drug of abuse or analogue would be used;
  - (f) the name and address of the place where the progra-

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mme is to be conducted;

- (g) the name and academic, professional or other relevant qualifications of any person other than the applicant, under whose supervision the programme would be conducted; and
- (h) the security arrangements that would be undertaken while the drug of abuse or analogue is possessed, used or disposed of.

(3) An application to conduct such a programme shall be accompanied by -

- (a) a written description of the programme, including its estimated duration;
- (b) in the case of a programme of research, a research protocol; and
- (c) in the case of a clinical trial, a clinical trial protocol; and
- (d) a written statement approving the programme, signed by the person in charge of the institution.

(4) The Minister may authorise such a programme if satisfied that-

- (a) the programme cannot be carried out satisfactorily without the use of the specified drug of abuse or analogue;
- (b) the programme is scientifically viable having regard to any relevant protocol;
- (c) the applicant is a fit and proper person to conduct the programme;
- (d) the programme will be adequately supervised; and



- (e) the programme is to be conducted at, or under the auspices of, a recognised institution.
- (5) A permit shall specify -
- (a) the full name and address of the authorized person;
  - (b) the drug of abuse or analogue to which the permit relates;
  - (c) the strength and form in which the drug of abuse or analogue may be used;
  - (d) the maximum quantity of the drug of abuse or analogue that may be possessed at any one time, and the total quantity that may be possessed during the period of the programme;
  - (e) the purpose for which the permit is granted;
  - (f) the institution in relation to which the permit is granted;
  - (g) such conditions as are necessary and reasonable for ensuring -
    - (i) the proper use and safe-keeping of the drug of abuse or analogue; and
    - (ii) that proper records are kept concerning its receipt, use and disposal;
  - (h) the condition that such reports as the Minister may specify are provided on the use of the drug of abuse or analogue in the programme, including particulars of the quantities acquired, used, disposed of and still held; and
  - (i) such other particulars as may be prescribed.

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**Open individual authorisation for certain exports of controlled chemicals, etc**

19. (1) Where an operator is required under section 7(1) to hold an open individual authorisation issued by the Minister the operator shall, before undertaking any activity for which the authorisation is required, notify the Minister in writing of -

- (a) the full name, private and business address of the operator;
- (b) the activity for which authorization is sought;
- (c) if the operator is a company, the full name and residential address of each director and of the company secretary;
- (d) if the operator will engage in the activity under a business name, that name;
- (e) each controlled chemical, equipment or material for which authorisation is sought;
- (f) details of the operator's commercial experiences relevant to the controlled chemicals, equipment or materials concerned, and of each person under whose supervision the activity will be carried out;
- (g) details in summary form of export transactions of the relevant chemicals, equipment or materials during the preceding 12 months, specifying by country of export in relation to each chemical, equipment or materials exported, the total quantities and total number of transactions involved; and
- (h) such other particulars as may be prescribed.

(2) Subject to subsection (3) and on receipt of an application made in accordance with subsection (1), the Minister may grant an open individual authorisation and subject to the authorisation to such terms and conditions as

the Minister thinks fit.

(3) The Minister may refuse to grant the open individual authorisation, if the operator (and in the case of a company, any director or the company secretary) has ever -

- (a) failed to comply with a provision of this Act or any other law in Lesotho relating to any drug of abuse, controlled chemical, equipment or material; or
- (b) been convicted in Lesotho or elsewhere for any serious offence or any offence however described relating to trafficking in drugs, or controlled chemicals, equipment or material.

### **Extended authorisation for related activities**

20. Where a person is registered or licenced, or holds a permit or authorisation under this part in relation to any activity, the person shall, subject to this Act and to any terms or conditions of the licence, permit or authorisation, be deemed to be entitled to possess the relevant drug of abuse, analogue, controlled chemical, equipment or material for the purpose of that activity.

### **Duration of registration, licences, permits and open individual authorisations**

21. (1) A registration or licence shall remain in force for 12 months, unless earlier surrendered, suspended or revoked, and may be successively renewed for a period of 12 months by application in writing, signed by the applicant and accompanied by the prescribed fee.

(2) A permit or open individual authorisation shall only remain in force for such period as may be specified in it, which in the case of an import, export or transit permit shall not exceed 6 months.

### **Duty of authorised person to notify material changes, etc**

22. (1) Where, in relation to any licence or permit granted to any person under this Part, a material change occurs in the -

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- (a) name or address of the person, or in the case of a company, of any director or the company secretary;
  - (b) address of the place or premises where -
    - (i) the licensed or permitted activity is carried out;
    - (ii) any drug of abuse, controlled chemical equipment or material is stored;
  - (c) raw materials, or manufacturing or denaturing processes used in the licenced manufacture of any drug of abuse;
  - (d) security arrangements implemented at any relevant address;
  - (e) identity of person under whose supervision the licensed activity is carried out;
  - (f) planned transport route, including the planned point of entry or exit from Lesotho of any import, export or transit consignment for which a permit has been granted under subsection 15(1). The person shall, within 14 days of its occurrence, furnish the Minister with a written notice containing full particulars of the change, and shall return to the Minister any licence or permit issued under this Part.

(2) Where, in relation to any registration or open individual authorization granted to any person under this Part, a material change occurs in the -

- (a) name or address of the person, or in the case of a company, of any director or the company secretary; or
- (b) address of the place or premises where -
  - (i) the registered or authorised activity is carried out;

- (ii) the controlled chemical, material or equipment is stored, the person shall, within 14 days of its occurrence, furnish the Minister with a written notice containing full particulars of the change.

### **Variation, suspension or revocation of registration, licences, permits or authorisations**

23. (1) If, at any time after the grant of a licence, permit, registration or open individual authorisation, it appears to the Minister that -

- (a) it was granted on the basis of information that was false or misleading in a material particular;
- (b) a material change of circumstances referred to in section 22 has occurred since it was granted, whether notified under that section or not;
- (c) a condition to which it was subject has not been complied with; or
- (d) the person has been charged or convicted of an offence against this Part, or of a serious offence,

the minister may, as he or she deems necessary and reasonable in all the circumstances to prevent the risk of unlawful diversion-

- (i) impose conditions, or vary any existing conditions specified on the licence, permit or authorisation, with effect from 28 days following the date of issue of a notice of variation;
  - (ii) suspend the registration, licence, permit or authorization for such period as the Minister thinks fit; or
  - (iii) revoke the registration, licence, permit or authorisation.
- (2) Any person whose licence, permit or authorisation is suspend-

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ed or revoked under subsection (1) shall return it to the Minister not later than 21 days after the Minister notifies the person in writing of the revocation or suspension.

### **Duty of operators to check and notify suspicious orders and transactions**

24. (1) Whenever an operator -
- (a) is registered, licenced, permitted or authorised under this Part;
  - (b) receives an order or becomes party to a transaction involving a drug of abuse, controlled chemical or item or controlled equipment or materials; and
  - (c) has reasonable grounds to suspect that information that it has concerning the order transactions may be relevant to an offence or a possible offence against Part III, the operator shall, immediately after forming that suspicion, communicate to the Minister particulars of the suspicion, the basis for it, and such other information, if requested, as the person has in relation to the order or transaction.

(2) Any person who fails to comply with this subsection (1) commits an offence and is liable on conviction to imprisonment for a period not less than 3 months or a fine not less than M2,000 or both and in the case of a legal person a fine not less than M10,000.

### **Offence for licenced operators in dealings with unlicensed operators**

25. (1) No operator licenced under this Part in relation to any drug of abuse shall supply to or acquire from another operator in Lesotho any drug of abuse, unless the second operator is also licenced under this Part.

(2) Any person who contravenes this section commits an offence and is liable on conviction to imprisonment for a period not less than six months or M2,000, and in the case of a legal person a fine not less than M10,000.

**Offences in relation to drugs of abuse in lawful transit**

26. (1) No person shall -
- (a) cause a drug of abuse lawfully in transit to be subjected to any process which could alter its nature;
  - (b) otherwise than in accordance with instruction issued by the Minister of Health in consultation with Director of Customs, wilfully open or break any package or container containing any drug of abuse in transit.

(2) No licenced operator shall, except under the authority of a redirection permit issued under this Part, cause or procure any drug of abuse or controlled chemical, equipment or material in transit to be redirected to any destination other than that shown on the export permit or redirection permit accompanying the drug or chemical.

(3) Any person who contravenes this section commits an offence and is liable on conviction to imprisonment for a period not less than 5 years or fine not less than M20,000 or both and in the case of a legal person a fine not less than M100,000.

**Power to limit licensees's stock**

27. (1) On or before 31 December each year, the Minister shall, in the light of the prevailing market conditions, determine the maximum quantities (if any) of each of drug of abuse and controlled chemical that each operator licenced under Division 1 of this Part may manufacture or stock for the normal conduct of its business during the following year.

(2) The Minister may, at any time amend any quota determined pursuant to subsection (1), and shall promptly notify each licensee in writing of the amended quota.

(3) When the Minister is satisfied that a person authorized to stock a drug of abuse holds a quantity in excess of the person's annual quota as revised in accordance with subsection (2), he or she may make requisition of the surplus quantity upon payment of an amount not less than the amount paid by the person to acquire it.

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*Division 3 - Professional Supply of Drugs of Abuse*

**Person authorised to engage in professional supply of drugs of abuse**

28. (1) No person shall engage in a conduct that constitutes professional supply of any drug or abuse except -

- (a) a pharmacist, acting in accordance with the norms and standards of the pharmacy profession, when supplied to another person on prescription or on requisition, in the ordinary course of a pharmacy business;
- (b) a person licensed under section 9(1)(b) if the supply at all times takes place under the immediate supervision of a pharmacist; and
- (c) a practitioner who, in accordance with the norms and standards of his or her profession -
  - (i) administers the drug directly to a patient or animal in the ordinary course of treatment; or
  - (ii) supplies the drug to a patient or for an animal in the ordinary course of treatment from a place more than 10 kilometres from the place of business of a pharmacist.

(2) Any person who contravenes this section commits an offence and is liable on conviction to imprisonment for a period not less than 5 years or a fine not less than M20,000 or both and in the case of a legal person a fine not less than M100,000.

**Prescriptions**

29. (1) No person shall prescribe a drug of abuse, unless that person is -

- (a) a medical practitioner, who prescribes the drug of abuse in the ordinary course of treatment of another person's physical or mental conditions;



- (b) a dentist, who prescribes the drug of abuse in the ordinary course of treatment of another person's dental conditions;
- (c) a veterinary surgeon, who prescribes the drug of abuse in the ordinary course of treatment of an animal; or
- (d) a person or class which the Minister may authorize from time to time for the purposes of this section to prescribe certain drugs of abuse in places where access to a practitioner is not reasonably possible.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment for a period not less than 5 years or a fine not less than M20,000 or both.

(3) A person referred to in subsection (1) shall not, except in -

- (a) a medical emergency; or
- (b) in the ordinary course of treatment under Division 2 of Part IV,

prescribe a drug of abuse to a person who has reason to believe may be a drug dependent person, without the prior written approval of the Minister.

(4) A person who contravenes this section commits an offence and is liable on conviction to imprisonment for period not less than 2 years or a fine not less than M5,000 or both, and in the case of a legal person a fine not less than M20,000.

(5) Subject to subsection (4), a prescription for a drug of abuse shall -

- (a) be on a prescribed form;
- (b) be legible;
- (c) be written in terms and symbols used in ordinary pro-

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fessional practice;

- (d) specify the name, address, qualifications and registration number of the prescribing practitioner;
- (e) specify the date on which it is issued if different from the date on which it was signed, and the period during which it may be filled;
- (f) specify the name and address of the patient, or the owner of the animal, as the case may be;
- (g) specify the name, quantity, form and strength of the drug of abuse;
- (h) specify the number of times up to a maximum of 3, the drug of abuse may be refilled and, if more than once, the interval to elapse between dispensing;
- (i) if the prescription is for an unusual or dangerous dose, bear the signature of the prescribing practitioner beside an underlined reference to the dose;
- (j) if the prescription is issued by a veterinary surgeon-
  - (i) be endorsed as being for the treatment of an animal;
  - (ii) specify the name and address of the owner or caretaker of the animal;
  - (iii) specify the species of animal; and
  - (iv) if possible, specify a means of identifying the animal; and
- (k) be signed and dated by the prescribing practitioner.

(6) Where the need for treatment is urgent, a prescription may be given orally and acted upon, provided it is confirmed by a written prescription

within 24 hours.

### **Requisitions**

30. (1) No person shall issue a requisition for a drug of abuse unless the person is-

- (a) a pharmacist in dispensary in an institution;
- (b) any practitioner in an institution; or
- (c) a person in charge of a ward in an institution.

(2) A person shall not supply a drug of abuse against a requisition except to a person referred to in subsection (1)(a), (b) or (c) at an institution for the treatment of a person therein.

(3) Subject to subsection (4), a requisition for a drug of abuse shall-

- (a) be legible;
- (b) specify the name of the person issuing it and the capacity in which he or she issues it;
- (c) specify the name, quantity, form and strength of the drug that is required;
- (d) specify the ward or dispensary where the drug is required;
- (e) be signed and dated by the person issuing it; and
- (f) be countersigned by either the pharmacist who is to supply the drug of abuse, or a medical practitioner.

(4) Where the need for a drug of abuse is urgent, a requisition may be given orally and acted upon, provided it is confirmed by a written requisition within 24 hours.

(5) Any person who contravenes this section commits an offence and is liable on conviction to imprisonment for a period not less than 1 year or a fine not less than M3000 or both and in the case of a legal person a fine not less than M15,000.

#### ***Division 4 - Commercial Documentation and Labelling, Records and Security***

##### **Commercial documents**

31. Any commercial documents, such as an invoice, cargo manifest or a customer, transport and other shipping document, relating to any transaction by an operator involving a drug of abuse, controlled chemical or equipment, shall include-

- (a) the name and quantity of the drug of abuse, controlled chemical or equipment as listed in the relevant Schedule;
- (b) in the case of any import or export, the name and address of the exporter, the importer and, where known, the consignee.

##### **Forwarding of import permit in advance to proposed foreign exporters**

32. Where the Minister issues an import permit under this Part to an operator, the operator shall as soon as possible but no later than 30 days after its receipt forward the permit to the exporter named in the permit.

##### **Export permits to be attached to consignments**

33. Where the Minister issues an export permit under this Part to an operator, the operator shall attach an authenticated copy of the permit to each consignment on export.

##### **Endorsement and return of export permits following import**

34. After an imported consignment has entered Lesotho or when the period stipulated in the import permit expires, the Minister shall cause the export permit issued by the competent authority of the exporting country or territory to be returned to that authority, with an endorsement specifying the quantity of each drug of abuse or controlled chemical, equipment or material actually

imported.

**Forwarding of redirection permits, etc.**

35. (1) Where a redirection permit is issued under subsection 16(1) -
- (a) one copy shall accompany the drug of abuse or controlled chemical when it is exported from Lesotho;
  - (b) the Minister shall cause another copy of the redirection permit to be sent forthwith, upon issue to the authority in the foreign country to which the consignment has been redirected; and
- (2) Upon the issue of a redirection permit, any person holding export permit or redirection permit accompanying the drug or chemical on its arrival in Lesotho shall remit it to the Minister who shall return it to the competent authority issuing it, together with -
- (a) notice of the name of the foreign country to which the consignment has been redirected; and
  - (b) an endorsement specifying the quantity of each drug of abuse or controlled chemical, equipment or material actually imported.

**Liability to forfeiture of improperly or undocumented consignments**

36. (1) A consignment of a drug of abuse or controlled chemical, equipment or material is liable to forfeiture if -
- (a) it is accompanied by an export permit or redirection permit, and there are reasonable grounds to believe that the permit is false, or has been obtained by fraud or wilful misrepresentation of a material particular;
  - (b) there are reasonable grounds to believe that any import relating to it is false; or
  - (c) in the case of a consignment of a drug of abuse, it is not

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accompanied by any export or redirection permit.

(2) Where the Minister is satisfied that any consignment referred to in subsection (1) is legitimate, the consignment shall be released forthwith to the person lawfully entitled to it.

### **Drugs of abuse registers**

37. (1) The following persons shall keep, or cause to be kept at a place where any drug of abuse is kept, a register which shall be in a prescribed form-

- (a) any person granted registration, or a licence or a permit under Division 2 in relation to any drug of abuse;
- (b) any person authorized under Division 3 to issue a prescription or requisition for a drug of abuse, or to supply such a drug by retail;
- (c) any pharmacist, including a pharmacist responsible for the supervision of all other pharmacists employed in a hospital or other institution for medical treatment or care; or
- (d) any duly qualified person for the time being in charge of a ward or other area of an institution in which any drug of abuse is administered.

(2) A person required by subsection (1) to keep or cause to be kept a register in relation to any drug of abuse, shall within 24 hours of any import, export, manufacture, administration, supply, acquisition, disposal or return of such drug, enter or cause to be entered in the register -

- (a) the date of the import, manufacture, administration, supply, acquisition, disposal or return of any drug of abuse;
- (b) the name, quantity, dosage, form and strength of the drug, imported, exported, manufactured, administered, supplied, acquired, disposed of or returned;

- (c) the name and occupation or business address of the person to or from whom the drug was imported, exported, supplied or acquired;
- (d) in the case of export or supply, the quantity of the drug, if any, still kept;
- (e) in the case of supply on prescription for the purpose of treatment, or of administration of a drug of abuse for that purpose -
  - (i) the name and address of the person who prescribed the drug or ordered its administration;
  - (ii) the name and residential address of the person to whom the drug was supplied or administered, or where prescribed to be administered to an animal, or the person having custody of the animal at the time;
  - (iii) the name and residential address of the patient to whom the drug was prescribed, if different from the person referred to in subparagraph (ii); and
  - (iv) where applicable, the name and address of any person other than the treating practitioner who administered the drug, the time of administration, and particulars sufficient to identify any animal for whose treatment the drug was administered, prescribed or supplied on prescription;
- (f) in the case of supply or requisition in an institution, details of the dispensary, ward or other place to which the drug was supplied;
- (g) in the case of return, the name of the person to whom the drug was returned; and

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- (h) in the case of disposal; the method of disposal; the signature, name and designation of the person responsible for the disposal, and of at least one witness to the disposal.

(3) A person who makes an entry in a drugs register shall date and sign the entry.

(4) A person may, in the presence of a witness, correct, by notation, a mistake in an entry in a drugs register, providing the person making the correction makes, signs and dates the notation, and the witness countersigns the notation.

(5) Any person who -

- (a) delivers a drug of abuse to a ward or other area of an institution; or
- (b) in the ordinary course of duties in a medical, dental or veterinary practice, or in a ward or other area of an institution, witnesses the administration of that drug,

shall countersign the relevant entry in the drugs register.

(6) Any person required by this section to keep a drugs of abuse register shall, subject to any written direction to the person by the Minister, retain possession of the register and all prescriptions, requisitions and commercial documents relating to entries therein for 3 years after the date of the last entry in the register.

### **Controlled chemical, equipment and materials registers**

38. (1) Any person granted registration, licence, permit or open individual authorisation under Division 2 in relation to any controlled chemical, equipment or materials shall keep, or cause to be kept, at a place where any such chemical or item is kept by that person, a register in accordance with the form prescribed from time to time by the Minister.

(2) Any person required under subsection (1) to keep and maintain a register in relation to any controlled chemical, equipment or material shall,



within 24 hours of any import, export, manufacture, supply, acquisition or disposal by that person of any chemical or item, enter or cause to be entered in such register -

- (a) the date of the import, export, manufacture, supply, acquisition or disposal;
- (b) the name of the chemical equipment or material, and the quantity involved;
- (c) in the case of a controlled chemical, its form and strength;
- (d) in the case of a disposal, the method of disposal; and
- (e) in the case of import, export, acquisition or supply, the name and occupational or business address of the person to or from whom the chemical or item was imported, exported, acquired or supplied, and where known, the name of any ultimate consignee.

(3) Any register required to be kept under subsection (1), and all commercial documents relating to entries therein such as orders, invoices, despatch notes, cargo manifests or customs or other shipping documents shall be kept for at least 3 years after the end of the calendar year of the last entry in the register.

### **False or misleading entries in registers and records**

39. (1) Any person required to keep a register or other record under this Act shall not -

- (a) make, or cause or permit to be made, an entry in or on it that is, to the knowledge of that person, false or misleading in any material particular; or
  - (b) cancel, obliterate or alter any entry, except to correct an error in accordance with section 37(4).
- (2) Any person who contravenes this section commits an offence

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and is liable on conviction to imprisonment not less than 2 years or a fine not less than M2,000 or both.

### **Duty to notify loss, destruction or discrepancies in registers**

40. (1) Any person required to keep a register under this Division shall, immediately on discovering -

- (a) the loss or destruction of the register, or of the whole or any part of the contents of the register; or
- (b) any discrepancy in the register, other than a mistaken entry,

advise the Minister in writing accordingly.

(2) Any person who contravenes this section commits an offence and is liable on conviction to imprisonment for a period not less than 2 years or a fine not less than M2,000 or both, and in the case of a legal person, a fine not less than M10,000.

### **Safe keeping of drugs of abuse**

41. (1) Any person authorised -

- (a) to import, export, manufacture, administer, supply or acquire a drug of abuse or controlled chemical in accordance with this Part; or
- (b) to engage in professional supply in accordance with section 28,

shall, while the drug or chemical is in the person's custody or control, keep it or cause it to be kept in a vault, safe or other prescribed secure storage.

(2) A person referred to in subsection (1) shall take such measures as the Minister may direct, in writing, to ensure that no unauthorised person has -

- (a) access to the combination, key or other means of access to any secure receptacle containing a drug of abuse or controlled chemical; or
- (b) the drug or chemical contained therein.

(3) Any person who contravenes this section commits an offence and is liable on conviction to imprisonment for a period not less than 2 years or a fine not less than M5,000 or both, and in the case of a legal person, a fine not less than M25,000.

### **Duties where there is loss or theft of a drug of abuse or controlled chemical**

42. Any person authorised -

- (a) to import, export, manufacture, administer, supply or acquire a drug of abuse or controlled chemical in accordance with this Part; or
- (b) to engage in professional supply in accordance with section 28,

shall immediately upon becoming aware of the loss or theft of any quantity of the drug or chemical in the person's custody or control -

- (i) if the person believes on reasonable ground that the drug or chemical has been stolen, notify an inspector and an authorised officer orally and in writing within 24 hours;
- (ii) in the case of loss, give a written report of the circumstances of the loss to an inspector; and
- (iii) record relevant particulars of the loss or theft in the appropriate register.

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PART III - TRAFFICKING AND RELATED OFFENCES

*Division 1 - Trafficking in Drugs of Abuse, Analogues, or Controlled Chemicals, Equipment or Materials*

**Unlawful manufacture, possession etc of drugs of abuse or analogues, controlled chemicals, equipment or materials**

43. (1) No person shall produce, manufacture, extract, prepare, offer, offer for sale, distribute, sell, deliver on any terms whatsoever, dispatch, dispatch in transit, transport, import or export any drug of abuse, chemical or precursor contrary to this Act. Any person who acts contrary to the provisions of this subsection commits an offence of trafficking and shall, on conviction, be liable to imprisonment for a period not less than 20 years or a fine not less than M1,000,000 or both.

(2) An operator who is a manufacturer shall not, in relation to any controlled chemical, equipment or material -

- (a) manufacture or supply a controlled chemical or material; or
- (b) acquire or possess it for the purpose of such supply or manufacture, if the person knows or has reasonable grounds for believing that the controlled chemical, equipment or material is to be used, in Lesotho or elsewhere -
  - (i) for the unlawful manufacture of a drug of abuse or any other drug or analogue; or
  - (ii) in the unlawful cultivation of a cannabis plant, or of another plant which is a drug of abuse.

(3) Any person who contravenes this section commits an offence and is liable on conviction to imprisonment for a period not less than 10 years or a fine not less than M50,000 or both, or in the case of a legal person, a fine not less than M150,000.

**Facilitating personal use by others**

44. (1) No person shall -

- (a) publish or display; or
- (b) cause or permit to be published or displayed,  
  
anything promoting or encouraging the use of any drug of abuse, analogue, controlled chemical, equipment or material; or for any purpose other than a medical or scientific purpose.

(2) No owner, occupier or person in charge of any place used by or accessible to the public shall cause or permit the unlawful use of any drug of abuse, analogue, controlled chemical, equipment or material.

(3) If the owner, occupier or person in charge of any place used by or accessible to the public has reason to suspect that any person in or on such a place uses or has in his or her possession or deals in any drug in contravention of the provisions of this Act, he shall –

- (a) as soon as possible report his or her suspicion to any police officer on duty at nearest police station; and
- (b) on the request of the said police officer, furnish that police officer with such particulars as he or she may have available regarding the person in respect of whom the suspicion exists.

(4) Failure to inform the police under subsection (2) shall be an offence under subsection (1).

(5) No person shall add a drug of abuse or analogue to the food or drink of another person without the other person's consent.

(6) No person shall supply any drug of abuse on presentation of a prescription, if the person knows or has reason to believe that the prescription is -

- (a) forged, unlawfully altered, or cancelled; or
- (b) issued more than 3 months before presentation.

(7) Any person who contravenes this section commits an offence

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and is liable on conviction to imprisonment for a period not less than 5 years or a fine not less than M20,000 or both, and in the case of a legal person, a fine not less than M100,000.

### **Supply of toxic chemical inhalants**

45. (1) No person shall supply any toxic chemical inhalant to any person, if the person supplying it knows or has reasonable grounds for suspecting that the person acquiring it is acquiring it for the purpose of abuse.

(2) Any person who contravenes this section commits an offence and is liable on conviction to imprisonment for a period of not less than 6 months or, fine not less than M2,000 or both, and in the case of a legal person, a fine not less than M10,000.

### **Facilitation via computerised data networks**

46. (1) For the purpose of subsection (2) “server supplier” means any person who, in the normal course of business, supplies any online server facility.

(2) No person shall supply any online server facility to enable access to any computerized data exchange network, including a network such as “Internet” so as to permit any other person to offer via such a network accessible in Lesotho any data whose purpose or effect is to permit, incite, facilitate or promote the unlawful cultivation, manufacture, supply or use of any drug of abuse, analogue or controlled chemical.

(3) It shall be a defence to any prosecution for an offence against subsection (2) to establish that he, she or it had taken reasonable steps to prevent the person from offering such data.

(4) No person shall, without lawful authority, input or cause to be input into a computerized data exchange network accessible in Lesotho, any data knowing or having reasonable grounds to believe that its effect will be to permit, incite, facilitate or promote the unlawful cultivation, manufacture, supply or use of any drug of abuse, analogue or controlled chemical.

(5) Any person who contravenes this section commits an offence and is liable on conviction to imprisonment for a period of not less than 5 years

or a fine not less than M20,000 or both and in the case of a legal person a fine not less than M100,000.

### **Conspiracy, attempt, aiding and abetting, etc.,**

47. Any person who -

- (a) conspires to commit, or attempts to engage in conduct that constitutes an offence against this Act;
- (b) aids, abets, counsels or procures, or is by act or omission in any way directly or indirectly knowingly concerned in, or party to, any conduct that constitutes an offence against this Act; and
- (c) incites to commit, or urges or encourages, any conduct that constitutes an offence against this Act; commits an offence and is punishable on conviction by the same penalty as would be applicable if the person convicted of the first-mentioned offence.

### **Assisting etc., in the commission of an offence abroad**

48. Any person commits an offence as if in Lesotho if the person assists in or induces the commission in any place outside Lesotho of an offence punishable under the law of a foreign State relating in whole or in part to the control of any drug of abuse, analogue, controlled equipment or controlled material.

### ***Division 2 -Further provision on penalties and sentences***

#### **Grounds for aggravation**

49. (1) For purposes of section 49(a)(i); “organised criminal syndicate” means structured group of two or more persons existing for a period of time, and existing in concert with the aim of committing one or more serious crimes or offences established in accordance with this Act in order to obtain, directly or indirectly, a financial or other material benefit.

(2) In the determining of the nature and extent of any penalty to be ordered in relation to any person convicted of any offence against this Part, the court shall take into account whether -

- 
- (a) the convicted offender -
- (i) belonged to an organized criminal syndicate;
  - (ii) participated in other illegal activities facilitated by the offence;
  - (iii) used violence or arms;
  - (iv) committed the offence in the exercise of a public office or public duty;
  - (v) added any substance to the drugs which aggravated their danger to a user;
  - (vi) made use or took advantage of a minor or mentally disabled and mentally handicapped person in committing the offence; or
  - (vii) has had previous conviction relating to the offence;
- (b) the offence was committed –
- (i) by a health professional or person responsible for combating drug abuse or traffic;
  - (ii) in a teaching or educational institution, a hospital or care institution, a social service facility or in other places to which school children or students resort for educational, sports or social activities, or in the immediate vicinity of such establishments and premises; or
  - (iii) in a penal institution or a military establishment;
- (c) the drug was supplied or offered to a minor, a mentally disordered and handicapped person or a person undergoing treatment, or when used by such a person



was facilitated; and

- (d) the drug supplied caused death or seriously impaired the health of a person.

### **Alternative sentences**

50. (1) Where a person has been convicted of an offence against this Part, the Court may order house arrest, or other deprivation or restriction of liberty for the term prescribed, instead of imprisonment.

(2) Where a person has been convicted of an offence against this Part, and it appears to the court that it would be appropriate, in the interests of justice and not contrary to the broader public interest to do so, the court may, instead of ordering any penalty provided for the offence -

- (a) order that the person undergo community service or periodic detention;
- (b) order surrender and suspension of the person's passport, and in the case of a foreigner, withdraw the person's visa, deportation, or prohibition on re-entry into Lesotho;
- (c) order -
  - (i) disqualification, cancellation or suspension of any right in Lesotho to operate a vehicle, vessel or aircraft used by the person in connection with the commission of the offence; or
  - (ii) disqualification to hold or exercise public office in Lesotho by the person in connection with the commission of the offence;
- (d) order the suspension of any licence or registration entitling the person to carry on any trade or business carried on by the person in connection with the commission of the offence; or

- (e) recommend to the appropriate professional body, the suspension or disqualification of the person's right to practise any profession practised by the person in connection with the commission of the offence, for such period as the court considers appropriate.

(3) Where a foreigner has been convicted of an offence against this Part, the court may in addition to ordering the penalty provided for the offence or alternative measures in section 50, order withdrawal of the person's visa, deportation or prohibition on re-entry into Lesotho.

### **Suspension and revocation of suspended sentences**

51. (1) Where a person has been convicted of an offence against this Part and is also –

- (a) between the ages of 14 and 18;
- (b) a first offender;
- (c) a drug abuser; or
- (d) a drug dependent person,

the court may order suspension of the whole or any part of the penalties imposed on the person, on such terms and conditions as appear to be necessary to ensure that the person does not re-offend, provided that it is in the interests of justice and not contrary to the broader public interest to make such an order.

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

## **PART IV - DRUG ABUSE, TREATMENT AND REHABILITATION**

### **Registration of certain treatment centers**

52. No person shall manage a treatment or rehabilitation center unless the person has applied for and obtained, in the prescribed manner, a registration of the centre from the Director General of Health Services.

**Treatment orders**

53. (1) Where the court -

- (a) finds an offence under this or any other Act proven against any person;
- (b) considers that the person may have been -
  - (i) under the influence of a drug of abuse or analogue at the time of the offence; or
  - (ii) motivated to commit the offence by a desire either to use the substance or obtain resources to enable its use,

the Court may order that the person be admitted for treatment in addition to any sentence the court may think fit.

(2) Where the psychiatrist recommends that the person undergo treatment at an approved treatment centre, the psychiatrist may -

- (a) order that the person, submit himself or herself for the treatment specified in the order;
- (b) specify conditions relating to the supervision of the person at a treatment center.

**Suspension of sentence**

54. Where an order has been made under subsection 53(2)(a), and the person promises to undertake and complete the treatment, the Court may at the same time also order that any or all the penalties and sanctions imposed under Part III or section 52 be suspended.

**Discharge of suspended sentences**

55. Where a person completes treatment ordered under section 53(2)(a) to the satisfaction of a psychiatrist, and commits no further offence of any description within two years from the date of his or her conviction, any orders

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made under Part III or section 53 -

- (a) shall be deemed to be fully served and discharged in relation to the offence in respect of which they were made; and
- (b) in relation to any other offence, may be discharged by order if the court is satisfied that it is in the public interest for the court to make such order, following consideration of a report of psychiatrist to the effect that the person is fit to return to everyday responsibilities and functions.

### **Revocation of suspension orders**

56. (1) Where the person does not complete the course of treatment to the satisfaction of a psychiatrist, the court may, on the recommendation of competent professional, revoke the order of suspension made under section 52.

(2) Where the court revokes the order under subsection (1), the time spent in treatment shall count as time towards the discharge of orders made under Part III or section 52.

### **Offences in relation to treatment orders**

57. (1) Any person who, without reasonable excuse, refuses or fails –

- (a) to comply with a treatment order;
- (b) to inform the person in charge of a treatment centre attended by the person pursuant to such an order of any change in the person's address;
- (c) to appear before a psychiatrist as ordered; or
- (d) to attend a treatment centre for assessment or treatment as ordered, commits an offence.

(2) Any person who contravenes this section commits an offence and is liable to imprisonment for a period not less than 6 months or a fine not less than M2,000 or both.

## PART V - ADMINISTRATION, COMPLIANCE AND ENFORCEMENT

*Division 1 - Lesotho Narcotics Bureau***Establishment of the Bureau**

58. (1) There is established a body to be known as the Lesotho Narcotics Bureau (in this Act referred to as “the Bureau”), which may exercise the powers and perform the duties conferred or imposed upon it by or in terms of this Act.

(2) The members of the Bureau shall be appointed by the Minister and shall consist of -

- (a) a chairperson, nominated by the Minister;
- (b) a Magistrate, nominated by the Chief Justice;
- (c) the Commissioner of Police, or his or her nominee;
- (d) A legal officer nominated by the Attorney-General;
- (e) the Director of Customs and Excise, or his or her nominee;
- (f) the Director of Legal Affairs (Ministry of Foreign Affairs), or his or her nominee;
- (g) three persons nominated by the Director-General of Health Services;
- (h) Director of Communications or his or her nominee;
- (i) a nominee from the Ministry of Education nominated by the Minister responsible for education;
- (j) a nominee from the Ministry of Environment nominated by the Minister responsible for environment; and
- (k) the Legal Officer from the Ministry of Health.

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(3) The Minister shall appoint the members of the Bureau by notice published in the Gazette.

### **Powers and duties of the Bureau**

59. (1) The Bureau shall -

- (a) advise the Minister on policy development and implementation in regard to illicit drugs and drug trafficking;
- (b) co-ordinate efforts of relevant Government Ministries, Departments and Non-Governmental Organisations (NGO's) aimed at combating drug abuse and illicit drug trafficking;
- (c) co-ordinate training in relation to drugs of abuse for relevant Government Ministries, Departments and NGO's with the aim of updating knowledge, improving techniques of interdictions and detections of drugs;
- (d) collect and analyse data on types of drugs, abuse patterns, trafficking routes, seizures in order to plan intervention measures property;
- (e) assist the Government in implementing the United Nations Drug Conventions of 1961, 1971, 1988 and the SADC Protocol on combating drugs and illicit drug trafficking.

(2) The Bureau may, in consultation with the Minister, establish or cause to be established programmes which are aimed at -

- (a) the prevention of drug dependency;
- (b) information to the community on the abuse of drugs;
- (c) the education of the youth in regard to the abuse of drugs;
- (d) the observation, treatment and supervision of persons

who -

- (i) are in a treatment center or a registered treatment centre;
  - (ii) have been released from a treatment centre or registered centre or who have been placed under supervision by a court; and
- (e) the rendering of assistance to the families of persons detained in a treatment centre or registered treatment centre.

### **Meetings of the Bureau**

60. (1) The Bureau shall meet as often as its business requires but not less than four times a year.

(2) At its meetings -

- (i) the Bureau shall determine its own procedures and maintain a written record of its proceedings; and
- (ii) two thirds of the members shall form a quorum.

(3) The Chairman shall preside at all meetings of the Bureau and in his absence, the members shall elect one of their numbers to preside.

(4) The decisions of the Bureau shall be by a majority of votes and in the event of equality of votes, the Chairman shall have a casting vote as well as a deliberative vote.

### **Establishment of Narcotics Secretariat**

61. (1) The Minister shall, on the recommendation of the Bureau, establish a secretariat which shall be managed by a co-coordinator appointed by the Minister.

(2) The functions of the Secretariat shall be to -

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- (a) co-ordinate the activities of the Bureau;
  - (b) raise funds for the Bureau;
  - (c) prepare a master plan for the Bureau;
  - (d) prepare an annual report for the Bureau; and
  - (e) implement and administer the strategies and policies laid down by the Bureau.

### **Remuneration and allowances of the Secretariat and members of the Bureau**

62. Members of the Bureau and Members to staff of the Secretariat who are not public officers shall be paid such remuneration and allowances as the Minister may, in consultation with the Minister responsible for finance, determine.

### **Funds of the Bureau**

63. (1) The Funds assets and resources of the Bureau shall consist of –

- (a) all moneys or property that may from time to time be donated, lent or granted to the Bureau –
  - (i) by the Government or by a Ministry, Department or other agency of the Government;
  - (ii) by another government, a person or an international organisation;
- (b) moneys raised by the Bureau.

(2) The funds shall be administered and applied by the Bureau towards meeting expenses in carrying out its duties and functions under this Act.



## *Division 2 - Inspection for Compliance*

### **Appointment of inspectors**

64. (1) The Minister may on the recommendation of the Bureau, appoint an inspector for the purposes of this Act and the regulations.

(2) An inspector shall perform such duties for the purposes of this Act and the regulations as the Minister may direct.

(3) The Minister shall cause to be issued to an inspector an identity card which states the name and appointment of the inspector and on which appears a recent photograph of the inspector.

### **Inspection of authorised premises and operations**

65. (1) Any person who is registered, or holds a licence or permit issued under Part II shall, when so required in writing, by an inspector, provide the inspector with a statement in writing, signed and dated by the person, accounting for each drug of abuse, controlled chemical, equipment or material in possession of the authorised person at any time since the grant of the registration, licence, or permit as the case may be.

(2) Any person who fails or neglects to comply with a requirement under subsection (1) commits an offence, and is liable on conviction to a fine not less than M2,000 in the case of a legal person, fine not less than M100,000.

### **Powers of inspectors**

66. (1) Any person appointed as an inspector pursuant to section 64 may, at any time during ordinary business or professional hours, with such assistance and by such force as is necessary and reasonable, enter any premises or place at which any activity is carried out by any person -

- (a) granted a registration, licence or permit under Division 2 of Part II; or
- (b) authorised in accordance with section 28 to engage in professional supply.

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- (2) Subject to section 68, an inspector who enters any premises or place pursuant to subsection (1) may -
- (a) require the occupier of the premises to supply his or her name and address;
  - (b) inspect the premises or place in order to ascertain whether or not this Act, or a term or condition of any licence or permit granted pursuant to this Act, has been or is being complied with;
  - (c) examine any label, advertising material, register, record book, electronic data or other document therein relating to any drug of abuse, controlled chemical, equipment or material;
  - (d) make an extract therefrom or take a copy thereof, and require from any person an explanation of an entry in any such register, record or document;
  - (e) open and examine any receptacle or package found in that place in which a drug of abuse, analogue, controlled chemical, equipment may be found;
  - (f) examine any thing found in that place that is issued or may be capable of being used for the manufacture, packaging or storage of a drug of abuse, analogue, controlled chemical, equipment or material;
  - (g) use or cause to be used any computer system at that place to examine any electronic data referred to in subparagraph (iii) or (iv), and reproduce any document from any such data or cause it to be reproduced in the form of a print-out or other output;
  - (h) take any thing referred to in subparagraph (c) or (f) for examination or copying;
  - (i) use or cause to be used any copying equipment at that place to make copies of any document;

- (j) examine any substance found in that place and take, for the purpose of analysis, such samples thereof as are reasonably required; or
- (k) seize and detain anything, which in the opinion of the inspector, is connected with, or may provide proof of a contravention of Part II or a term or condition of any licence or permit granted under this Act, or which the inspector believes on reasonable grounds is necessary for the purpose of ensuring compliance with this Act or the regulations.

(3) Where an inspector seizes and detains any substance suspected to be a drug of abuse, analogue, controlled chemical, equipment or material, it may, at the discretion of the inspector be kept or stored at the place where it was seized or, at the direction of the inspector, be removed to any other proper place.

(4) Where an inspector determines that for the purpose of ensuring compliance with this Act or the regulations it is no longer necessary to detain a substance suspected to be a drug of abuse, controlled chemical or item of controlled equipment or material, under subsection (2)(k), the inspector shall notify in writing the owner or other person in charge of the place where it was detained of that determination and, on being issued a receipt therefore shall return the substance to that person.

(5) Where in the ordinary course of duty, an inspector becomes aware of a possible offence against Part III, he or she shall immediately report that fact to the Commissioner of Police and provide such further lawful assistance as may be reasonable or necessary for the purpose of any investigation or proceeding relating to that possible offence.

### **Inspection of approved treatment centres**

67. (1) An inspector may, at any reasonable hour of the day or night, with such assistance and by such force which is necessary and reasonable enter the premises of an approved treatment centre.

(2) Subject to section 68, an inspector who enters an approved treatment centre pursuant to subsection (1), may -

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- (a) inspect the premises and any facilities provided at, or equipment used at the premises for, or in connection with, the provision of treatment or accommodation at the centre;
  - (b) inspect any drug register, prescribed book, record or document kept on the premises relating to such treatment or accommodation, or otherwise relating to the conduct of the centre in relation to patients referred to the centre pursuant to Part IV, Division 2;
  - (c) require the occupier of the premises to produce any drug register, prescribed book, record or document or to give the inspector any prescribed information in his or her possession relating to such treatment or accommodation or otherwise relating to the conduct of the centre in relation to such patients;
  - (d) exercise any of the powers referred to under section 66, which for the purposes of this section shall apply *mutatis mutandis* to the centre and its patients.

### **Inspectors to produce identification**

68. (1) An inspector exercising any powers conferred under section 66 or 67 shall produce his or her identity card issued under subsection 64(3) to the person in charge of any place entered pursuant to this Act for the purpose of inspection.

(2) An inspector who enters premises in accordance with this Act is not authorised to remain on the premises if, on request by or on behalf of the occupier of the premises, the inspector does not produce the identity card, and any person in or on the premises of whom the inspector made a requirement in the exercise of a power under section 66 or 67 is not obliged to comply with that requirement.

### **Obstruction of inspector, etc**

69. (1) No person shall, without reasonable excuse, by an act or omission -

- (a) obstruct or hinder an inspector in the exercise of the powers or performance of the duties of the inspector under this Act or regulations; or
- (b) refuse or fail to comply with a reasonable requirement of an inspector who has entered any premises in accordance with this Act.

(2) Any person who contravenes this section commits an offence and is liable on conviction to imprisonment not less than 6 months or a fine not less than M2,000.

### *Division 3 - Investigation of Offences Against Part III*

#### **Use of covert monitoring devices**

70. (1) Where any person is suspected on reasonable grounds of having either committed an offence against this Act, or of being about to commit such an offence, the court may, on the application of a police officer not below the rank of Superintendent, permit an authorised officer to covertly monitor and record by any such means as are specified in the order the conduct, movements and communications (including telecommunications) of the person.

(2) In making such an order, the court shall specify an appropriate time limit, which shall not be extended unless it considers it in the interests of justice and not contrary to the broader public interest to grant the extension.

(3) Notwithstanding any law to the contrary, evidence obtained pursuant to and in accordance with an order made under subsection (1) -

- (a) shall be admissible in any proceedings relating to an offence against this Act;
- (b) may be communicated to any competent authority -
  - (i) in Lesotho, for the purpose of an investigation or proceeding relating to a serious offence; or
  - (ii) elsewhere, for the purpose of a mutual assistance request made or received under the mutu-

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al assistance, agreement between Lesotho and any other party.

### **Undercover and controlled delivery operations**

71. (1) Where the Director of Public Prosecutions or a police officer of the rank of Superintendent suspects on reasonable grounds that any person has committed, or is about to commit, an offence against this Act, he or she 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) Notwithstanding any law to the contrary, the activities which may be undertaken in the course of and for the purposes of a controlled delivery include -

- (a) allowing any vehicle, vessel, aircraft or other means of transport to enter or leave Lesotho;
- (b) allowing any -
  - (i) drug of abuse, analogue, controlled chemical, equipment or material or other items in or on the vehicle, vessel, aircraft or other means of transport; or
  - (ii) property believed to be derived or indirectly from any offence; to enter or leave Lesotho or be delivered or collected in Lesotho;
- (c) using such force as 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 of abuse, analogue, controlled chemical, equipment or material or other thing to enter or leave Lesotho.

(3) Where the Director of Public Prosecutions, or a police officer of the rank of Superintendent and above, suspects on reasonable grounds that any person has committed, or is about to commit, an offence against this Act, he or she 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 the purpose of gathering evidence in Lesotho or elsewhere, relating to the commission of any such offence.

(4) An approval may not be given, unless the Director of Public Prosecutions, or a police officer not below the rank of Superintendent -

- (a) suspects on reasonable grounds that any person, whose identity may or may not be known, has committed, is committing or is about to commit an offence against this Act;
- (b) is satisfied on reasonable grounds that the proposed undercover operations-
  - (i) are properly designed to provide the suspect with an opportunity to manifest or provide evidence of that offence; and
  - (ii) will not give rise to an undue risk that any person not involved in criminal activities would be encouraged to commit a criminal offence they would otherwise not have contemplated.

(5) The Director of Public Prosecutions, or a police officer of the rank of Superintendent or above may renew an approval given under subsec-

tion (3) from time to time for periods each of which shall not exceed 3 months.

(6) The Director of Public Prosecutions, or a police officer of the rank of Superintendent or above, shall within 14 days of giving or renewing an approval, give a copy of the instrument of approval or renewal to the Minister of Justice.

(7) Any drug of abuse, analogue, controlled chemical, equipment or material or other item imported into Lesotho in the course of an approved undercover operation or controlled delivery shall, when no longer required for the purposes of the due enforcement of this Act, be liable to be dealt with as if it were a prohibited import for the purposes of the Customs Act.

(8) Despite any other 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, notwithstanding that in doing so, the person may, but for this subsection, commit an offence.

(9) Subsection (8) operates retrospectively in respect of a participant in any undercover operation or controlled delivery undertaken prior to the commencement of this Act, provided the requirements of paragraphs (a) subsection (4)(a) and (b) could have been met in the case had they been in force at the time.

### **Monitoring of the mail**

72. (1) Notwithstanding any other law to the contrary, where a Police officer not below the rank of Senior Inspector suspects on reasonable grounds that any consignment by mail may contain evidence of the commission of a serious offence, the police officer or the Customs officer may give approval, in writing, to any authorised officer to carry out at any time inspections in the postal services in order to detect that consignment, and if found, to detain it for further investigation.

(2) Where the court is satisfied by information on oath that there are reasonable grounds to believe that any consignment detected and detained pursuant to subsection (1) may contain evidence of the commission of a serious offence, the court may order any authorised officer to -

- (a) open the consignment; and



- (b) if such evidence is found on opening, to seize and detain it until further order of the court.

### **Access to computer systems**

73. (1) Where it appears to the court, by information on oath, that a computer system in the custody of any person contains data which may be relevant to proving an offence against this Act, the court may order the person having custody or control of that system to give to a police officer access to that data.

- (2) A person who, without reasonable excuse, fails to -
  - (a) give access as ordered; or
  - (b) provide reasonable assistance to enable the data to be retrieved and recorded,  
  
commits an offence.

(3) Any person who contravenes this section commits an offence and is liable on conviction to imprisonment for a period not less than 5 years or a fine not less than M20,000 or both, and in the case of a legal person a fine not less than M100,000.

### **Search warrants**

74. (1) Where the court is satisfied, by information on oath, that there are reasonable grounds to believe that there is in any place -
- (a) a drug of abuse, analogue, controlled chemical, equipment or material in respect of which this Act has been contravened;
  - (b) anything in which such a drug, analogue, chemical or item is contained or concealed;
  - (c) a property derived from an offence; or
  - (d) anything that will afford evidence in respect of an

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offence against this Act, the court may issue a warrant empowering a police officer at any time, or at such time as the court may specify in the warrant, to enter the place, search for any such drug, analogue, chemical, item or thing and if found, seize it.

- (2) A police officer who executes a warrant under subsection (1) may -
- (a) enter any place named or described in the warrant and search the place for things of the kind described;
  - (b) search any person found at or in the place, or any person whom he or she reasonably believes to be about to enter or to have recently left the place, and any clothing that the person is wearing, or property in the apparent control of the person that the officer believes on reasonable grounds to be connected with the offence; and
  - (c) seize anything of that kind found as a result of the search.
- (3) A police officer who executes a warrant issued under subsection (1) may seize, in addition to the things mentioned in the warrant -
- (a) any drug of abuse, analogue, controlled chemical, equipment or material in respect of which the officer believes on reasonable grounds that this Act has been contravened;
  - (b) anything that the officer believes on reasonable grounds to contain or conceal such a drug, analogue, chemical or item;
  - (c) anything that the officer believes, on reasonable grounds, to be property derived from an offence; or
  - (d) anything that the officer believes, on reasonable grounds will afford evidence in respect of an offence under this Act.

**Search and seizure without warrant in emergencies**

75. (1) A police officer may exercise any of the powers in section 74 without a warrant if the conditions for obtaining a warrant under subsection 74(1) exist, and the officer believes, on reasonable grounds that -

- (a) it is necessary to do so in order to prevent the concealment, loss or destruction of any thing connected with an offence; 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 issued under section 74(1) or of an order of the court.

(2) A police officer acting pursuant to subsection (1) may -

- (a) search any person or the clothing that is worn by him or her, and property in the apparent control of a person suspected by the officer to be carrying any thing connected with an offence;
- (b) enter and search any place at or in which the police officer believes on reasonable grounds that any thing connected with an offence is situated; and
- (c) seize any such thing that he or she finds in the course of that search or at or in the place.

(3) A police officer who believes on reasonable grounds that a person is, without lawful authority or reasonable excuse, carrying any thing connected with an offence against this Act may, for the purpose of this section detain the person.

(4) A police officer who believes on reasonable grounds that any thing connected with an offence is upon or in a vehicle, vessel or aircraft may, for the purposes of this section stop that vehicle, vessel or aircraft.

(5) Any person aggrieved by the seizure of any thing under this section by a police officer, may apply to the court for judicial review of the

seizure action.

- (6) Upon hearing any application under subsection (5), the court may -
- (a) confirm the seizure; or
  - (b) order the release of the thing seized to the applicant, subject to such conditions as to the security and continued preservation of the thing as the court thinks fit.

### **Searching a person and clothing**

76. (1) Where a police officer is authorised under this Part to search the clothing that a person is wearing, the officer may remove or require the person to remove any clothing that the person is wearing.

(2) A person shall not be searched under this Part except by a police officer of the same sex as the person who is being searched.

### **Internal body cavity searches**

77. (1) Where a police officer has reason to believe that a person is transporting any drug of abuse or analogue, by concealing it inside his or her body and the person refuses to submit to a medical examination, the officer may detain the person for a period not exceeding 48 hours, pending the obtaining of an order from the court under subsection (2).

(2) Where the court, is satisfied, by information given on oath, that there are reasonable grounds to believe that a person is transporting any drug of abuse or analogue by concealing it inside his or her body and the person has refused without reasonable cause to submit to a medical examination, the court may issue an order -

- (a) directing the person to submit forthwith to such medical examination including x-ray or other tests as may be reasonably necessary to establish whether the person is transporting a drug of abuse or analogue inside the body;

- (b) authorising the person to be taken in custody by a police officer to any place stated in the order for the purpose of having the medical examination carried out; and
- (c) authorising any medical practitioner to carry out such an examination and to provide such medical treatment as may be reasonable and appropriate in the circumstances.

(3) No person shall without reasonable excuse refuse or fail to submit to a medical examination as directed by order made under subsection (2).

(4) Any person who contravenes this section commits an offence and is on conviction liable to imprisonment for a period not less than 1 year or a fine not less than M3,000.

### **Application made by use of telecommunication**

78. For the purposes of section 73, 74, 75 or 76, information may be submitted to the court by use of, subject to and in accordance with, any rules made from time to time by the court.

### **Use of force**

79. For the purpose of exercising any of the powers conferred under section 73, 74, 75 or 76 a police officer may use such force as is reasonably necessary in the circumstances.

### **Temporary detention of certain suspects**

80. (1) Any person may be arrested and detained for questioning for a period not more than 48 hours if suspected on reasonable grounds of being involved in the commission of any offence against this Act.

(2) The court may authorise one or more extensions, each of 48 hours duration, if satisfied that it is in the interests of justice and not contrary to the broader public interest to do so, but in no case shall the cumulative period of temporary detention exceed 192 hours.

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**Power to destroy cannabis and other unlawful crops**

81. (1) Subject to subsection (2), where it appears to any police officer, on reasonable grounds, that cannabis plants, coca bushes or opium poppy or any other plants that are a drug of abuse are -

- (a) growing in the wild; or
- (b) being cultivated unlawfully,

he or she may, without warrant and with such assistance and force as is reasonably necessary, enter any place on or in which they are growing and cause them to be uprooted and destroyed.

(2) The powers under subsection (1)(b) to uproot and destroy shall not be exercised unless the police officer believes, on reasonable grounds, that in all the circumstances -

- (a) sufficient samples and other evidence have been collected to properly establish the identity and estimated number, quantity and weight of the plants under unlawful cultivation; and
- (b) it appears necessary to the officer to exercise the powers forthwith, in order to prevent other persons known or unknown from -
  - (i) unlawfully harvesting, removing, concealing or using the plants; or
  - (ii) endangering the life or safety of the officer or any person,

before the plants can be safely seized, secured and dealt with in accordance with proper investigatory practice.

### *Division 4 - Post Seizure Procedure*

#### **Collection and processing of evidence at seizures**

82. (1) The officer in charge at the seizure scene shall ensure that any material evidence is collected and processed, and in particular that any seized drug of abuse, analogue or controlled chemical is properly marked for identification, weighed, counted, sampled, sealed, labelled and, until destroyed or otherwise disposed of in accordance with Division 5, preserved for evidentiary purposes.

(2) Where any substance seized is found in packages or containers of similar size and weight and bearing identical markings, and colour testing of the contents of a representative number of them yields similar results for each, the seizing officer shall cause all such packages or containers to be classified, serially numbered and separated into lots ready for weighing, counting, sampling to the sealed and labelled.

(3) Where it is physically possible to count and weigh the seizure as a complete entity, the seizing officer shall cause it to be counted and weighed. Where it is not physically possible to count or weigh the seizure as a complete entity, the seizing officer shall cause its count or gross weight and net weight as the case may be to be estimated.

(4) The seizing officer shall also prepare a report of the seizure as soon as possible but not later than 48 hours after seizure, which include particulars of -

- (a) the time, and date of seizure;
- (b) the identity of the seizing officer and all persons present;
- (c) the circumstances in which seizure took place;
- (d) a description of the vehicle, vessel, place or person searched and the location where the substance was found;
- (e) a description of the substance found;

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- (f) a description of any packaging, seals, and other identifying features;
  - (g) a description of quantity, volume and units and the measurement method employed;
  - (h) a description of any preliminary identification test used and results;
  - (i) all subsequent movements of the seized substance; and
  - (j) any other prescribed matter.

(5) The officer in charge of an investigation following a seizure shall ensure that all items of evidentiary value are stored in appropriate conditions for the prevention of loss, theft or any other form of misappropriation, as well as accidental or accelerated deterioration.

#### *Division 5 - Scientific Analysis*

#### **Sampling and analysis of bulk seizure of prohibited plants, drugs of abuse, analogues, precursors, etc.**

83. (1) As soon as possible but not later than 7 days after counting and weighing any significant quantity of seized substance, samples shall be taken for scientific analysis, in duplicate.

(2) Any samples taken under subsection (1) shall be signed or otherwise marked for identification by the seizing officer and each other person present when it is taken.

#### *Division 6 - Disposal of Seized Drugs of Abuse, Analogues and Precursors*

#### **Early disposal of seized drugs, chemicals and analogue**

84. (1) If scientific analysis of a sample indicates that the seized substance is a drug of abuse, analogue, or controlled chemical, the seizing officer shall forthwith forward a copy of any scientific analysis report to the Director of Public Prosecutions.



(2) If after receipt of a report referred to in sub-section (1) the Director of Public Prosecutions is of the opinion that -

- (a) proceedings are likely to be brought against any person (whether or not the identity of that person is yet known);
- (b) physical preservation of all the seized substances is not necessary for the purposes of any actual or contemplated proceedings under this Act; and the seized substances and they-
  - (i) may properly and lawfully be used, in Lesotho for medical or scientific purposes, or in small amounts for the training of personnel responsible for carrying out functions under this Act; or
  - (ii) cannot be safely, securely or conveniently stored until the final determination of such proceedings,

the Director of Public Prosecutions shall apply to the court for an order directing the disposal of such part of the seized substances or samples as he or she is satisfied that it is not necessary to detain them for the purposes of the due administration of justice.

(3) Where the Director of Public Prosecutions has made an application for a disposal order under subsection (2) in relation to a seizure, and the court is satisfied that -

- (a) the seized substances are illegal property liable to forfeiture under this Act;
- (b) the provisions of this section relating to the taking and analysis of samples have been complied with;
- (c) sufficient samples have been taken, analysed and preserved to enable all material questions relating to the seized substances to be properly determined in any actual or contemplated proceedings under this Act; and

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- (d) any suspect or accused person in relation to the seized has had reasonable opportunity to have samples independently analysed at that person's expense,

the court shall order the disposal of such seized substances or samples as the Director of Public Prosecutions is satisfied that it is not necessary to retain them for the purposes of the due administration of justice.

(4) Where, in relation to any seized drug of abuse, analogue or controlled chemical, and after reasonable investigatory efforts, the Director of Public Prosecutions is -

- (a) of the opinion that proceedings are not likely to be brought against any person for the reason only that no suspect has been identified or located; and
- (b) satisfied that sufficient samples have been taken, analysed and preserved to enable all material questions relating to the seized substances to be properly determined should any suspect be ultimately identified and proceedings be brought,

the Director of Public Prosecutions may order the disposal of such part of the seized substances or samples as he or she is satisfied that is not necessary to retain them for the purposes of the due administration of justice.

(5) A substance subject to an order under subsection (3) shall be disposed of only -

- (a) by delivery to the Minister for use exclusively in meeting the lawful medical, scientific or training needs of Lesotho; or
- (b) by incineration, or such other safe means of destruction as the Minister may direct.

(6) Subject to this section, in any prosecution for an offence against this Act or regulations, a certificate or report -

- (a) purporting to be signed by the officer in charge of car-

rying out a disposal order made under subsection (3) or (4) and two witnesses to the disposal; and

(b) stating-

- (i) that the substance, the subject of an order, has been disposed of in accordance with the order; and
- (ii) the identity and quantity of the substance disposed of, is admissible in evidence.

(7) In the absence of evidence to the contrary, a certificate or report admissible under subsection (6) is a proof of the statement contained therein, without proof of the signature, expires or official character of the person appearing to have signed it.

### *Division 7 - Evidentiary Matters*

#### **Burden of proof**

85. (1) No exception, exemption, or qualification prescribed by law is required to be set-out or negated in any indictment, information or other process commencing proceedings for an offence under this Act.

(2) In any prosecution under this Act, the prosecutor is not required, except by way of rebuttal, to prove that a certificate, licence permit or other qualification does not operate in favour of the accused, whether or not the qualification is set out in the information or indictment.

#### **Factual presumption relating to liability of legal person**

86. (1) Where in proceedings for an offence against Division 1 of Part III in respect of any conduct, it is necessary to establish the state of mind of a legal person, it is sufficient to show that a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

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- (2) Any conduct engaged in by -
- (a) a director, servant or agent of a legal person within the scope of his or her actual or apparent authority; or
  - (b) any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the legal person, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent, shall be for the purposes of this Act, also an act of the legal person.

(3) A reference in subsection (1) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief, suspicion or purpose of the person and that person's reasons for his or her intention, opinion, belief, suspicion or purpose.

(4) Where at any time a legal person commits an offence under this Act with the consent or connivance, or because of neglect by an individual, the individual also commits that offence if at the time -

- (a) that individual is a director, manager, secretary or other similar officer of the legal person; and
- (b) that individual is purporting to act as such officer; or that legal person is managed by its members of whom the individual is one.

### **Factual presumptions relating to possession of drugs of abuse or analogues**

87. If in the prosecution of a person for an offence against this Act or the regulations it is proved that a drug of abuse or analogue was found -

- (a) on any animal, vehicle, vessel, or aircraft, and that the accused was at the time on or in charge of the animal, vehicle, vessel or aircraft; or
- (b) in any place under the control or supervision of the accused, or

on his person, it shall be presumed, until the contrary is proved, that the accused was found in possession of the drug or analogue.

### **Factual presumptions relating to a particular purpose**

88. For the purposes of this Act, where a person has performed an act which requires specific purpose then he or she shall be deemed to have done it for an illegal purpose.

### **Factual presumptions relating to purpose of supply of drugs of abuse or analogue**

89. (1) For the purposes of subsection (2) -

- (a) “school” means any educational institution, including university or other tertiary institution where full time education, including pre-school education is provided to pupils;
- (b) “school grounds” means land, whether contiguous or not, buildings or accommodation, sporting or other facilities used for or in connection with the activities of a school.

(2) If in a prosecution of a person for an offence against section 45 it is proved that the accused was found in unlawful possession of any drug of abuse or analogue -

- (a) in or on any school grounds or within the distance 100 metres therefrom; or
- (b) of a quantity of drugs or analogue which exceeds the quantity which the accused could have acquired for medical or scientific purposes pursuant to this Act,

it shall be presumed, until the contrary is proved, that the possession was for the purpose of supply.

(3) For the purposes of this Act, where a person -

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- (a) has in his or her possession;
  - (b) imports into or exports from Lesotho; or
  - (c) has in his or her possession for the purpose of importing into or exporting from Lesotho,

a trafficable quantity or a commercial quantity of a drug of abuse or analogue, it shall be presumed until the contrary is proved that the possession, import, export, intended import or intended export, as the case may be, is for the purpose of supply.

### **Proof of street or market value of drug of abuse etc.**

90. For the purposes of this Act, it shall be competent for any authorised officer who is or has recently carried out duties relating to the investigation of offences against Part III, to give evidence in any proceedings relating to -

- (a) an offence against that Part; and
- (b) a serious offence, as to the street or market value in Lesotho of any drug of abuse, analogue or controlled chemical, and as to the demand for, availability of and other circumstances pertaining to its sale, supply or distribution, the court may give such probative weight to that evidence as it thinks fit.

### **Factual presumption relating to samples**

91. If in any prosecutions for an offence against this Act it is proved that a sample which was taken from any substance possesses particular properties, it shall be presumed, until the contrary is proven, that the substance possesses the same properties as the samples.

### **Proof of continuity of possession of exhibits**

92. (1) In any proceedings under this Act, continuity of possession of any exhibit tendered as evidence may be proved by testimony given under oath or the affidavit of, the person claiming to have had it in his or her possession.

(2) Where the affidavit of a person is offered in proof of continuity of possession under subsection (1), the court may require the person to appear before it for examination or cross-examination in respect of the issue of continuity of possession.

### **Admissibility of official records**

93. A copy of any record of a ministry, department, agency, municipality or other body established by or pursuant to the law of Lesotho, or of any statement containing information from the records kept by any such Ministry, department, agency, municipality or other body, purporting to be certified by an official having custody of that document or those records, is admissible in evidence in any prosecution for an offence against this Act, and in the absence of evidence to the contrary, is proof of the facts contained in the document, without proof of the signature or official character of the person purporting to have certified it.

### **Proof of certificate or report of scientific analysis**

94. (1) Subject to this section, in any prosecution for an offence against this Act or regulations, a certificate or report purporting to be signed by an analyst and stating that an article, sample or substance has been submitted to, examined and analysed by the analyst and stating the results of the analysis or examination, is admissible in evidence.

(2) In the absence of evidence to the contrary, a certificate or report admissible under subsection (1) is a proof of the statements contained therein, without proof of the signature, expertise or official character or the person appearing to have signed it.

(3) Without limiting the generality of subsection (1), the certificate or report may include a statement in relation to a drug of abuse, analogue or controlled chemical, as to -

- (a) when and from whom it was received;
- (b) what, if any identifying labels or other things accompanied it;
- (c) what container it was in;

- 
- (d) a description of it, and its weight;
    - (a) if it, or any portion of it, was analysed -
      - (i) the name of the method of analysis; and
      - (ii) the results of the analysis, including as to its identity pure drug or chemical content; and
    - (b) how it was dealt with after handling by the analyst, including details of -
      - (i) the quantity retained;
      - (ii) the name of the person, if any, to whom any retained quantity was given; and
      - (iii) measures taken to secure any retained quantity.

(4) The party against whom a certificate or report is produced under subsection (1) may, with leave of court, require the attendance of the analyst from the purpose of cross-examination.

(5) Unless court otherwise orders, no certificate or report shall be received in evidence under subsection (1), unless the party intending to produce it has, before the trial, given to the party against whom it is intended to be produced reasonable notice of that intention, together with a copy of that certificate or report.

### **Proof of prohibited import or export of a drug of abuse etc., under foreign law**

95. 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 of abuse, controlled chemical, equipment, or material 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.



**Offence of interfering etc., with evidence**

96. Any person who unlawfully interferes with, uses, takes or disposes of any seized substance or any sample thereof, or who unlawfully interferes with, or falsifies the results of any analysis with the intention of interfering with the proper course of justice, commits an offence and is liable on conviction to imprisonment for a period not less than 5 years or a fine not less than M20,000 or both and in the case of a legal person a fine not less than M100,000.

***Division 8 - General*****Delegation**

97. (1) The Minister and any other person on whom any power is conferred by this Act may, either generally or as otherwise provided by the instrument of delegation, delegate to any officer of his or her department, all or any of his or her powers under this Act, except -

- (a) this power of delegation;
- (b) the power to grant licence under section 12;
- (c) the power to grant exemption from the operation of the Act or the regulations under section 98; and
- (d) the power to make regulations under section 118.

(2) Any person on whom any power or function is conferred by a provision of this Act may delegate the whole or any part of that function by notice in the Gazette, subject to such conditions and limitations as may be specified in the notice.

**Exemption from operation of the Act or regulations**

98. Subject to section 5(3), the Minister may, on such terms and conditions as he or she thinks necessary, exempt any person or class of persons or any drug of abuse, controlled chemical, equipment or material, or any class thereof, from the application of all or any provisions of this Act or the regulations if, in the opinion of Minister, the exemption is necessary for a medical or scientific purpose and is otherwise in the public interest.

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**Offence of tipping-off**

99. (1) Except for the purposes of the due administration and enforcement of this Act, no person shall without lawful authority or reasonable excuse disclose to another person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him or her under this Act -

- (a) the fact that he or she is under investigation;
- (b) any details of the investigation; or
- (c) the identity of any person who is the subject of such an investigation or any details of such an investigation.

(2) Any person who contravenes this section commits an offence and is liable on conviction to imprisonment for a period not less than 5 years or a fine not less than M100,000 or both.

(3) Subsection (1) shall cease to apply in relation to the identity of the person or details of the investigation when -

- (a) a search warrant issued under Part V has been executed at the person's premises; and
- (b) a warrant for the arrest of the person has been issued, or the person has been arrested.

**Obstruction of officers etc.,**

100. (1) An inspector or police officer who maliciously -

- (a) enters or searches or causes to be entered or searched any place, person, clothing of that person, or property under the control of that person;
- (b) seizes the property of any person on the pretence of seizing or searching for any drug of abuse, analogue, controlled chemical, equipment or material or other property liable to be confiscated under this Act, or of

seizing any record, article or other thing liable to be seized under this Act; or

- (c) detains, searches or arrests any person, commits an offence.

(2) Any person who maliciously gives false information leading to the arrest of a person or a search being made pursuant to this Act commits an offence and is liable to imprisonment for a period not less than 3 years or a fine not less than M20,000 or both.

### **Immunity where official powers or functions exercised diligently and in good faith**

101. No suit, prosecution or other legal proceedings shall lie against the Government, or any officer or other person in respect of anything done by or on behalf of that person, with due diligence and in good faith, in the exercise of any power or the performance of any function under this Act or the regulations.

### **Protection of informers**

102. (1) Subject to subsection (2), no witness in any proceedings under this Act shall be obliged -

- (a) to disclose the name or address of any informer who has given information with respect to an offence under this Act, or of any person who has persisted in detecting, investigating or otherwise assisting with respect to the due administration or enforcement of this Act;
- (b) to answer any question if the answer thereto would lead, or would tend to lead, to the discovery of the name, address or identity of such informer or person, if the informer or person 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 person is named or described or which might lead to his or her discovery, the court shall cause

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all such entries to be concealed from view or to be obliterated so far as may be necessary to protect the informer or such 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 wilfully made a material statement which he or she knew to be false or did not believe to be true, or if in any other proceedings the court is of the opinion that justice cannot be fully done between the parties thereto without disclosure of the name of the informer or other person who has assisted in any investigation or the proceedings under this Act, the court may permit enquiry and require full disclosure concerning the informer or person.

### **Conditional immunity where offenders assist the prosecution**

103. (1) The Director of Public Prosecutions may, with a view to obtaining the evidence of any person who appears to have been directly or indirectly concerned in the contravention of any provision of this Act, grant to the person immunity from prosecution for any offence under this Act on condition that the person makes a full and true disclosure of the whole circumstances relating to the contravention.

(2) Any immunity granted by the Director of Public Prosecutions under subsection (1) and accepted by a person shall, to the extent to which the immunity extends, render the person immune from prosecution for any offence in respect of which immunity was tendered.

(3) If it appears to the Director of Public Prosecutions, at any time that a person to whom immunity has been tendered under subsection (1) has -

- (a) failed or refused to comply with an item or a condition on which immunity was granted;
- (b) wilfully concealed anything or given false or misleading evidence; or
- (c) subsequent to the grant of immunity, has committed an offence against this Act,

the Director of Public Prosecutions may, by notice in writing to the person, withdraw the immunity, and the person may be tried for the offence in respect

of which immunity was granted and any other offence of which the person appears to have committed in connection with that offence.

### **Limited official secrecy**

104. (1) This section applies to an inspector, analyst, authorised officer or other person who is, or has been, a person exercising powers or performing duties under this Act.

(2) Subject to subsection (4), a person to whom this section applies shall not, either directly or indirectly, except in the exercise of a power or the performance of a duty under this Act -

- (a) make a record of, or divulge or communicate to a person any information acquired by the person concerning the business, professional or personal affairs of another person;
- (b) produce to a person a document produced to or otherwise acquired by the person, by reason of the exercise of those powers or the performance of those duties.

(3) Any person who contravenes this section commits an offence and is liable to imprisonment not less than 5 years or a fine not less than M20,000 or both.

(4) Nothing in this section applies in relation to the giving of information or the production of a document -

- (a) to an authorized officer while acting in the course of his or her duties;
- (b) to the court in relation to any proceedings under this Act;
- (c) to treatment assessment panel established under Part IV;
- (d) to a person where the giving of information or the production of the document is necessary to remove a threat

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to the life of health or the person;

- (e) subject to subsection (5) to any other person for the purpose of:
  - (i) any investigation, prosecution or other proceedings in Lesotho or elsewhere; or
  - (ii) due to administration and enforcement of this Act.

(5) Nothing in subsection (4)(e) entitles any person to obtain, by way of discovery, any information or document to which he or she would not be entitled to under the ordinary rules relating to discovery.

### **Penalty for offences where no penalty expressed provided**

105. Any person who contravenes a provision of-

- (a) this Act for which punishment is not otherwise provided; or
- (b) of a regulation made pursuant to this Act,

commits an offence and is liable on conviction to imprisonment for a period not less than 5 years or a fine not less than M20,000 or both, and in the case of a legal person a fine not less than M100,000

## **PART VI - MISCELLANEOUS**

### **Paramouncy and repeal**

106. (1) The provisions of Division 2, 3 and 4 of Part II and of Division 1 of Part VI have paramouncy over any inconsistent provision of any other law in force in Lesotho.

- (2) The Dangerous Medicines Act of 1973 is repealed.

### **Transitional**

107. (1) Where a person has committed an offence against the Dangerous

Medicines Act of 1973 and proceedings for that offence have not been instituted against the person before the date of commencement of this Act, that person may be proceeded against for that offence and dealt with as if that Act had not been repealed by this Act.

(2) Where any proceedings instituted before the date of commencement of this Act for an offence against the Dangerous Medicines Act of 1973 have not been finally concluded by that date, the proceedings shall be deemed under this Act, and the person may be dealt with as if that Act had not been repealed by this Act.

(3) Where in a case to which subsection (2) applies, any penalty, punishment, forfeiture or confiscation provided for by the Dangerous Medicines Act of 1973 is varied by this Act, the lesser penalty, punishment, forfeiture or confiscation shall apply in respect of any offence committed before the coming into force of this Act.

(4) A licence, registration, permit, authorization or certificate issued under the Dangerous Medicines Act of 1973, shall continue to be in force until three months of the coming into operation of this Act.

## **Regulations**

108. (1) The Minister may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient for giving effect to it, and, without restricting the generality of subsection (1) the Minister may make regulations-

- (a) amending any Schedule, in accordance with section 6;
- (b) revising penalties under this Act;
- (c) governing, controlling, limiting, authorizing the import into Lesotho, export from Lesotho, production, packaging, sending, transportation, delivery, sale, provision, administration, possession or obtaining of or other dealing in any drug of abuse, controlled chemical, equipment or material;
- (d) prescribing the fees payable on application for any reg-

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istration, licence or permit provided for by this Act;

- (e) relating to the method of production, preservation, testing, packaging or storage of any drug of abuse, controlled chemical, equipment or material;
- (f) relating to the premises, processes or conditions for the manufacture, sale or supply of any drug of abuse or controlled chemical, equipment or material, and deeming such premises, processes or conditions to be or not to be suitable for the purposes of the grant or holding of registration or a licence or permit provided for by this Act;
- (g) relating to the qualifications of persons engaged in the production, reservation, testing, packaging, storage, supplying or otherwise dealing in any drug of abuse, controlled chemical, equipment or material;
- (h) prescribing standards of composition, strength, concentration, potency, purity or quality or any other property of any drug of abuse, controlled chemical, equipment or material;
- (i) relating to the labelling, packaging, size, dimensions, and other specifications of packages used for the import into Lesotho, export from Lesotho, sending, transportation, delivery, sale, supply or other dealing in any drug of abuse, controlled chemical, equipment or material;
- (j) relating to the distribution of samples of any drug of abuse, controlled chemical, equipment or material;
- (k) controlling or limiting the advertising for sale of any drug of abuse, controlled chemical, equipment or material;
- (l) relating to the establishment, maintenance, keeping or provision of records, books, electronic data or other



documents by persons or classes of persons, for the purpose of this Act in respect of drugs of abuse, controlled chemical, equipment and materials;

- (m) relating to the making and provision of reports by persons or classes of persons for the purpose of this Act in respect of drugs of abuse, controlled chemical, equipment and materials;
- (n) relating to the powers and duties of inspectors in relation to the enforcement, and compliance with, the regulations;
- (o) relating to the powers and duties of analysts;
- (p) relating to the detention and disposal of any drug of abuse, controlled chemical, equipment or material;
- (q) relating to the taking of samples of substances;
- (r) relating to the communications of any information obtained under this Act or the regulations to any person or class of persons in Lesotho or elsewhere to whom, in the opinion of the Minister is necessary or desirable to communicate that information for the proper administration or enforcement of this Act, the regulations made under this section, or any law of Lesotho relating to international assistance in criminal matters;
- (s) relating to the making, serving, filling and manner of proving service of any notice, order, report or other document required or authorized under this Act or the regulations.
- (t) prescribing forms for the purposes of this Act;
- (u) conferring powers or imposing duties and functions in relation to treatment assessment panels;
- (v) exempting assessment, on such terms and conditions as

may be specified in the regulations, any person or class of persons or any drug of abuse, controlled chemical, equipment or material, or any class thereof, from the application of all or any of the provisions of this Act; and

- (w) prescribing anything that, by this Act, is to be or may be prescribed.

## SCHEDULES

### SCHEDULE 1 PROHIBITED DRUGS OF ABUSE

(Section 4(2))

This Schedule includes-

- (a) the following substances, designated by their international non-proprietary names or the name used in the international convention in force;
- (b) their isomers, unless specifically excepted, whenever the existence of such isomers is possible within the specific chemical designation;
- (c) their esters and ethers, unless specifically excepted, whenever the existence of such esters and ethers is possible;
- (d) their salts, including the salts of esters, ethers and isomers, whenever the existence of such salts is possible;
- (e) preparations of these substances, unless exempted by law.

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

Arcetorphine	Acetyl-alpha-methyl-	Methyl-3-fentanyl
Cannabis and cannabis resin	fentanyl	Methyl-3-thio-fentanyl
Desomphine	Alphacetylmethadol	MPPP
Etorphine	Alpha-methylfentanyl	Para-flourofentanyl
Heroin	Beta-hydroxy-methyl-3-	PEPAP
Ketobemidone	Beta-hydroxy-methyl-3-	Thiofentanyl.
	fentanyl	

(FROM SCHEDULE 1 OF THE CONVENTION ON PSYCHOTROPIC  
SUBSTANCES, 1971)

Brolamfetamine	DOET	Mescaline
Cathinone	Etryptamine	Methcathinone
DET	(+)-Lysergide	4-Methyl-aminorex
DMA	MDA	MMDA
DMHP		MDMA
N-ethyl MDA	Psilocine, psilotsin	
N-hydroxy MDA	Psilocybne	
Parahexyl	Rolicyclidine	
PMA	STP, DOM	
	Tenafetamine	
	Tenocyclidine	
	Tetrahydrocannabinol	
	TMA	

SCHEDULE 2  
HIGH RISK DRUGS OF ABUSE

(Section 4(2))

(FROM SCHEDULE 1 OF THE CONVENTION ON NARCOTIC  
DRUGS, 1961)

Acetylmethadol	Concentrate of poppy	Etonitazene
Alfentanil	straw	Etoxeridine
Allylprodine	Desomorphine	Fentanyl
Alphamethadol	Dextromoramide	Furethidine
Alphamethylthio-fentanyl	Diampromide	Hydrocodene
alphaprodine	Diethylthiambutene	Hydromorphone
Anileridine	Difenoxin	Hydroxypethidine
Benzethidine	Dihydromorphine	Isomethadone
Benzylmorphine	DimenoxadolDimethylt	Levorphanol
Betacetylmethadol	hiambutene	Metazocine
Betameprodine	Dioxaphetul butyrate	Methadone
Betamethadol	Diphenoxylate	Methadone intermediate
Betaprodine	Dipipanone	(4-cyano-2-dimethyl-
Bezitramide	Drotebanol	amino-4,4-diphenyl
Clonitazene	Ecgonine, its esters and	butane)
Coca (leaf)	derivatives	Methyldesorphine
Cocaine	Ethymethyl-thi-	Methyldihydromorphine
Codoxime	ambutene	Metopon

Moramide-intermediate	Oxycodone	Phenadoxone
Morpheridine	Oxymorphone	Phenampramide
Morphine	Pethidine	Phenazocine
Morphine	Pethidine	Phernoperidine
methobromide and	intermediate A	Piritramide
other pentavalent	(4-cyano-1-methyl-	proheptazine
nitrogen morphine	4-phenyl-piperidine)	Piminodine
derivatives	Pethidine	Properidine
Morphine-N-oxide	intermediate B	Racemethorphan
Myrophine	(4-phenylpiperidine-4-	Racemoramide
Nicomorphine	carboxylic acid	Racemorphan
Noracymethadol	ethyl ester)	Sufentanil
Norlevorphanol	Pethidine	Thebacon
Normethadone	intermediate C	Thebaine
Normorphine	(1-methyl-4-	Tilidine
Norpipanone	phenylpiperidine-	Trimeperidine
Opium	4-carboxylic acid)	

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

Acetyldihydrocodeine	Ethylmorphine	Pholcodine
Codeine	Nicodicodine	Propiram
Dextropropoxyphene	Nicocodine	
Dihydrocodeine	Norcodeine	

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

Ametamine	Racemate	Phenmetrazine
Dexamfetamine	Methaqualone	Secobarbital
Fenetylline	Methyphenidate	Zipeprol
Levamfetamine	Phencyclidine	Dronabino
Mecloqualone		
Metamfetamine		
Metamfetamine		

## SCHEDULE 3 - RISK DRUGS OF ABUSE

(Section 4(2))

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

Amobarbital	Pentazocine
Buprenorphine	Pentobarbital
Butalbital	Flunitrazepam
Cathine	
Cyclobarbital	
Glutethimide	

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

Allobarbital	Ethinamate	Midazolam
Alprazolam	Ethyl loflazepate	Nimetazepam
Aaminorex	Etilamfetamine	Nitrazepam
Amfepramone	Fencamfamin	Nordazepam
Barbital	Fenproporex	Pinazepam
Benzphetamine	Fludiazepam	Pipradrol
Bromazepam	Flurazepam	Prazepam
Brotizolam	Halazepam	Pyrovalerone
Butobarbital	Halozolam	Secbutabarbital
Camazepam	Ketazolam	Temazepam
Chlordiazepoxide	Lefetamine	Tetrazepam
Clobazam	Lopraolam	Pinazepam
Clonazepam	LorazepamLormetazepam	Pipradrol
Clorazepate	Mazindol	Prazepam
Clotiazepam	Medazepam	Pyrovalerone
Clozolam	Mefenorex	Secbutabarbital
Delorazepam	Meprobamate	Temazepam
Diazepam	Mesocarb	Tetrazepam
Estazolam	Methylpheno-barbital	Triazolam
Ethchlorvynol	Methylprylon	Vinylbital

## SCHEDULE 4

CONTROLLED TOXIC INHALANT AND CONTROLLED  
CHEMICALS

This Schedule includes-

- (a) the following substances, designated by their international non-proprietary names or the names used in the international conventions in force;
- (b) 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 2***

(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	

SCHEDULE 5  
CONTROLLED MATERIAL AND EQUIPMENT

(Section 14)

***DIVISION 1***

CONTROLLED MATERIAL

Gelatin capsules

[eg. glucose, lactose, phenolphthalein]

[prescribed bulking agents eg. magnesium stearate, calcium oxide (“talc”) 1

[colouring materials or food dyes]

***DIVISION 2***

CONTROLLED EQUIPMENT

Encapsulating machines

Tabletting machines

Rotary evaporators

Laboratory equipment with a capacity for large volume production (eg. round bottom flasks of 25 litres or above and related condensers, separating funnels and heating apparatus)

**NOTE**

1. Act No. 21 of 1973