

PARLIAMENT OFFICE,
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Guyana.

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The following Bill which was introduced in the National Assembly is published for general information.

F.A. Narain,
Clerk of the National Assembly.



GUYANA

Bill No. 2 of 1999

**NARCOTIC DRUGS PSYCHOTROPIC SUBSTANCES (CONTROL)
AND (AMENDMENT) BILL 1999**

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Insertion of new Part IIA in the Principal Act.
3. Insertion of new Part IIIA in the Principal Act.
4. Amendment of section 73 of the Principal Act.
5. Insertion of new PART IXA in the Principal Act.
6. Insertion of new Fourth and Fifth Schedules to the Principal Act.

**A BILL
Intituled**

AN ACT to amend the Narcotic Drugs and Psychotropic Substances (Control) Act 1988.

A.D. 1999

Enacted by the Parliament of Guyana :-

Short title
No 2 of 1988

1. This Act which amends the Narcotic Drugs and Psychotropic Substances (Control) Act 1988 may be cited as the Narcotic Drugs and Psychotropic Substances (Control) (Amendment) Act 1999.

Insertion of new
Part IIA in the
Principal Act

2. The Principal Act is hereby amended by the insertion immediately after PART II of the following PART -

**“PART IIA
OFFENCES RELATING TO PRECURSOR CHEMICALS**

Offences relating
to precursor
chemicals.
Fourth
Schedule.

15A. Every person who -

(a) manufacturers or is in possession of a substance referred to in the Fourth Schedule; or

(b) transports such a substance or supplies it to another person, knowing or having reasonable grounds to suspect that the substance is to be used in or for the unlawful production of a narcotic is guilty of an offence and is liable -

(i) upon summary conviction to a fine of one hundred thousand dollars and to imprisonment for five years;

(ii) upon conviction or indictment to a fine of two hundred thousand dollars and to imprisonment for ten years.

Order
Fourth
Schedule

15B. The Minister may by order, add substances to the Fourth Schedule and may delete therefrom any substance, the inclusion or exclusion of which is by him deemed necessary in the public interest.

15C.(1) The Minister may make regulations -

Regulations

(a) for imposing requirements as to the documentation of transactions involving substances referred to in the Fourth Schedule;

Fourth
Schedule

- (b) requiring the keeping of records and the furnishing of information with respect to such substances;
- (c) for the inspection of records kept pursuant to the regulations;
- (d) for the labelling of consignments of substances referred to in the Fourth Schedule;
- (e) for the transportation of such substances.

(2) Regulations made under subsection (1)(b) may require -

- (a) the notification of the proposed exportation of substances specified in the Fourth Schedule to such countries as may be specified in the regulations: and
- (b) the production, in such circumstances as may be also specified, of evidence that the required notification has been given.

(3) Regulations made under this section may make different provisions in relation to the substances specified in the Fourth Schedule and in relation to different cases or circumstances.

Fourth
Schedule

(4) Any person who fails to comply with any requirement imposed by the regulations or, in purported compliance with any such requirements, furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular is guilty of an offence and is liable -

- (a) on summary conviction to a fine of ten thousand dollars and to imprisonment for two years;
- (b) on conviction on indictment to a fine of twenty thousand dollars and to imprisonment for not less than two years and not more than five years.

(5) No information obtained pursuant to the regulations shall be disclosed except for the purposes of criminal proceedings or of proceedings under this Act".

Insertion of new
PART IIIA in the
Principal Act.

3. The Principal Act is hereby amended by the insertion immediately after PART III of the following PART -

**“PART IIIA
ADDITIONAL POWERS OF
COMPTROLLER**

Additional
powers of
Comptroller

22A. (1) In addition to the functions conferred on the Comptroller by PART III, where any provision of this Act empowers any member of the Police Force to discharge a function, such function may be discharged by the Comptroller or any other person authorised in writing by the Comptroller under this Act to be an officer (hereinafter in this section referred to as the “Comptroller of Customs”) and being a member of that body known as the Customs Anti Narcotic Unit.

(2) Without prejudice to the generality of subsection (1), the Comptroller of Customs shall have the following powers

- (i) under section 10(2), the same power as any member of the Police Force or any other person authorised by the Commissioner of Police for the purposes of the said section 10;
- (ii) under section 27(1)(b), the same power as any member of the Police Force or any other person authorised in that behalf in writing by the Commissioner of Police or by a Police Officer not below the rank of an Assistant Commissioner of Police or the Chief Medical Officer;
- (iii) under sections 79(1) and (2), 83 and 93(1) the same power as a member of the Police Force;
- (iv) under sections 81, 82 and 85, the same power as any member of the Police Force or any other person authorised in writing by the Commissioner of Police for the purposes of section 81, 82 or 85;
- (v) under section 86, the same power as the Commissioner of Police; except that in relation to this paragraph “Comptroller of Customs” has the same meaning as

“Comptroller” in section 2 of the Customs Act;

Cap. 82:01

- (vi) under section 90(1), the same power as any member of the Police Force or any other person authorised in writing by the Commissioner of Police.

(3) Subject to this section, the provisions of this Act in particular section 31, shall as they apply to the Commissioner of Police or any member of the Police Force apply *mutatis mutandis* to the Comptroller of Customs.”.

4. Section 73 of the Principal Act is hereby amended as follows -

Amendment of section 73 of the Principal Act.

- (a) by the substitution for subsection (2) of the following subsection -

“(2) For the purposes of subsection (1) -

- (a) the fact that a person convicted of any offence under this Act was a child or young person on the date of the commission of that offence may be deemed to be a special reason;
- (b) where a person convicted of an offence under section 4 for being in possession of cannabis was on the date of the commission of the offence in the possession of an amount of cannabis not exceeding five grams, and the court is satisfied that such cannabis was in his possession only for his personal consumption, the court may deem such circumstances to be a special reason.”.

- (b) by the insertion after subsection (4) of the following subsection -

“(5) Notwithstanding subsection (4)(b), a court convicting a person of an offence under section 4 to which subsection (2)(b) of this section applies, shall impose a fine of not less than -

- (a) three thousand dollars in lieu of the fine under section 4(1)(a)(i) or (2)(A)(i);
- (b) six thousand dollars in lieu of the fine under section 4(a)(ii) or (2)(A)(ii),

and make an order requiring the person convicted to perform community service for such period not exceeding six months in lieu of imprisonment under section 4(1)(a)(i) or (2)(A)(i), and not exceeding nine months in lieu of imprisonment under section 4(1)(a)(ii) or (2)(A)(ii), and for such number of hours each day (excluding public holidays) as are specified in the order, and where any such order is made, the provisions of sections 3(2) to 7, inclusive, or the Extra-Mural Work Act shall, *mutatis mutandis* apply as if the order were an extra-mural work order made under section 3 of that Act.”.

Cap 11:02

Insertion of new
PART IXA in the
principal Act

5. The Principal Act is hereby amended by the insertion immediately after PART IX of the following PART -

**“PART IXA
OFFENCES ON THE HIGH SEAS**

Offences on
Guyana ships

95A. (1) In this Part - including the Fifth Schedule -

- (a) “Convention state” means a state which is a party to the Vienna Convention 1989;
- (b) “ship” includes every description of vessel used in navigation;
- (c) “Guyana ship” means a ship registered in Guyana;

(2) Anything which would constitute a drug trafficking offence if done on land in any part of Guyana shall constitute that offence if done on a Guyana ship.

Ships used for
illicit trading

95B. (1) This section applies to a Guyana ship, a ship registered in any other state and a ship not registered in any country or territory.

(2) A person is guilty of an offence if on a ship to which this section applies, wherever it may be, he -

- (a) has a narcotic or any substance represented or held out to be a narcotic in his possession; or
- (b) is in any way knowingly concerned in the carrying or concealing of a narcotic or any substance represented or held out to be a narcotic on the ship,

knowingly or having reasonable grounds to suspect that such narcotic or substance represented or held out to be a narcotic is intended to be imported or has been exported contrary to the provisions of Part II or the law of any state other than Guyana.

(3) A certificate purporting to be issued by or on behalf of the government of any state to the effect that the importation or exportation of a narcotic is prohibited by the law of that state shall be evidence of the matters stated.

(4) A person guilty of an offence under this section is liable -

(a) on summary conviction -

- (i) to a fine of fifty thousand dollars or, where there is evidence of the street value of the narcotic, three times the street value of the narcotic, whichever is greater; and
- (ii) to imprisonment for a term which shall not exceed ten years but which shall not be less than five years; or

(b) on conviction on indictment to imprisonment for life.

95C. (1) The powers conferred on an enforcement officer by the Fifth Schedule shall be exercisable in relation to any ship to which section 95A or 95B applies for the purpose of detecting and the taking of appropriate action in respect of the offences mentioned in those sections.

Enforcement
powers
Fifth
Schedule

(2) The powers referred to in subsection (1) shall not be exercised outside the landward limits of the territorial sea of Guyana in relation to a ship registered in a Convention state except with the authority of the Minister to whom responsibility for foreign affairs is assigned (hereafter in this Part referred to as "the Minister"), and he shall not give his authority unless that state has in relation to that ship -

- (a) requested the assistance of Guyana for the purpose mentioned in subsection (1); or
- (b) authorised Guyana to act for that purpose.

(3) In giving his authority pursuant to a request or authorisation from a Convention state the Minister shall impose such conditions or limitations on the exercise of the powers as may be necessary to give effects to any conditions or limitations imposed by that state.

(4) The Minister may, either of his motion or in response to a request from a Convention state, authorise a Convention state to exercise, in relation to a Guyana ship, powers corresponding to those conferred on enforcement officers by the Fifth Schedule but subject to such conditions or limitations, if any, as he may impose.

(5) Subsection (4) is without prejudice to any agreement made, or which may be made, on behalf of Guyana whereby Guyana undertakes not to object to the exercise by any other state in relation to a Guyana ship of powers corresponding to those conferred by the Fifth Schedule.

(6) The powers conferred by the Fifth Schedule shall not be exercised in the territorial sea of any state other than Guyana without the authority of the Minister and he shall not give his authority unless that state has consented to the exercise of those powers.

Jurisdiction and
prosecution

95D. (1) Proceedings under this Part or the Fifth Schedule in respect of an offence on a ship may be taken and the offence may for all incidental purposes be treated as having been committed, in any place in Guyana.

(2) No such proceeding shall be instituted in Guyana except by or with the consent of the Director of Public Prosecutions.

(3) Without prejudice to subsection (2) no proceedings for an offence under section 95B alleged to have been committed outside the landward limits of the territorial sea of Guyana on a ship registered in a Convention state shall be instituted except in pursuance of the exercise, with the authority of the Minister, of the powers conferred by the Fifth Schedule."

Insertion of new
Fourth and Fifth
Schedules in the
Principal Act.

6. The Principal Act is hereby amended by the insertion immediately after the THIRD SCHEDULE of the following SCHEDULE -

"FOURTH SCHEDULE

s.s.15A, B, C

1. N. Acetylantranilic acid
2. Acetic anhydride
3. Acetone
4. Anthranilic acid
5. Benzene
6. Benzyl chloride
7. Benzyl cyanide
8. 2 - Butanone (methyl ethyl ketone)
9. Ephedrine
10. Ergonovine
11. Ergotamine
12. Ethyl ether
13. Hydrochloric acid
14. Methylene Chloride
15. 3, 4 Methylene-dioxyphenyl-2-propanone
16. Norpseudo ephedrine
17. Phenylacetone acid
18. Phenylacetone
19. Piperidine
20. Potassium permanganate
21. Pseudo ephedrine
22. Sulphuric acid
23. Toluene
24. 1-Phenyl-2-propanone
25. Phenylacetic acid and its salts
26. Phenylpropanolamine and its salts
27. Bromobenzyl cyanide
28. Lysergic acid
29. Ergometrine and its salts
30. Sodium sulphate
31. Potassium carbonate
32. Sodium carbonate
33. Isosafrole (cis+trans)
34. Piperonal
35. Safrole
36. Methyl ethyl Ketone (MEK)

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

FIFTH SCHEDULE
ENFORCEMENT POWERS IN RECEIPT OF SHIP

s.95A

1.(1) In this Schedule "an enforcement officer" means -

- (a) a police officer
- (b) an officer of the Coast Guard
- (c) an officer authorised by the Comptroller the Customs Act; and
- (d) any other person of a description specified in an Order made for the purposes of this Schedule by the Minister to whom responsibility for national security is assigned.

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

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

(2) Where an enforcement officer is exercising his powers with the authority of the Minister given under section 95 C(2) the officer may require the ship to be taken to a port in the Convention state in question or, if that state has so requested, in any other country or territory willing to receive it.

(3) For any of the purposes referred to in subparagraphs (1) and (2) an enforcement officer may require the master or any member of the crew to take such action as may be necessary.

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

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

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

Power to stop,
board, divert
and detain.

Power to search
and obtain
information.

(3) Without prejudice to the generality of the powers referred to in subparagraphs (1) and (2) an enforcement officer may

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

4. If an enforcement officer has reasonable grounds to suspect that an offence mentioned in section 95B has been committed on a ship to which that section applies he may -

- (a) arrest without warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence; and
- (b) seize and detain anything found on the ship which appears to him to be evidence of the offence.

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

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

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

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

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

8. An enforcement officer shall not be liable in any civil or criminal proceedings for anything done in the

Powers in respect of suspected offence.

Assistants

Use of reasonable force.

Evidence of authority

Protection of officers

performance of his functions under this Schedule if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

Offences

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

- (a) intentionally obstructs an enforcement officer in the performance of any of his functions under this Schedule;
- (b) fails without reasonable excuse to comply with a requirement made by an enforcement officer in the performance of those functions; or
 - (i) make a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular; or
 - (ii) intentionally fails to disclose any material particular.

(2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine of five thousand dollars and to imprisonment for two years.”

EXPLANATORY MEMORANDUM

Clause 2 of the Bill inserts a new Part IIA in the Act which creates the offence of possessing, manufacturing, transporting or distributing precursor chemicals referred to in the inserted Fourth Schedule, knowing that they are to be used for the illicit cultivation or manufacture of narcotic drugs or psychotropic substances.

Clause 3 inserts a new PART IIIA in the Act giving the Comptroller of Customs Police powers under the Act.

Clause 4 seeks to amend section 73 of the Act, to deem as a special reason the circumstances where a person is convicted of being in possession of not exceeding 5 grams of cannabis, which the court is satisfied was in the defendant's possession only for his personal consumption. Where such a person is convicted summarily the court can impose a fine of not less than three thousand dollars and order him to do community service for a period of six months. Where a person is convicted indictably the court can impose a fine of not less than six thousand dollars and order him to do community service for a period of nine months. The above punishments are to be imposed in lieu of the exorbitant fine and period of imprisonment currently imposed under the Act.

Clause 5 inserts a new PART IXA in the Act which seeks to insert new provisions relating to drug trafficking offences committed on the high seas. Offenders caught on the high seas would now be treated in the same manner as offenders found on land and to facilitate their capture enforcement officers have under the provisions of the inserted Fifth Schedule been given special powers in this regard.

C. Ramson,
Attorney General and Minister
of Legal Affairs.