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REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2020**

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**THE NARCOTICS, DRUGS AND PSYCHOTROPIC  
SUBSTANCES (CONTROL) (AMENDMENT) BILL,  
2020**

**A Bill for**

**AN ACT of Parliament to amend the Narcotics, Drugs  
and Psychotropic Substances (Control) Act and for  
connected purposes**

**ENACTED** by the Parliament of Kenya, as follows—

**1.** This Act may be cited as the Narcotics, Drugs and Psychotropic Substances (Control) (Amendment) Act, 2020.

Short title.

**2.** Section 2 of the Narcotics, Drugs and Psychotropic Substances (Control) Act, (in this Act referred to as the “principal Act”), is amended by inserting the following new definitions in their proper alphabetical sequence—

Amendment of  
Section 2 of No.4  
of 1994.

“precursor chemicals” means a substance frequently used in the illicit manufacture of narcotic drugs or psychotropic substances as specified in the fourth schedule to this Act;

“law enforcement officer” means any person who is responsible for prevention, investigation, apprehension or deterrence of persons suspected to have committed an offence under this Act.

**3.** Section 3 of the principal Act is amended in subsection (2) by deleting paragraph (b) and substituting therefor the following new paragraph—

Amendment of  
Section 3 of No.4  
of 1994.

(b) in respect of a narcotic drug or psychotropic substance, other than cannabis—

(i) where the person is in possession of 1-5 grams, to a fine of not less than twenty million shillings and imprisonment for life; and

(ii) where a person is in possession of 1 gram or less, to a fine of not less than five million shillings, or to imprisonment to a term of not less than five years, or to both such fine and imprisonment.

4. The principal Act is amended by deleting section 4 and substituting therefor the following new section—

Amendment of  
Section 4 of No.4  
of 1994.

Penalty for trafficking  
in narcotic drugs, etc.

4. Any person who trafficks in, or has in his or her possession any narcotic drug or psychotropic substance or any substance represented or held out by him or her to be a narcotic drug or psychotropic substance, shall be guilty of an offence and liable—

- (a) in respect of any narcotic drug or psychotropic substance—
  - (i) where the person is in possession of 101 gm or more, to a fine not less than fifty million shillings or three times the market value of narcotic drug or psychotropic substance and imprisonment for life;
  - (ii) where the person is in possession of 51 – 100 gm, to a fine not less than thirty million shillings or three times the market value of narcotic drug or psychotropic substance and imprisonment for a term of not less than twenty years;
  - (iii) where the person is in possession of 0.1-50 gm, to a fine of not less than twenty million shillings or three times the market value of narcotic drug or psychotropic substance, or imprisonment for a term not less fifteen years, or to both such fine and imprisonment;
- (b) in respect of precursor chemicals or any substance, other than a narcotic drug or psychotropic substance, which he or she represents or holds out to be a narcotic or psychotropic substance,—

- (i) where the person is in possession of 50 mg or more, to a fine of not less than twenty million shillings or imprisonment for life; and
- (ii) where a person is in possession of 50 mg or less, to a fine of not less than ten million shillings, or to imprisonment to a term of not less than ten years, or to both such fine and imprisonment.

5. The principal Act is amended by inserting the following new sections immediately after section 4—

Insertion of sections 4A and 4B into No. 4 of 1994.

Penalty relating to precursor chemicals.

4A. (1) A person who—

- (a) manufactures or is in possession of a substance referred to in the fourth schedule for the purpose of production of any narcotic drug or psychotropic substances; 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 drug,

is guilty of an offence and is liable to, upon conviction, to a fine of not less than fifty million shillings and to imprisonment for a term of not less than twenty years.

(2) The Cabinet Secretary responsible for internal security may make regulations for carrying out the purposes of this section and in particular —

- (a) for imposing requirements as to the documentation of transactions involving substances referred to in the fourth schedule;

- (b) adding or deleting substances in the fourth schedule as is deemed necessary;
- (c) keeping of records and furnishing of information on substances as listed;
- (d) any other matter that may be required to be prescribed.

Conspiracy to commit offences under this Act.

**4B.** (1) A person who, being outside Kenya, conspires with a person who is in Kenya to commit an offence under this Act in any place outside Kenya being an act which if committed in Kenya, would constitute an offence under this Act shall be deemed to have conspired to commit that act in Kenya.

(2) A person who, being in Kenya, conspires with a person who is outside Kenya to commit an offence under this Act in Kenya shall be deemed to have conspired in Kenya to carry out that act.

(3) A person who, being outside Kenya, conspires with a person who is outside Kenya to carry out an offence under this Act in Kenya shall be deemed to have conspired in Kenya to do that act.

(4) A person who being in Kenya, conspires with another person who is also in Kenya to commit an offence under this Act in Kenya or outside Kenya commits an offence.

(5) A person who conspires to commit an offence under this section commits an offence and is liable, on conviction, to a fine of not less than one hundred million shillings and to imprisonment for life.

**6.** Section 5 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection —

(1) Subject to this Act, any person who—

Amendment of Section 4 of No.5 of 1994.

- (a) smokes, inhales, sniffs or otherwise uses any narcotic drug or psychotropic substance; or
- (b) without lawful and reasonable excuse, is found in any house, room or place to which persons resort for the purpose of smoking, inhaling, sniffing or otherwise using any narcotic drug or psychotropic substance; or
- (c) being the owner, occupier or concerned in the management of any premises, permits the premises to be used for the purpose of—
  - (i) the preparation of opium for smoking or sale, or the smoking, inhaling, sniffing or otherwise using any narcotic drug or psychotropic substance; or
  - (ii) the manufacture, production, sale or distribution of any narcotic drug or psychotropic substance in contravention of this Act;
- (d) has or is found in his possession of any pipe, machine, equipment, laboratory or other utensil for use in connection with the smoking, inhaling or sniffing or otherwise using of opium, cannabis, heroin or cocaine or any utensil used in connection with the preparation, production, or manufacturing of narcotic drugs or psychotropic substances, commits an offence and shall on conviction, be liable to a fine of not less than—
  - (i) two hundred and fifty thousand shillings or a term of imprisonment of not less than five years or to both such fine and imprisonment if the offence relates to paragraphs (a) or (b) ; or
  - (ii) twenty million shillings or a term of imprisonment of not less than ten (10) years or to both such fine and imprisonment, if the offence relates to paragraphs (c) and (d).

7. The principal Act is amended by inserting the following new section immediately after section 17—

Insertion of  
section 17A into  
No. 4 of 1994.

Penalty for by law enforcement officers.

**17A.** A law enforcement officer who aids or abets any offence under this Act including through concealing the commission of any offence or colluding with any person suspected of committing an offence under this Act, commits an offence and shall be liable upon conviction to a fine of not less than twenty million shillings or imprisonment for a term of not less than twenty years, or to both.

**8.** Section 59 of the principal Act is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of Section 59 of No.5 of 1994.

“(3) The Director of Public Prosecutions, shall request for information, evidence and particulars, where any person, including a foreign government, state or organization or entity alleges or has information that any person in Kenya has committed an offence under this Act, and shall upon receiving such information, evidence and particulars carry out the same in accordance with the law.”

**9.** The principal Act is amended by inserting the following new sections immediately after section 80—

Insertion of sections 80A, 80B, 80C into No. 4 of 1994.

Power to intercept communication and the admissibility of intercepted communication.

**80. A** (1) Subject to subsection (2), a police officer above the rank of Chief Inspector of Police may, for the purpose of obtaining evidence of the commission of an offence under this Act, apply ex parte, to a Chief Magistrate or to the High Court for an interception of communications order.

(2) A police officer shall not make an application under subsection (1) unless he has applied for and obtained the written consent of the Director of Public Prosecutions.

(3) The Court shall, in determining an application under subsection (1), make an order—

(a) requiring a communications service provider to intercept and retain specified communication of a specified description received or transmitted, or about to be received or transmitted by that communications service provider; or

(b) authorizing the police officer to enter any premises and to install on such premises, any device for the interception and retention of a specified communication and to remove and retain such device.

(4) The Court shall not make an order under subsection (3) unless it is satisfied that the information to be obtained relates to—

(a) the commission of an offence under this Act; or

(b) the whereabouts of the person suspected by the police officer to have committed the offence.

(5) Any information contained in a communication—

(a) intercepted and retained pursuant to an order under subsection (3); or

(b) intercepted and retained in a foreign state in accordance with the law of that foreign state and certified by a Court of that foreign state to have been so intercepted and retained,

shall, subject to the provisions of any other written law, be admissible in proceedings for an offence under this Act.

(6) A police officer who intercepts communication other than is provided for under this section commits an offence and shall on conviction be liable to



imprisonment for a term not exceeding ten years or to a fine of not less than ten million shillings or to both.

Duty to disclose information relating to offences committed under this Act, etc.

**80. B** (1) A person who has any information that is relevant in—

- (a) preventing the commission of an offence under this Act; or
- (b) securing the arrest or prosecution of another person for an offence committed under this Act,

shall disclose the information to a police officer.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than one million or imprisonment of a term of not less than five years, or both.

(3) No civil or criminal proceedings shall lie against any person for disclosing any information, in good faith, under subsection (1).

Collection of information.

**80. C** A person who, in committing or in instigating, preparing or facilitating the commission of an offence under this Act, holds, collects, generates or transmits information for the use in the commission of an offence under this Act, commits an offence, and is liable, on conviction, to imprisonment to a fine of not less than five million or to imprisonment of a term of not less than five years, or both.

**10.** Section 85 of the principal Act is amended —

- (a) in subsection (1) by deleting the words “not exceeding two hundred and fifty thousand shillings or imprisonment for a term not exceeding five years or to both such fine and imprisonment” and substituting therefor the words “not less than five million shillings and imprisonment for a term of not less than five years”.

Amendment of Section 85 of No.5 of 1994.

- (b) in subsection (2) by deleting the words “one hundred thousand shillings or to imprisonment for three years and in the case of a continuing offence to a further penalty of twenty thousand shillings” and substituting therefor the words “not less than two million shillings and imprisonment for a term of not less than three years and in the case of a continuing offence to a further penalty of one hundred thousand shillings”.

**11.** The principal Act is amended by inserting the following new Schedule immediately after Third Schedule

—

**FOURTH SCHEDULE (Section 2)**

Ephedrine  
Ergometrine  
Ergotamine  
Lysergicacid  
l-phenyl-2-propanone  
Pseudoephedrine  
Acetic anhydride  
Acetone  
Anthranilic acid  
Ethyl ether  
Phenylacetic acid  
Piperidine

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

## **MEMORANDUM OF OBJECTS AND REASONS**

The principal object of the Bill is to amend the Narcotic Drugs and Psychotropic Substances (Control) Act No. 4 of 1994 in order to—

- (a) enhance penalties related to the offences in possession and trafficking in narcotics and psychotropic substances;
- (b) define precursors and chemicals substances which may be used in manufacture of narcotics;
- (c) define who law enforcement officers are in respect to the Act;
- (d) prescribe offences for a law enforcement officer who aids or abets or is an accessory to any offence under the Act;
- (e) provide for the offences arising out of conspiracy;
- (f) provide for power to intercept communication and the admissibility of intercepted communication; and
- (g) provide for an obligation to disclose information that may aid to prevent commission of offences arising under the Act and that may secure the arrest of perpetrators of the crime.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill delegates legislative powers to the Cabinet Secretary. The Cabinet Secretary for the time being responsible for internal security is given powers to make Regulations under clause 5 of the Bill. In particular, the Cabinet Secretary may make Regulations—

- (a) for imposing requirements as to the documentation of transactions involving substances referred to in the fourth schedule;
- (b) adding or deleting substances in the fourth schedule as is deemed necessary;
- (c) on keeping of records and furnishing of information on substances as listed;
- (d) on any other matter that may be required to be prescribed.

The Bill however does not limit fundamental rights and freedoms.

### **Statement whether the Bill concerns County Governments**

The Bill does not concern County Governments in terms of Article 110(1)(a) of the Constitution as it does not contain provisions affecting the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

**Statement whether the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The Bill is not a money Bill within the meaning of Article 114 of the Constitution

Dated the 8th September, 2020.

PAUL KOINANGE,  
*Chairperson, Departmental Committee  
on Administration and National Security.*

***Section 3 of No. 4 of 1994 which it is proposed to amend—***

**Penalty for possession of narcotic drugs, etc.**

3. (1) Subject to subsection (3), any person who has in his possession any narcotic drug or psychotropic substance shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable—

- (a) in respect of cannabis, where the person satisfies the court that the cannabis was intended solely for his own consumption, to imprisonment for ten years and in every other case to imprisonment for twenty years; and
- (b) in respect of a narcotic drug or psychotropic substance, other than cannabis, where the person satisfies the court that the narcotic drug or psychotropic substance was intended solely for his own consumption, to imprisonment for twenty years and in every other case to a fine of not less than one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, or to imprisonment for life or to both such fine and imprisonment.

(3) Subsection (1) shall not apply to—

- (a) a person who has possession of the narcotic drug or psychotropic substance under a licence issued pursuant to section 16 permitting him to have possession of the narcotic drug or psychotropic substance; or
- (b) a medical practitioner, dentist, veterinary surgeon or registered pharmacist who is in possession of a narcotic drug or psychotropic substance for any medical purposes; or
- (c) a person who possesses the narcotic drug or psychotropic substance for medical purposes from, or pursuant to a prescription of, a medical practitioner, dentist or veterinary surgeon; or
- (d) a person authorized under the regulations to be in possession of the narcotic drug or psychotropic substance.

***Section 4 of No. 4 of 1994 which it is proposed to amend—***

**Penalty for trafficking in narcotic drugs, etc.**

4. Any person who trafficks in any narcotic drug or psychotropic substance or any substance represented or held out by him to be a narcotic drug or psychotropic substance shall be guilty of an offence and liable—

- (a) in respect of any narcotic drug or psychotropic substance to a fine of one million shillings or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater, and, in addition, to imprisonment for life; or
- (b) in respect of any substance, other than a narcotic drug or psychotropic substance, which he represents or holds out to be a narcotic drug or psychotropic substance to a fine of five hundred thousand shillings, and, in addition, to imprisonment for a term not exceeding twenty years.

***Section 5 of No. 4 of 1994 which it is proposed to amend—***

**Penalty for other acts connected to narcotic drugs, etc.**

5. (1) Subject to this Act, any person who—
- (a) smokes, inhales, sniffs or otherwise uses any narcotic drug or psychotropic substance; or
  - (b) without lawful and reasonable excuse, is found in any house, room or place to which persons resort for the purpose of smoking, inhaling, sniffing or otherwise using any narcotic drug or psychotropic substance; or
  - (c) being the owner, occupier or concerned in the management of any premises, permits the premises to be used for the purpose of—
    - (i) the preparation of opium for smoking or sale, or the smoking, inhaling, sniffing or otherwise using any narcotic drug or psychotropic substance; or
    - (ii) the manufacture, production, sale or distribution of any narcotic drug or psychotropic substance in contravention of this Act; or
  - (d) has in his possession any pipe or other utensil for use in connection with the smoking, inhaling or sniffing or otherwise using of opium, cannabis, heroin or cocaine or any utensil used in connection with the preparation of opium or any other narcotic drug or psychotropic substance for smoking, shall be guilty of an offence and liable to a fine of two hundred and fifty thousand shillings or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(2) Any person who, knowing or having reason to believe that a parcel, package, container or other thing contains any narcotic drug or psychotropic substance, handles the parcel, package, container or other thing, shall, except where such handling is by a public officer in the course

of his official duties or a registered pharmacist, be guilty of an offence and liable to a fine of one hundred thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(3) Any person who commits any offence referred to in subsection (2) in relation to any narcotic drug or psychotropic substance with a view to aiding, abetting or procuring the trafficking in the narcotic drug or psychotropic substance shall be liable to the penalty prescribed by section 4.

***Section 17 of No. 4 of 1994 which it is proposed to amend—***

**Penalty for obstruction, etc.**

7. Any person who—

- (a) delays or obstructs any police officer or any person authorized by the Commissioner of Police, the Director of Medical Services or any other person in the exercise of any of his functions under this Act; or
- (b) wilfully destroys or mutilates or attempts to destroy or mutilate any books or documents required, or liable to be produced before any police officer or any person authorised by the Commissioner of Police, the Director of Medical Services or any other public officer or any other person or any other authority or a court under any provision of this Act; or
- (c) refuses or fails to produce, or conceals, or attempts to conceal, any books or documents or stocks of narcotic drugs or psychotropic substances when their production is demanded by any person in the exercise of his powers under this Act; or
- (d) refuses or fails to comply with any lawful order or direction given by any public officer in the course of, or in connection with, the administration of any provision of this Act, not being a non-compliance referred to in paragraph (c), shall be guilty of an offence and liable to a fine of not less than one hundred thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

***Section 59 of No.4 of 1994 which it is proposed to amend—***

**Request by Kenya to other countries**

59. (1) For the purposes of an investigation or proceedings under this Act, the Director of Public Prosecutions may request an appropriate authority of another country to arrange for—



- (a) evidence to be taken, or information, documents or articles to be produced or obtained in that country; or
- (b) a warrant or other instrument authorizing search and seizure to be obtained and executed in that country; or
- (c) a person from that country to come to Kenya to assist in the investigation or proceedings; or
- (d) a restraint order or forfeiture order made under this Act to be enforced in that country, or a similar order to be obtained and executed in that country; or
- (e) an order or notice under this Act to be served on a person in that country; or
- (f) other assistance to be provided, whether pursuant to a treaty or arrangement between Kenya and that country or otherwise.

(2) Requests by other countries to Kenya for assistance of a kind specified in subsection (1) may be made to the Director of Public Prosecutions.

***Section 80 of No. 4 of 1994 which it is proposed to amend—***

**Power to arrest without warrant**

**80.** (1) Any police officer may arrest without warrant any person who has committed, or has attempted to commit, or is reasonably suspected by such police officer of having committed or attempted to commit or being about to commit an offence against this Act.

(2) The provisions of subsection (1) shall be in addition to, and not in d Penalty for contravention of regulations

***Section 85 of No. 4 of 1994 which it is proposed to amend—***

**Penalty for contravention of regulations**

**85.** (1) Regulations made under section 84 may provide that any person contravening any provision thereof, other than a provision for which a specific penalty is provided, shall be liable to a fine not exceeding two hundred and fifty thousand shillings or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(2) Every person guilty of the contravention of any regulation, not being a regulation made under section 84 (4), for which no penalty is expressly provided shall be liable to a fine of one hundred thousand shillings or to imprisonment for three years and in the case of a continuing offence to a further penalty of twenty thousand shillings for each day during which the offence continues.

