

NO. 4 OF 1994

**THE NARCOTIC DRUGS AND PSYCHOTROPIC
SUBSTANCES (CONTROL) ACT**

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

Page

1. The Narcotic Drugs and Psychotropic Substances (Control)(Restraint and Forfeiture) Regulations.....	3
2. The Narcotic Drugs and Psychotropic Substances (Control)(Seizure, Analysis and Disposal) Regulations.....	5

**THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES
(CONTROL)(RESTRAINT AND FORFEITURE) REGULATIONS**

[Legal Notice 547 of 1997]

1. These Regulations may be cited as the Narcotic Drugs and Psychotropic Substances (Control) (Restraint and Forfeiture) Regulations.

2.

- (1) Where the Attorney-General has reasonable grounds to believe that a person has committed a specified offence and investigations into the offence have commenced, the Attorney-General may apply to the court for a restraint order in respect of any or all of the property of the person.
- (2) A copy of the application under paragraph (1) shall be served upon the respondent thereto and published for general information in the *Gazette* and in at least two daily newspapers circulating in the area in which the property is situated.
- (3) Any person with an interest in property which the subject matter of an application for a restraint order under the regulation may, at any stage of the proceedings, apply to the court to be made a party to such proceedings.

3. Where the court is satisfied as to the matters averred in the application for a restraint order, the court may make the order and shall cause it to be published for general information in the *Gazette* and in at least one newspaper circulating in the area in which the property is situated.

4. A restraint order made under the provisions of these Regulations shall remain in force until it is revoked by the court or the property in respect of which it is made is forfeited to the Government, whichever is the earlier.

5. Any person who handles any property which is subject to a restraint order in any manner contrary to the terms of such order shall be guilty of an offence and liable to a fine not exceeding two hundred and fifty thousand shillings, or to both imprisonment for a term not exceeding five years, or to both.

6. Where a person is convicted of a specified offence and the court makes a final decision in which such a person is found guilty, the court shall cause a notice to that effect to be published in the *Gazette* and in at least one newspaper circulating in the area in which the property is situated.

7. A notice published under regulation 6 shall state the fact of the conviction and the liability of the person's property to forfeiture.

8. Any person with an interest in property which is subject to an order for forfeiture may, within thirty days of the publication of a notice under regulation 6, apply to the court for any relief to which he is entitled under the Act.

9. Where a final order for forfeiture has been made in respect of any property, all interests in that property prior to such order shall be void.

**THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES
(CONTROL)(SEIZURE, ANALYSIS AND DISPOSAL) REGULATIONS**

ARRANGEMENT OF REGULATIONS

PART 1 – PRELIMINARY

Regulation

1. Citation
2. Interpretation

PART II – GENERAL PROCEDURES AT
AND IMMEDIATELY AFTER SEIZURE

3. Collection and processing of evidence at seizure
4. Procedure immediately after seizures

PART III – SUBSEQUENT GENERAL PROCEDURES

5. Analysis of seized substances
6. Procedure after analysis
7. Storage, security and transportation of seized substances
8. Destruction of seized substance
9. Safe custody of seized substance
10. Tampering with seized substance
11. Maintenance of records of custody of seized substance
12. Admission into evidence of records of custody of seized substances

PART IV – SPECIAL PROCEDURES TO BE APPLIED WHERE
SEIZED SUBSTANCES ARE TO BE USED IN EVIDENCE,
BUT SECTION 74A OF THE ACT CANNOT BE APPLIED

13. Application by the Attorney-General for a destruction order
14. Destruction order by a magistrate
15. Procedure following the grant of destruction order by a magistrate
16. Persons to be charged entitled to have sample analysed
17. Penalty for contravening these Regulations

SCHEDULES

CERTIFICATE OF PROOF OF COMPLETE DESTRUCTION OF SEIZED
SUBSTANCE

GUIDELINES ON INCINERATION

**THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES
(CONTROL)(SEIZURE, ANALYSIS AND DISPOSAL) REGULATIONS**

[Legal Notice 16 of 2006]

PART 1 – PRELIMINARY

1. Citation

These Regulations may be cited as the Narcotic Drugs and Psychotropic Substances (Control) (Seizure, Analysis and Disposal) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Narcotic Drugs and Psychotropic Substances (Control) Act (Cap. 245);

"authorized officer" has the meaning assigned to it in section 74A of the Act;

"designated analyst" means a duly qualified analyst designated as such under section 67 (1) of the Act;

"minimum amount", in reference to seized substance, means 10% or as near as practicable thereto, by weight or volume, of the seized substance that is kept in custody by the Seizures Registrar for the purpose of analysis, as and when an accused person is arrested and arraigned in court;

"Seizures Registrar" means a police officer, not below the rank of Assistant Commissioner, designated as such in writing by the Commissioner of Police for the purposes of these Regulations; and

"seized substance" means anything that is or contains a narcotic drug, psychotropic substance or prohibited plant seized under the Act.

PART II – GENERAL PROCEDURES AT AND IMMEDIATELY AFTER SEIZURE

3. Collection and processing of evidence at seizure

(1) Immediately following the seizure of a substance, the police officer in charge of the seized substance shall take all reasonable steps to ensure that—

- (a) all material evidence relating to the seizure is collected and processed;
- (b) the original condition of the whole amount of the seized substance at the scene is documented;
- (c) the seized substance is marked for identification and inventory thereof made; and
- (d) the seized substance is weighed, displayed and photographed, videotaped or otherwise recorded to depict it as originally packaged.

(2) Where it is physically possible to count and weigh the seized substance as a complete unit, the officer in charge of the seized substance shall cause the substance to be counted and weighed and where appropriate, cause the gross or net weight of the seized substance to be estimated.

(3) In cases where it is not physically possible to store the seized substance as a single unit, wherever practicable—

- (a) the seized substance shall be placed in sturdy containers carrying about 15 to 20 kilogrammes of the seized substance;
- (b) each container shall be completely encircled with a fibre tape and an evidence sticker placed where the ends of the fibre tape meet; and
- (c) the evidence sticker shall contain all relevant information relating to the case, including the case name and number, exhibit number, place and date

*Narcotic Drugs and Psychotropic
Substances (Control)*

[Subsidiary]

of seizure and signatures of witnesses and shall accompany the evidence throughout the process of storage, analysis, transportation and ultimate disposal of the seized substance.

(4) The officer in charge of the seized substance shall ensure that all items of evidentiary value relating to the seized substance are stored in secure and appropriate conditions for the prevention of loss, theft or any other form of misappropriation, as well as accidental or accelerated deterioration.

4. Procedure immediately after seizures

(1) As soon as practicable but in any case not later than 24 hours after the seizure, the officer in charge of the seized substance shall—

- (a) cause a report of the seized substance to be prepared and a copy thereof to be delivered to the Seizures Registrar; and
- (b) cause the whole amount of the seized substance to be delivered or transferred into the custody of the Seizures Registrar at such locations and places as the Seizures Registrar may arrange.

(2) A report prepared pursuant to paragraph (1)(a) shall contain—

- (a) the time, place and date of seizure;
- (b) the identity of the seizing officer and all persons present;
- (c) the circumstances in which seizure took place;
- (d) a description of each vehicle, vessel, place or person searched and each location where the seized substance was
- (e) a description of the seized substance found;
- (f) a description of all packaging, seals, and other identifying features of the seized substance;
- (g) a description of the quantity, volume and units of the seized substance found and the measurement method employed in determining the quantity of the seized substance;
- (h) a description of any preliminary identification test used on the seized substance and the results thereof; and
- (i) all subsequent movements of the seized substance until its delivery in accordance with paragraph (1)(b).

(3) Upon receipt of the seized substance, the Seizures Registrar shall immediately notify the Attorney-General in writing of the seizure and provide the Attorney-General with a copy of the seizure report.

(4) Nothing in paragraph (3) shall permit or require the Attorney-General to be called as a witness.

PART III – SUBSEQUENT GENERAL PROCEDURES

5. Analysis of seized substances

(1) When, for the purposes of the Act or these Regulations, a designated analyst takes away for analysis or receives for analysis any seized substance, the designated analyst shall—

- (a) give each container and package a unique laboratory number;
- (b) enter or cause particulars of the seized substance, including all markings and evidence labels placed on the seized substance pursuant to the Act or these Regulations, to be entered into the designated analyst's laboratory records; and
- (c) in the case of a seized substance received for analysis, verify the contents of each container or package so received.

(2) The designated analyst shall, as soon as practicable thereafter, carry out an analysis of the seized substance to determine its—

*Narcotic Drugs and Psychotropic
Substances (Control)*

[Subsidiary]

- (a) identity;
- (b) quantity or mass; and
- (c) purity.

(3) If the seized substance is cannabis leaf, the designated analyst shall, after identifying the seized substance, only determine the quantity or mass of the cannabis leaf.

(4) Any seized substance in the custody of a designated analyst, shall be kept in a secure place as shall be determined by the Seizures Registrar.

6. Procedure after analysis

Subject to the Act and these Regulations after carrying out any analysis of any seized substance, the designated analyst shall—

- (a) prepare the certificate referred to in section 67(2) of the Act; and
- (b) cause the certificate and each sealed package to be delivered to the Seizures Registrar.

7. Storage, security and transportation of seized substances

The Seizures Registrar shall ensure that—

- (a) all seized substances in his custody are kept in secure storage and released from secure storage only for the purposes of the Act and these Regulations;
- (b) when transported, all seized substances are—
 - (i) locked within secure transport vehicles;
 - (ii) accompanied by armed police officers; and
 - (iii) never left unattended from the time they first leave secure storage until their receipt into the next place of secure storage, and ultimately into the place of final disposal;
- (c) when ordered to be destroyed—
 - (i) each container or package of the seized substance is inspected and an inventory of the substance made;
 - (ii) the substance is verified, in such respects and by such persons, as Attorney-General may direct; and
 - (iii) the substance is secured so that it is accounted for from the time it first leaves the place of secure storage until it is finally physically destroyed.

8. Destruction of seized substance

(1) The destruction of any seized substance shall be carried out by authorised officers in the presence of a magistrate and the Seizures Registrar.

(2) Wherever practicable, and unless otherwise directed in writing by the Director of Medical Services, destruction of any seized substance shall be at such place and subject to such conditions as may be specified in writing from time to time by the Director of Medical Services and in particular—

- (a) in the case of a prohibited plant, by uprooting and burning such plants; and
- (b) in the case of narcotic drug or psychotropic substance, by incineration or such other method as shall ensure safe and complete physical destruction of such drugs.

(3) After destruction of the seized substance, in accordance with paragraph (2) is complete, the magistrate in attendance shall, if satisfied that the physical destruction of all the seized substance is complete, sign a certificate in the prescribed form set out in the First Schedule.

(4) The guidelines set out in the Second Schedule shall apply during incineration of a seized substance.

*Narcotic Drugs and Psychotropic
Substances (Control)*

[Subsidiary]

9. Safe custody of seized substance

Any person who has lawful custody of any seized substance shall ensure that all containers, packages and samples of the substance in his custody are stored in such secure location as may be determined by the Seizures Registrar, in order to prevent any tampering or diversion of the substance.

10. Tampering with seized substance

(1) Immediately after a police officer—

- (a) opens a container or package of seized substance that has been sealed in accordance with these Regulations; or
- (b) becomes aware that a package or container sealed in accordance with these Regulations has been opened or tampered with,

the whole of the contents of the package or container shall be given to a designated analyst for analysis.

(2) If a difference occurs between the findings recorded in two or more certificates by designated analysts concerning the same seized substance and the designated analyst who provides the later or latest certificate is of the opinion that the difference is significant, the designated analyst who performs the analysis last shall promptly forward a copy of all relevant certificates relating to the seized substance to the Attorney-General.

(3) Nothing in paragraph (2) shall permit or require the Attorney-General to be called as a witness.

11. Maintenance of records of custody of seized substance

(1) Every person who has lawful possession or custody of, or who handles or transports, or analyses any seized substance shall keep a record of the custody and movement of such seized substance.

(2) For the purposes of these Regulations, a record of custody of a seized substance shall include:

- (a) upon seizure—
 - (i) the date, time and place of seizure;
 - (ii) the circumstances of seizure;
 - (iii) the total quantity of the seized substance; and
 - (iv) the identification number placed on the seized substance;
- (b) in all other cases—
 - (i) any new identification number or mark placed on the seized substance by the person having custody;
 - (ii) the place, date, time and the name of the person from whom the seized substance was received;
 - (iii) the place, date, time and name of the person to whom the seized substance was passed;
 - (iv) wherever possible, the nature and quantity of the seized substance;
 - (v) the purpose for which the seized substance was received; and
- (c) upon sampling, if samples are taken—
 - (i) the place, date and time of sampling;
 - (ii) the size of packaging placed on each sample taken;
 - (iii) the identification number placed on the package containing any samples taken;
 - (iv) the size and packaging placed on the bulk remaining after sampling; and
 - (v) the identification number placed on any bulk remaining after sampling;

*Narcotic Drugs and Psychotropic
Substances (Control)*

[Subsidiary]

- (d) if any portion of the seized substance is ordered to be disposed of before trial, a record shall be kept of—
- (i) the place, time, date and quantity of the seized substance to be disposed of; and
 - (ii) the method of disposal.

(3) Any person who fails to comply with the provisions of paragraph (1), or wilfully makes a false or misleading entry in the record shall be guilty of an offence.

12. Admission into evidence of records of custody of seized substances

(1) Subject to paragraph (2), any record purporting to show proper custody and movement of any seized substance shall, in criminal proceedings, be admissible in evidence as proof of the matters stated in the record if it is shown to the satisfaction of the court that such record had been kept prior to the commencement of such proceedings in accordance with the provisions of regulation 11.

(2) No record of custody of any seized substance shall be admissible in evidence unless a copy of such record together with a notice of intention to tender such record in evidence has been served on the accused person not less than 14 days before the trial.

(3) The accused person may, not less than 7 days before trial, serve a notice on the Attorney-General requiring the attendance at the trial of any person who signed the record referred to in paragraph (2) and where such notice is given by the accused person, the Attorney-General shall produce the person named in the notice to give evidence at the trial.

PART IV – SPECIAL PROCEDURES TO BE APPLIED WHERE
SEIZED SUBSTANCES ARE TO BE USED IN EVIDENCE,
BUT SECTION 74A OF THE ACT CANNOT BE APPLIED

13. Application by the Attorney-General for a destruction order

(1) Notwithstanding the provisions of section 74A of the Act and Part III of these Regulations, where a seized substance is to be used in evidence against an accused person who has not been identified or located or if the accused person is not in Kenya, the Attorney-General may apply to a magistrate for a destruction order under regulation 14, if he is satisfied that—

- (a) criminal proceedings may lie against any such accused person in relation to the seized substance;
- (b) the seized substance may be used as evidence in the proceedings referred to in paragraph (a);
- (c) weighing, sampling, analysis and destruction of the whole of the seized substance cannot be carried out in the presence of an accused person pursuant to section 74A of the Act, because the accused person has not yet been identified or located or if the accused person has been identified and located, the accused person is not in Kenya or cannot for good reason be present; and
- (d) having regard to any views communicated by the Seizures Registrar and the Government Chemist, the size of the seized substance is such that retention, storage and control of the whole of the seized substance pending any trial against the accused person poses unreasonable security risks.

(2) An application made by the Attorney-General pursuant to paragraph (1) may be granted by a magistrate notwithstanding the absence of the accused person, the other analyst or the accused person's advocate at the hearing of such an application, including the fact that the accused person, the other analyst or the accused person's advocate may not be present at the destruction of the seized substance.

14. Destruction order by a magistrate

(1) Where the Attorney-General applies to a magistrate under regulation 13 for a destruction order, the magistrate shall grant the order in respect of the whole amount of

*Narcotic Drugs and Psychotropic
Substances (Control)*

[Subsidiary]

the seized substance, less a minimum amount or an amount required for the purpose of sampling and analysis, unless the magistrate decides that the whole of the seized substance should be retained.

(2) In determining whether to order that a seized substance should be retained, a magistrate shall consider—

- (a) the amount of the seized substance;
- (b) whether the seized substance can reasonably be securely retained;
- (c) the period and purpose of the retention;
- (d) the amount of the seized substance required for the purpose of sampling and analysis;
- (e) a report, if any, of a designated analyst relating to the seized substance;
- (f) the number of persons who have already been, or may in future be, identified, located, arrested or charged in relation to the seized substance;
- (g) whether the arrest of any person in relation to the seized substance is imminent;
- (h) when the hearing of any charge relating to the seized substance is likely to be concluded;
- (i) the inability of the accused person, the other analyst or the accused person's advocate to be present at the hearing of the application and the destruction of the seized substance;
- (j) any other order under the Act relating to the seized substance;
- (k) any claim of any person to be lawfully entitled to the seized substance; and
- (l) any other matter which, in the opinion of the magistrate, is relevant.

(3) Where a magistrate determines that a seized substance be retained, the magistrate shall fix a date, not later than one month after the determination, in order to make further determination whether the seized substance should be retained.

15. Procedure following the grant of destruction order by a magistrate

(1) Where a magistrate has granted a destruction order under regulation 14, the authorized officers shall, in the presence of a designated analyst, weigh the whole amount of the seized substance.

(2) Thereafter, the designated analyst shall—

- (a) isolate from the whole amount seized, the minimum amount of the seized substance;
- (b) isolate, from the remainder of the seized substance, one or more samples in duplicate that provide a true representation of the nature of the seized substance;
- (c) In respect of the minimum amount, the samples, and the remainder of the seized substance respectively, place each into one or more packages, securely seal each package and mark each package with a unique identifying number; and
- (d) take away all samples isolated, for the purpose of analysis in accordance with Part III of these Regulations.

16. Persons to be charged entitled to have sample analysed

(1) Where—

- (a) a person is or is intended to be charged with an offence in relation to a seized substance;
- (b) evidence of that substance is to be used in proceedings against that person in respect of that offence;

*Narcotic Drugs and Psychotropic
Substances (Control)*

[Subsidiary]

- (c) the seized substance, less any minimum amount and any samples, has been destroyed pursuant to the Act or these Regulations;
- (d) weighing, sampling, analysis and destruction of the whole of the seized substance cannot be carried out in relation to that person under section 74(A) of the Act, because at the time, that person has not yet been identified or located, or if so identified and located the person is not in Kenya,

that person shall, when ultimately arrested and charged, be entitled to have a sample or samples that provide a true representation of the nature of the substance taken and analysed, at his own cost, by an analyst chosen by him, if there is a sufficient quantity of the seized substance remaining in the custody of the Seizures Registrar to enable the sample or samples to be analysed.

(2) A police officer shall make all reasonable attempts to serve on each person referred to in paragraph (1), notice of his entitlement under paragraph (1) to have a sample or samples of the seized substance taken and analysed at that person's own cost.

(3) A person referred to in this regulation may apply in writing to the Seizures Registrar for the release, into the custody of an analyst appointed by him of a sample or samples of the seized substance.

(4) The Seizures Registrar may authorise the release into the custody of a person specified in an application under paragraph (3), or taking of a sample or samples of a seized substance by a person specified in an application under paragraph (3), if the Seizures Registrar is satisfied that—

- (a) it is for the purpose of conducting an analysis or examination to determine the nature of the seized substance; and
- (b) the person to whom the sample of the seized substance is to be released is authorised under the Pharmacy and Poisons Act to have possession of the seized substance.

(5) A notice under this regulation may be served on a person by —

- (a) handing it to the person;
- (b) posting it to the person at the person's last known postal address or place of residence or business; or
- (c) leaving it for the person at the person's last known place of residence or place of business with a person either resident or employed at the said premises and such person shall be a person above the age of sixteen years.

17. Penalty for contravening these Regulations

Any person who contravenes these Regulations shall, upon conviction, be liable to imprisonment for a term not exceeding five years, or to a fine not exceeding two hundred and fifty thousand shillings, or to both and in the case of a continuing offence, to a further penalty of twenty thousand shillings for each day or part thereof during which the offence continues.

FIRST SCHEDULE

[r. 8(3)]

CERTIFICATE OF PROOF OF COMPLETE DESTRUCTION OF SEIZED SUBSTANCE

REPUBLIC OF KENYA

CERTIFICATE OF PROOF OF COMPLETE DESTRUCTION OF SEIZED SUBSTANCE

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT

[Cap. 245]

I certify that the _____ (type, nature and quantity of seized substance) that was seized on the _____

Narcotic Drugs and Psychotropic
Substances (Control)

[Subsidiary]

(date of seizure) at _____ (place of seizure) /and
(where applicable) which has been subject to criminal proceedings in
_____ (particulars of case number and parties
thereto) has been completely destroyed to my satisfaction.

Dated this _____ day of _____ 20 _____

(Signature of Magistrate)

(Name & designation of Magistrate)

SECOND SCHEDULE

[r. 8(4)]

GUIDELINES ON INCINERATION

1. Only incineration facilities that prevent retrieval before incineration of seized substance placed into the incinerator facilities shall be used during incineration.

2. During incineration, the following standards shall be observed

- (a) 300 pounds per hour throughout;
- (b) STC temperature up to 2,200 degrees Fahrenheit;
- (c) 2.5 seconds residence time in STC;
- (d) particulate levels at output of less than -
 - (i) 4 parts per million of carbon monoxide;
 - (ii) 250 parts per million of nitrous oxide;
 - (iii) 30 parts per million of mercury;
 - (iv) 15 parts per million of hydrochloric acid; and
- (e) residual drug particulate of less than 90 parts per million.

