

THE DANGEROUS DRUGS (AMENDMENT) BILL
(No. XV of 2022)

Explanatory Memorandum

The main object of this Bill is to amend the Dangerous Drugs Act so as to implement the recommendations of the Commission of Inquiry on Drug Trafficking (2018).

2. Accordingly, where a person is suspected of having committed a drug offence for his personal consumption, he will, on the recommendation of the Director of Public Prosecutions, not be prosecuted for that offence but will instead be referred to the Drug Users Administrative Panel (DUAP). On being referred to the DUAP, the drug user will be directed to undergo rehabilitation such as education, counselling, treatment, aftercare, social reintegration or any other therapy at a public health institution or such other institutions as the Ministry may approve. The DUAP will have the responsibility to monitor the progress of the drug user during the period of rehabilitation and may do such other things as may be necessary to assist the drug user to overcome his addiction to drugs.

3. The Bill also makes provisions for a patient to be treated with medicinal cannabis where that patient suffers from specific therapeutic conditions and those therapeutic conditions have failed to respond to conventional treatment. A Medicinal Cannabis Therapeutic Committee will be set up in every regional hospital and will, on a case to case basis, determine whether a patient needs medicinal cannabis for his treatment. The use, dispensing and importation of medicinal cannabis will be supervised by the Ministry under very strict conditions.

4. The Forensic Science Laboratory will be empowered, as is the case in other several jurisdictions, to analyse a sample of dangerous drugs seized rather than analysing all the dangerous drugs seized. In addition, the Police will be given wider powers so as to enable it to detect drug offences and will, on the order of a District Magistrate, be able to destroy dangerous drugs seized rather than keeping same to be produced in Court.

5. Opportunity is also being taken to cure some shortcomings in the Dangerous Drugs Act and, consequently, the Courts Act is also being amended.

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Minister of Health and Wellness

21 October 2022

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A BILL

To amend the Dangerous Drugs Act to make provisions, inter alia, for the implementation of the recommendations of the Commission of Inquiry on Drug Trafficking (2018)

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Dangerous Drugs (Amendment) Act 2022.

2. Interpretation

In this Act –

“principal Act” means the Dangerous Drugs Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

- (a) by deleting the definition of “Commissioner”;
- (b) by inserting, in the appropriate alphabetical order, the following new definitions –

“accredited science laboratory” means a science laboratory duly accredited by the Mauritius Accreditation Service under the Mauritius Accreditation Service Act for the purpose of analysing dangerous drugs;

“ADSU” officer –

- (a) means a police officer attached for duty to ADSU; and
- (b) includes the Director of ADSU;

“Director of ADSU” means a police officer, not below the rank of Deputy Commissioner of Police, who is the officer-in-charge of ADSU;

“drug user” means a person who –

- (a) is suspected of having committed an offence under section 34; but
- (b) in lieu of being prosecuted for that offence, is directed to undergo rehabilitation under Part IIIA;

“FSL” means the Forensic Science Laboratory of the Ministry responsible for the subject of home affairs;

“medicinal cannabis” means a product which is –

- (a) produced from cannabis plant; and
- (b) presented as a capsule, an oil-based solution or suspension, or an oro-mucosal spray, and having a concentration of not more than 30 milligrammes of tetrahydrocannabinol per millilitre (3% weight per volume) per unit dose and a total volume of not more than 60 millilitres;

“Panel” means the Drug Users Administrative Panel referred to in section 59A;

4. New section 2A inserted in principal Act

The principal Act is amended by inserting, after section 2, the following new section –

2A. Non-application of Act

Part II shall not apply to medicinal cannabis.

5. Section 8 of principal Act amended

Section 8 of the principal Act is amended, in subsection (1), by inserting, after the words “no person shall”, the words “import,”.

6. Section 18 of principal Act amended

Section 18 of the principal Act is amended –

- (a) in subsection (1)(a), by inserting, after the word “handwrite”, the words “, other than for methadone,”;

- (b) in subsection (4)(a), by deleting the words “10 days” and replacing them by the words “14 days”;

7. New Part IIA inserted in principal Act

The principal Act is amended by inserting, after Part II, the following new Part –

PART IIA – MEDICINAL CANNABIS

28A. Interpretation of Part IIA

In this Part –

“authorised patient” means a patient who is, pursuant to section 28F, issued with a prescription to be treated with medicinal cannabis;

“authorised pharmacist” means a Government pharmacist who –

- (a) has successfully completed a training course, as approved by the Ministry, on the therapeutic use of medicinal cannabis; and
- (b) is authorised, in writing, by the Ministry to handle and dispense medicinal cannabis;

“authorised specialist” means a specialist who –

- (a) is registered as such under section 20 of the Medical Council Act;
- (b) has successfully completed a training course, as approved by the Ministry, on the therapeutic use of medicinal cannabis; and
- (c) is authorised, in writing, by the Ministry to make a request for, and to issue a prescription to, a patient to be treated with medicinal cannabis;

“specific therapeutic conditions” means –

- (a) spasticity, associated with multiple sclerosis, that has failed to respond to conventional treatment;

- (b) severe refractory epilepsy that has failed to respond to conventional anti-convulsant treatment;
- (c) intractable nausea and vomiting, associated with chemotherapy, that has failed to respond to conventional anti-emetic treatment; or
- (d) severe intractable pain that has failed to respond to conventional treatment.

28B. Lawful use and importation of medicinal cannabis

No person shall use or import medicinal cannabis unless he is authorised to do so under this Part.

28C. Medicinal Cannabis Therapeutic Committee

(1) There shall be, in every regional hospital, a Medicinal Cannabis Therapeutic Committee which shall determine, on a request made by an authorised specialist, whether a patient needs treatment with medicinal cannabis.

(2) Every Medicinal Cannabis Therapeutic Committee shall consist of –

- (a) a Regional Health Director, as chairperson;
- (b) 2 Government authorised specialists; and
- (c) an authorised pharmacist.

(3) Every Medicinal Cannabis Therapeutic Committee shall regulate its meetings in such manner as it thinks fit and may co-opt such other person as it may determine.

28D. Request for treatment with medicinal cannabis

(1) No person, other than an authorised specialist, shall make a request to the Medicinal Cannabis Therapeutic Committee for a patient to be treated with medicinal cannabis.

(2) Where an authorised specialist assesses that a patient who suffers from specific therapeutic conditions requires treatment with

medicinal cannabis, he shall make a request, in such form as may be prescribed, to the Medicinal Cannabis Therapeutic Committee of the regional hospital which is nearest to the place of residence of the patient.

(3) Notwithstanding this section, no authorised specialist shall make a request for himself to be treated with medicinal cannabis.

28E. Approval or rejection of request

(1) The Medicinal Cannabis Therapeutic Committee shall, on receipt of a request made under section 28D, approve or reject the request.

(2) Where, pursuant to a request made under section 28D, the Medicinal Cannabis Therapeutic Committee approves or rejects the request, it shall convey, in writing, its approval or rejection, as the case may be, to the authorised specialist.

28F. Prescription for treatment with medicinal cannabis

(1) On receipt of an approval under section 28E, the authorised specialist may issue a prescription, in such form as may be prescribed, to the patient to be treated with medicinal cannabis.

(2) The treatment with medicinal cannabis may be prescribed for a renewable period not exceeding 3 months and on such other terms and conditions as the Medicinal Cannabis Therapeutic Committee may determine.

28G. Dispensing medicinal cannabis

- (1) No medicinal cannabis shall be dispensed –
- (a) other than in a regional hospital;
 - (b) other than by an authorised pharmacist;
 - (c) other than to the authorised patient, unless a person acting on behalf of the patient is authorised by the Medicinal Cannabis Therapeutic Committee;
 - (d) more than once on a prescription for medicinal cannabis.

(2) On receipt of a prescription for medicinal cannabis, an authorised pharmacist shall take such reasonable steps as may be necessary to ascertain that the Medicinal Cannabis Therapeutic Committee approved the request for medicinal cannabis.

(3) An authorised pharmacist who dispenses medicinal cannabis on a prescription for medicinal cannabis shall –

- (a) at the time of dispensing, mark on the prescription the date on which it is dispensed;
- (b) keep the prescription on the premises where the medicinal cannabis prescribed has been dispensed;
- (c) deliver to the authorised patient for whose use the medicinal cannabis was supplied, or to the person acting on his behalf, a copy of the prescription bearing –
 - (i) the date on which the prescription was dispensed; and
 - (ii) the stamp of the hospital;
- (d) enter into the register of medicinal cannabis the details of the patient required under section 28H(2); and
- (e) forthwith notify the Consultant-in-Charge of the hospital for record purposes.

28H. Register of medicinal cannabis

(1) There shall be, in every regional hospital, a register of medicinal cannabis, to be kept in such manner as the Permanent Secretary may determine.

(2) An authorised pharmacist who dispenses medicinal cannabis to an authorised patient, or to a person acting on behalf of the patient, shall forthwith enter into the register of medicinal cannabis –

- (a) the name, address, National Identity Card number and contact details of the patient or the person acting on behalf of the patient;

- (b) the name of the authorised specialist who issued the prescription for medicinal cannabis;
- (c) the prescription of medicinal cannabis in respect of the authorised patient;
- (d) the medicinal cannabis dispensed;
- (e) the quantity of medicinal cannabis dispensed;
- (f) the date on which the medicinal cannabis is dispensed;
- (g) such other particulars as the Permanent Secretary may deem necessary.

28J. Importation of medicinal cannabis

- (1) No person shall import medicinal cannabis unless –
 - (a) the medicinal cannabis is imported on behalf of the Ministry; and
 - (b) the person is authorised, in writing, by the Ministry.

(2) Where medicinal cannabis is imported, the importer shall, under the strict supervision of the Police, deliver the medicinal cannabis to the Ministry.

28K. Patients coming from abroad

It shall not be an offence for a person who travels into Mauritius to be in possession of medicinal cannabis where he –

- (a) has a prescription to be treated with that medicinal cannabis; and
- (b) is authorised as such by the Ministry.

28L. Guidelines

The Ministry may issue such guidelines as may be necessary for the purposes of this Part.

8. Section 29 of principal Act amended

Section 29 of the principal Act is amended, in subsection (1)(a), by deleting the words "Part II" and replacing them by the words "Part II or Part IIA".

9. Section 30 of principal Act amended

Section 30 of the principal Act is amended by repealing subsection (2).

10. Section 34 of principal Act amended

Section 34 of the principal Act is amended –

- (a) by repealing subsections (2), (3) and (4);
- (b) in subsection (5), by deleting the words "Notwithstanding subsection (2), a person" and replacing them by the words "A person";
- (c) by adding the following new subsection –

(6) The repealed subsections (3) and (4) shall continue to apply where a Court order under the repealed subsection (2) has been made prior to the commencement of this subsection.

11. Section 35 of principal Act amended

Section 35 of the principal Act is amended by repealing subsection (2).

12. New section 39A inserted in principal Act

The principal Act is amended by inserting, after section 39, the following new section –

39A. Conspiracy to commit drug offence

Notwithstanding section 109 of the Criminal Code (Supplementary) Act, any person who agrees with one or more other persons to commit an offence under this Act shall commit an offence and shall, on conviction, be liable to the same penalty as would have been applicable to that offence.

13. Section 41 of principal Act amended

Section 41 of the principal Act is amended –

- (a) in subsection (1)(i), by inserting, after the words “committed in”, the words “Court premises, a rehabilitation institution,”;
- (b) in subsection (3), by deleting the words “2 million rupees” and replacing them by the words “10 million rupees”.

14. Section 42 of principal Act amended

Section 42 of the principal Act is amended, in subsection (4), by deleting the words “10,000 rupees”, “100,000 rupees” and “2 years” and replacing them by the words “100,000 rupees”, “one million rupees” and “5 years”, respectively.

15. Section 54 of principal Act amended

Section 54 of the principal Act is amended –

- (a) by repealing subsection (1) and replacing it by the following subsection –

(1) Where a person is reasonably suspected of having concealed any dangerous drug inside his body, a Government medical officer shall, on the recommendation of a police officer not below the rank of Superintendent of Police, conduct –

- (a) such medical examination, including X-ray or other tests, as may be necessary to detect the substance; and
 - (b) such other medical treatment as may be considered appropriate in the circumstances.
- (b) in subsection (3), by deleting the words “100,000 rupees” and replacing them by the words “one million rupees”.

16. Section 55 of principal Act amended

Section 55 of the principal Act is amended by repealing subsection (2) and replacing it by the following subsection –

(2) The police officer may, if he thinks fit, cause the consignment of dangerous drugs to be lawfully intercepted and allowed to proceed its way either intact or by replacing the drugs, or part of the drugs, with substances other than dangerous drugs.

17. New section 57A inserted in principal Act

The principal Act is amended by inserting, after section 57, the following new section –

57A. Lawful acts of police officer

(1) Subject to subsection (2), nothing in this Act shall render unlawful the act of a police officer who, in the discharge of his functions for the detection of an offence under this Act, transports, dispatches, possesses, purchases or offers to purchase any dangerous drug.

(2) A police officer referred to under subsection (1) shall not transport, dispatch, possess, purchase or offer to purchase any dangerous drug unless he is authorised in writing by, and acts under the supervision of, an officer not below the rank of Superintendent of Police.

18. Section 58 of principal Act amended

Section 58 of the principal Act is amended –

(a) by repealing subsections (2) and (3) and replacing them by the following subsections –

(2) The police officer in charge of the investigation shall, as soon as possible, request FSL to analyse the dangerous drugs seized to determine its nature, identity and weight.

(3) (a) An accused may, on being informed in writing of the contents of the report of FSL, request –

(i) another sample of the dangerous drugs to be analysed by FSL or an accredited science laboratory to determine the nature, identity and weight of the drugs; or

(ii) the net amount of the dangerous drugs to be analysed by an accredited science

laboratory to determine the nature, identity and net weight of the drugs.

(b) The request under paragraph (a) shall be made in writing to the police officer in charge of the investigation not later than 14 days after the accused is informed of the contents of the report of FSL.

(c) The accused shall, not later than 30 days after making the request, cause, under the supervision of the police officer in charge of the investigation, another sample of the dangerous drugs or the net amount of the dangerous drugs, as the case may be, to be analysed.

(d) The costs of the analysis to be carried out under this subsection shall be borne by the accused.

(b) by adding the following new subsections –

(4) Every other item of evidentiary value seized, other than the dangerous drugs seized, shall be kept in a place of safety in police custody until they are produced in Court.

(5) Subsections (3) and (4) shall apply to any dangerous drugs which have, on the commencement of these subsections, not been analysed by FSL.

19. New section 58A inserted in principal Act

The principal Act is amended by inserting, after section 58, the following new section –

58A. Destruction of dangerous drugs

(1) Where –

(a) a sample of dangerous drugs is analysed by FSL under section 58(2) and no request for a further analysis is made under section 58(3);

- (b) a further analysis of dangerous drugs is made under section 58(3),

the police officer in charge of the investigation shall, on the written direction of a police officer not below the rank of Superintendent of Police, make an application, in such form as may be prescribed, to the District Court where the accused was or is provisionally charged for the destruction of the dangerous drugs seized.

(2) Where, on an application made under subsection (1), the District Magistrate is satisfied that –

- (a) a sample of the dangerous drugs has been analysed by FSL under section 58(2) and no request for a further analysis has been made under section 58(3);
- (b) a further analysis of the dangerous drugs has been made under section 58(3),

he shall order the destruction of the dangerous drugs to be carried out under his supervision and in presence of the police officer in charge of the investigation, at such place and time as he may determine.

(3) Where the dangerous drugs seized are not the subject matter of any prosecution, they shall, notwithstanding this section, be destroyed forthwith.

(4) The police officer in charge of carrying out the destruction under subsection (3) shall certify in a written report that the dangerous drugs have been destroyed.

20. Section 59 of principal Act amended

Section 59 of the principal Act is amended –

- (a) by numbering the existing provision as subsection (1);
- (b) in the newly numbered subsection (1), by deleting the words “police officer who is or has recently been” and replacing them by the words “ADSU officer or any police officer who has been”;
- (c) by adding the following new subsection –

(2) Notwithstanding section 181 of the Courts Act, in any proceedings for an offence under this Act, a certificate under the hand of an expert witness of FSL regarding the results of an analysis performed on a sample of the dangerous drugs shall constitute evidence of the nature, identity and weight of the drugs stated therein without proof of the handwriting of such expert.

21. New Part IIIA inserted in principal Act

The principal Act is amended by inserting, after Part III, the following new Part –

PART IIIA – NON-PROSECUTION AND REHABILITATION OF DRUG USERS

59A. Drug Users Administrative Panel

(1) There shall be, within the Ministry, a Panel to be known as the Drug Users Administrative Panel (DUAP).

(2) In the discharge of its functions and exercise of its powers, the Panel –

- (a) may direct a drug user to undergo rehabilitation such as education, counselling, treatment, aftercare, social reintegration or any other therapy;
- (b) shall monitor the progress of a drug user during the period of rehabilitation; and
- (c) shall do such other things as may be necessary to assist a drug user to overcome his addiction to drugs.

(3) The Panel shall consist of –

- (a) a retired Judge of the Supreme Court, or a barrister having not less than 15 years' standing, as Chairperson;
- (b) a barrister having not less than 10 years' standing, as Vice-chairperson;

- (c) 2 retired Government medical officers having knowledge and experience in the field of drug dependence; and
- (d) 2 social workers having knowledge and experience in the field of drug dependence.

(4) The members of the Panel shall be appointed by the Prime Minister, after consultation with the Minister, on such terms and conditions as he may determine.

(5) (a) The Panel shall sit in 2 divisions.

(b) A division shall consist of the Chairperson, or the Vice-chairperson, and a retired Government medical officer and a social worker selected by the Chairperson.

(c) The Panel may co-opt such other persons as it deems necessary.

59B. Suspension of prosecution

(1) Where, in respect of an offence committed by a drug user under section 34, the Commissioner of Police is of the opinion that –

- (a) the offence was committed by the drug user for his personal consumption;
- (b) no aggravating circumstances exist in the commission of the offence; and
- (c) the drug user is not a drug trafficker,

he shall make a recommendation to the Director of Public Prosecutions for the drug user to undergo rehabilitation in lieu of being prosecuted for that offence.

(2) Where, on the recommendation of the Commissioner of Police, the Director of Public Prosecutions is satisfied that a drug user may undergo rehabilitation in lieu of being prosecuted, he may advise the Commissioner of Police to refer the drug user to the Panel.

(3) The Commissioner of Police shall, on the advice of the Director of Public Prosecutions, forthwith refer the drug user to the Panel.

59C. Rehabilitation of drug users

(1) Where a drug user is referred to the Panel, it shall assess the drug user and if he is willing to overcome his addiction to drugs, it shall, on such terms and conditions as it may determine, direct the drug user to undergo such rehabilitation as may be appropriate for him at a public health institution or such other institutions as the Ministry may approve.

(2) Where a drug user is referred to an institution under subsection (2), the person in charge of that institution shall –

- (a) regularly monitor the progress of the drug user during the rehabilitation period and make a report to the Panel as and when required by it;
- (b) forthwith notify the Panel of any failure, if any, by the drug user to comply with the terms and conditions of the Panel;
- (c) at the end of the rehabilitation period, make a comprehensive report to the Panel with regard to the rehabilitation undergone by the drug user, including whether the drug user has complied with all the terms and conditions of the Panel.

(3) The Panel shall make a report to the Director of Public Prosecutions, certifying the rehabilitation undergone by the drug user and whether he has complied with all terms and conditions of the rehabilitation.

(4) Where a drug user fails to appear before the Panel as and when required or fails to comply with the terms and conditions of a direction of the Panel under subsection (1), it shall refer the matter to the Director of Public Prosecutions for such prosecution or legal proceedings as he may deem appropriate.

59D. Protection of drug users

No evidence given by a drug user before the Panel shall –

- (a) give rise to any civil or criminal proceedings against the drug user; and

- (b) be admissible against the drug user in any civil or criminal proceedings.

22. Section 60 of principal Act amended

Section 60 of the principal Act is amended –

- (a) in subsection (2) –
 - (i) by inserting, after the words “Regulations made”, the words “by the Minister”;
 - (ii) in paragraph (b), by deleting the word “Schedules” and replacing it by the words “Schedules, other than the Sixth and Seventh Schedules”;
- (b) by adding the following new subsection –
 - (3) The Attorney-General may, after consultation with the Director of Public Prosecutions and the Commissioner of Police, amend, by regulations, the Sixth and Seventh Schedules.

23. First Schedule to principal Act amended

The First Schedule to the principal Act is amended –

- (a) in Part I, by deleting the following item –

Cannabis (also named as *Gandia* or Indian Hemp)

and replacing it by the following item –

Cannabis (also named as *Gandia* or Indian Hemp), excluding medicinal cannabis
- (b) in Part II, by deleting the following item –

Cannabis Resin

and replacing it by the following item –

Cannabis Resin, excluding medicinal cannabis

24. Second Schedule to principal Act amended

The Second Schedule to the principal Act is amended by inserting, in the appropriate alphabetical order, the following new item –

Medicinal cannabis

25. Consequential amendment

The Courts Act is amended –

(a) in section 161B, in subsection (1), by inserting, after the words “any witness in relation to”, the words “an offence under the Dangerous Drugs Act or”;

(b) in section 161BA –

(i) by deleting the heading and replacing it by the following heading –

161BA. Agreement on facts between prosecution and defence in dangerous drugs and financial crime cases

(ii) by inserting, after the words “criminal proceedings”, the words “under the Dangerous Drugs Act, or”;

(c) in section 188C –

(i) by deleting the heading and replacing it by the following heading –

188C. Admissibility of out of Court statement in dangerous drugs cases, piracy and financial crime cases where maker is unavailable

(ii) in subsection (1), by inserting, after the words “criminal proceedings under “, the words “the Dangerous Drugs Act,”.

26. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.
