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Opium and Habit-forming Drugs Act, 1922

Act 37 of 1922

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Opium and Habit-forming Drugs Act, 1922

Act 37 of 1922

Commenced on 23 June 1922

[This is the version of this document at 1 December 1998.]

An Act to restrict and regulate the importation and the exportation, and the production and use therein of opium and other habit-forming drugs.

1. Short title

This Act may be cited as the Opium and Habit-forming Drugs Act, 1922.

2. Prohibition of dealing in drugs

(1) Save as provided in this Act, no person shall—

- (a) import, export, produce or manufacture, or assist in, or permit or allow, the importation, exportation, production or manufacture of any habit-forming drug or;

[Amended P.49/1954]

- (b) import, cultivate, or export, or assist in, or permit or allow the importation, cultivation or exportation, of any plant from which such drug can be extracted, derived, produced or manufactured; or

- (c) administer, give, sell, barter, exchange or otherwise supply, or use, accept, purchase, take in exchange or otherwise receive any such drug or plant, anything to the contrary in any other law notwithstanding.

(2) Notwithstanding anything in this Act, no person shall import or export any prepared opium.

3. Permits

(1) A duly registered medical practitioner, dentist or chemist and druggist or duly qualified veterinary surgeon may, when authorised thereto by permit issued under the authority of the Minister for Health by such officer or officers as may from time to time be designated by him, import or acquire by purchase or otherwise from a licensed producer or manufacturer in Swaziland stated quantities of any such drug.

(2) Any such drug imported into Swaziland or purchased or otherwise acquired, except on the authority of such permit, may be seized on the order of the Minister for Health and declared by him without legal proceedings to be forfeited.

(3) A duly registered medical practitioner, dentist, or chemist and druggist or a duly qualified veterinary surgeon may, when authorised thereto by permit issued under the authority of the Minister for Health by such officer or officers as may from time to time be designated by him, export a stated quantity of any such drug.

(4) The permits referred to in subsections (1) and (3) should be in the form, and contain such conditions as may be provided by regulation.

4. Licences

- (1) On being satisfied that there is a reasonable and legitimate demand for medical, surgical, dental or veterinary purposes for any drug which can be extracted, derived, produced or manufactured within Swaziland, the Minister for Health may in his discretion authorise the issue of—
 - (a) permits for the importation, or licences for the cultivation of plants from which such drug can be extracted, derived, produced, or manufactured;
 - (b) Licences for the extraction, derivation, production or manufacture of such drug.
- (2) Every such permit or licence, as the case may be, shall set forth the place from which such plants may be imported or the place at which they may be cultivated or at which such drug may be extracted, derived, produced, or manufactured, and shall contain such conditions as to cultivation, extraction, derivation, production, manufacture, importation, exportation, storage, distribution and sale as the Minister for Health may deem necessary for the purpose of giving effect to the objects of this Act.

5. Use for medicinal purposes

- (1) Any such drug imported or acquired by a medical practitioner, dentist, or veterinary surgeon, or, sold or supplied by a chemist and druggist to a medical practitioner, dentist or veterinary surgeon in accordance with this Act shall be used by such medical practitioner, dentist or veterinary surgeon exclusively for professional purposes in the course of his practice.
- (2) Any such drug imported or acquired by a chemist and druggist may be sold or supplied to a duly registered medical practitioner or dentist or to a duly qualified veterinary surgeon for professional purposes or to another chemist and druggist for purposes authorised by this Act on the written order of such medical practitioner, dentist, veterinary surgeon, or chemist and druggist and may also be sold or supplied for strictly medical, surgical, dental or veterinary purposes—
 - (a) upon a written prescription of a medical practitioner, dentist, or veterinary surgeon;
 - (b) upon a written order of a medical practitioner to or on behalf of any hospital, nursing home, or sanatorium for use therein exclusively for such medical, surgical or dental purposes as are named in the order; or
 - (c) if it occurs as an incidental ingredient in any recognised pharmacopoeial preparation or in any medicinal preparation which the Minister for Health by notice in the *gazette* declares to be a recognised medicinal preparation for the purpose of this section upon a written order of the chemist or druggist requiring the same for the purpose of making such preparation.
- (3) Every such order or prescription shall state—
 - (a) the quantity and description of such drug which may be sold or supplied thereon;
 - (b) the name and address of the person for or by whom such drug is prescribed or required or the name and address or the institution for which it is ordered, as the case may be;
 - (c) the full name and address and the profession or qualification of the person signing such order or prescription; and
 - (d) the date of issue of such order or prescription.
- (4) Every such order or prescription shall be deemed to authorise one issue only of the drug mentioned therein, and shall be preserved and retained by the person supplying or selling the drug, and such person shall not supply a copy of such order or prescription or allow a copy to be made of it, except upon the order of the Minister for Health.

- (5) Every chemist and druggist and every medical practitioner, dentist, or veterinary surgeon who compounds or dispenses medicines shall cause to be entered in a book to be kept exclusively for the purpose—
 - (a) the quantity of any of the drugs possessed, imported, or acquired by him as aforesaid;
 - (b) the date of the importation or acquisition;
 - (c) the person from whom and the place from which the same were imported or acquired; and
 - (d) the quantity which has been disposed of and the manner in which and the person to whom such disposal has taken place.
- (6) Every such book referred to in subsection (5) shall be so kept as to show clearly, in addition to particulars of importation, acquisition, or sale, the amount of any such drug held in stock.
- (7) Every such order or prescription as is referred to in subsection (2) and every record made in such book as is referred to in subsection (5) shall be preserved and retained for a period of at least three years, and shall be open to the inspection of any member of the police force of or above the rank of sergeant or any other person authorised thereto in writing under the instructions of the Minister for Health.
- (8) Any chemist and druggist or medical practitioner or veterinary surgeon who personally or by any partner, manager, clerk, agent, apprentice or servant associated with or employed by him fails to retain and preserve or forthwith upon demand to produce such order, prescription, or book for inspection in accordance with subsection (7) shall be guilty of an offence and liable upon conviction to a fine not exceeding forty emalangenis or, in default of payment thereof, imprisonment for a period not exceeding three months.

6. Misuse by practitioners

- (1) The Minister for Health may cause reference to be made to the Swaziland Medical Council in the case of medical practitioners or dentists or the Chief Medical Officer in the case of chemists and druggists for their opinion in any instance where it is suspected that a medical practitioner, dentist or chemist and druggist, as the case may be, has ordered, prescribed or supplied any drug in an excessive quantity or for other than strictly necessary medical, surgical, dental or pharmaceutical purposes, or in manner forbidden by this Act.
- (2) The Swaziland Medical Council or the Chief Medical Officer, as the case may be, may recommend that the name of any medical practitioner, dentist or chemist and druggist, convicted under this Act be erased from the register and that his certificate or licence to practise be cancelled or withdrawn, and the Minister for Health may act in accordance with such recommendation:

Provided that the name of such person may thereafter be restored to the register by the Minister for Health on the request of such Council or Medical Officer, as the case may be.

7. Taking of drugs

No person shall use any pipe, receptacle, or material for smoking opium, Indian hemp or dagga, or, save and except in the circumstances contemplated in sections 4 and 5, consume, be in possession of, or use any habit-forming drug or plant from which such drug can be derived, extracted, produced or manufactured and no person shall keep or assist in the keeping of or frequent any premises or place for the smoking of opium, Indian hemp or dagga, or for the surreptitious consumption, injection or administration in any manner whatsoever of any habit-forming drug.

8. Penalties

- (1) Any person who contravenes any provision of section 2, 3, 5 or 7, or any condition of any permit or licence issued under the provisions of section 3 or 5 shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand emalangenis, or, in default of payment thereof,

imprisonment not exceeding five years or such imprisonment without the option of a fine, or both such fine and imprisonment, and any such plant as is referred to in any of the said sections suspected of having been unlawfully imported or cultivated, and any habit-forming drug suspected of having been unlawfully imported, produced, extracted, derived or manufactured may be seized, and if any person is convicted of contravening any provision of any of the said sections, or any condition of any such permit or licence, the plant or drug in respect of which such contravention has taken place shall be forfeited.

- (2) Notwithstanding anything in the Magistrate's Courts Act, [No. 66 of 1938](#) or in any other law, a magistrates court of the First Class may impose a punishment not in excess of the maximum punishment set out in subsection (1) hereof.
- (3) Notwithstanding anything in any other law, a magistrates court of the First Class may, in addition to any penalty imposed in terms of subsection (1) hereof—
 - (a) if the convicted person was at the time of his arrest in possession or custody of any motor vehicle used in conveyance of or containing any article or substance in contravention of any provision of this Act relating to the importation, exportation or possession of habit-forming drugs or plants, suspend for a period not exceeding five years any driver's licence issued to any such person under the provisions of any law relating to motor vehicles;
 - (b) if the convicted person is licensed to keep a motor vehicle plying for hire under the provisions of any law relating to the issue of trading or revenue licences, cancel such licence, and in addition, if it thinks fit, declare such person disqualified from securing another such licence for a period not exceeding five years; and
 - (c) if the convicted person is the holder of any licence to trade, issued under the provisions of any law relating to the issue of trading or revenue licences, and it is proved to the satisfaction of the court that he has used such licence to conceal, or assist him in concealing, any contravention of this Act, cancel such licence, and, in addition, if it thinks fit, declare such person disqualified from securing another such licence for a period not exceeding five years.

9. Right of entry and search

Any member of the police force having the written authority of an administrative officer or of any police officer of or above the rank of sub-inspector and any police officer of or above that rank, without written authority, may search any person suspected on reasonable grounds of being in unlawful possession of any article or substance in contravention of any provision of this Act, or enter and search any premises, place, receptacle, vehicle or aeroplane wherein it is suspected upon reasonable grounds that any such article or substance is being kept, or used, or cultivated, or conveyed in contravention of this Act; and if on such search any such article or substance, or any pipes, receptacles or appliances for smoking or using them are found, they shall be seized and removed; and if it is proved that any such substances or article, or pipe, receptacle or appliance was possessed, kept, used cultivated or conveyed in contravention of this Act, it shall be declared forfeited to the Crown:

Provided that if a member of the police below the rank of sub-inspector exercises the powers conferred by this section he shall forthwith make a written record of such search, or he shall make a report to his superior officer who shall without delay reduce such report to writing.

10. Presumption of guilt

- (1) Any duly registered medical practitioner, dentist, or chemist and druggist or any duly qualified veterinary surgeon (as the case may be) shall be deemed to be guilty of and shall be liable to the penalties prescribed for any contravention of [section 5](#) if the act or default constituting such contravention was that of a partner, manager, clerk, agent, apprentice, or servant associated with or employed by him unless he satisfies the court before which he is charged that such act or default was not due to his negligence in the supervision or direction of such partner, manager, clerk, agent, apprentice or servant.

- (2) Every director and manager resident in Swaziland of a company shall be liable to the penalties prescribed for a contravention of this Act by such company.

11. Burden of proof

- (1) If in any charge under this Act it is alleged that dagga was being cultivated, evidence that such dagga was found growing in cultivated land shall be sufficient proof that it was being cultivated, and that it was being cultivated with the knowledge of the owner or occupier of such land, unless, in either case, the contrary is proved.
- (2) Any person who is upon or in charge of or who accompanies any vehicle, aeroplane or animal, in or upon which there is any habit-forming or drug mentioned in [section 15](#), or any plant or portion of a plant from which any such drug can be extracted, derived produced or manufactured shall, until the contrary be proved, be deemed for the purposes of this Act to be the possessor of such drug, plant or portion of a plant.
- (3) The burden of proving any fact which would be a defence to a charge of contravening any provision of this Act shall lie upon the person charged.
- (4) Every person required by this Act to be in possession of a permit to import, or acquire, or a licence to cultivate, or an order or prescription to sell or supply any plant or drug, as the case may be, shall be deemed to be without such permit, licence, order or prescription unless he produces or gives satisfactory proof of possessing the same.
- (5) In any indictment, summons, or other form of charge under this Act it shall be sufficient to set forth the offence charged in the words of this Act or in similar words without negating any exception, exemption or qualification.

12. Regulations

The Minister for Health may make regulations not inconsistent with the provisions of this Act for the better carrying out of the objects and purposes of any provision or requirement thereof and may by such regulations prescribe penalties for the breach thereof not exceeding a fine of fifty emalangeni or imprisonment for a period of one month or both such fine and such imprisonment.

13. Forfeited drugs

Any drug forfeited under the provisions of this Act shall, unless the Minister for Health otherwise directs, be burned or otherwise destroyed, in the presence of a commissioned officer of police, who shall transmit to the Minister for Health a certificate under his hand stating the circumstances under which the forfeiture took place, the amount forfeited and other particulars showing his compliance with the provisions of this Act.

14. Payment of informers

The Minister for Health may pay out of the public revenue to a person (other than an officer in the public service) on whose information a charge is laid resulting in a conviction under this Act, a sum not exceeding forty emalangeni.

15. Interpretation

- (1) In this Act unless the context otherwise requires, “**habit-forming drug**” or “**drug**” means and includes the following as herein defined—
 - “**amidone**”, (dl-2-dimethylamino-4, 4-diphenylheptan-5-one), also known as “methadone”; its salts and other substance containing any proportion of amidone;
 - “**coca-leaves**”, the leaves of erythroxylon cocoa;

“**cocaine**”, the principal alkaloid of cocoa leaves, including all preparations, salts, admixtures or derivatives prepared therefrom or therewith and containing one-tenth or more per cent of cocaine or any derivative of cocaine;

“**cannabis**”, “dagga”, “intsangu”, or “Indian hemp”, under whatever name it may be described, known, sold, supplied or otherwise referred to or dealt with; and whether the whole or any portion of the plant and all extracts, tinctures or preparations or admixtures thereon (except *cannabis indica* plasters);

“**diamorphine**”, or “diacetyl-morphine”, also known as heroin, including all preparations, salts, admixtures or derivatives prepared therefrom or therewith and containing one-tenth or more per cent of diamorphine or of any derivative of diamorphine;

“**dicodid**” (dihydrocodeinone);

“**ecgonine**”, including all preparations, salts, admixtures or derivatives prepared therefrom or therewith and containing one-tenth or more per cent of ecgonine, or of any derivatives of ecgonine;

“**eukodal**”, (dihydro-oxcodeinone hydrochloride);

“**morphine**”, the principal alkaloid of opium, including all preparations, salts, admixtures or derivatives prepared therefrom or therewith and containing one-fifth or more per cent of anhydrous morphine or of any derivative of morphine;

“**opium**”, including—

“**raw opium**”, the entreated coagulated juice of the capsules of *papaver somniferum*; the expression includes gum opium, powdered or granulated opium, also the leaves or wrappings in which opium has been wrapped;

“**prepared opium**”, opium prepared for smoking; the expression includes opium dross or refuse or any residue remaining after opium has been smoked or roasted;

“**medicinal opium**”, raw opium which has been artificially dried, whether pure or mixed with other substances;

“**extract of opium**”, including both the solid and liquid extracts;

every other preparation, admixtures, compound or derivative of opium containing one-fifth or more per cent of anhydrous morphine or other narcotic alkaloid;

“**phenodoxone**” (6-morpholino-4; 4-disphenylheptan-3-one hydrochloride), under whatever name it may be described or sold;

“**pethidine**”, identified chemically as ethyl-1-methyl-4-phenyl-piperidine-4-carboxylate, its salts and derivatives and all preparations or admixtures containing one-fifth or more per cent of ethyl-1-methyl-4-phenyl-piperidine-4-carboxylate or its salts or derivatives, but shall not include —

“**cercoli iodoformi et morphinae**” B.P.C. 1923 — Iodoform and Morphine Bougies;

“**emplastrum opii**” B.P. 1898 — Opium Plaster;

“**linimentum opii**” B.P.C. — Liniment of Opium;

“**linimentum opii ammoniatum**” B.P.C. 1923 — Ammoniated Liniment of Opium;

“**pasta arsenicalis**” B.P.C. — Arsenical Paste;

“**pilulae hydrargyri cum opio**” B.P.C. 1923 — Mercury and Opium Pills;

“**pilulae ipecacuanhae cum scilla**” B.P.C. — Pills of Ipecacuanha with Squills;

“**pilulae plumbi cum opio**” B.P.C. — Lead and Opium Pills;

“**pilulae digitalis et opii dompositae**” B.P.C. 1923 — Compound Digitalis and Opium Pills;

“pilulae hydrargyri cum creta et opii” B.P.C. — Pills of Mercury with Chalk and Opium;

“pulvis cretae aromaticus cum opio” B.P. — Aromatic Powder of Chalk and Opium;

“pulvis ipecacuanhae et opii” B.P. — Dovers Powder;

“pulvis ipecacuanhae compositus” B.P. 1914;

“pulvis kino compositus” B.P.C. — Compound Kino Powder;

“suppositoriae plumbi cum opio” B.P. — Compound Lead Suppositories;

“tablettae plumbi cum opio” B.P.C. 1923 — Lead and Opium Tablets;

“unguentum gallae cum opio” B.P.C. — Gall and Opium Ointment;

“unguentum gallae compositum” B.P.C. 1923 — Compound Gall Ointment;

eyedrops for inclusion in first-aid outfits consisting of a solution of 1 in 3,000 Perchloride of Mercury in Castor Oil with 0.5 per cent of Cocaine.

[Amended P.70/1959]

- (2) The Minister for Health may by notice in the *gazette* declare that any substance other than those defined in this section shall be a habit-forming drug within the meaning of this Act, or that any of the substances defined in this section shall no longer be deemed to be a habit-forming drug within the meaning of this Act, or may amend any of the definitions herein contained.
- (3) The provisions of this Act shall apply to the definitions contained in subsection (1) as altered by such addition, omission or amendment.

16. Saving

The provisions of the Exportation and Importation Restriction Act [No. 46 of 1939](#) shall not apply to any habit-forming drug.

17. Application of other laws

This Act shall be in addition to and not in substitution for any law or regulation which may be in force regulating the sale or disposal of drugs or poisons.