

THE HABIT-FORMING DRUG PROCLAMATION (CHAPTER 57)

as amended by

THE HABIT-FORMING DRUG (AMENDMENT) LAW, 1962

(Date of Effect 21st September, 1962)

and

**THE CONSTITUTIONAL AMENDMENT (ADAPTATION OF EXISTING LAWS)
ORDER, 1966**

(Legal Notice No. 84 of 1966)

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CHAPTER 57
HABIT-FORMING DRUGS

To regulate and control the importation and the exportation and the production and use of opium and other habit-forming drugs

36 of 1922
5 of 1925
55 of 1931
Cap. 43
48 of 1954
1 of 1956
31 of 1962
L.N. 84 of 1966

Short Title.

1. This Proclamation may be cited as the Habit-forming Drug Proclamation.

Interpretation

2. In this Proclamation and in any regulations made thereunder, unless the context otherwise clearly requires, "habit-forming drug" or "drug" means and includes the following, as herein defined:

- "coca leaves", the leaves of *erythroxylon coca*;
- "cocaine", the principal alkaloid of coca leaves, including all preparations, admixtures or derivatives prepared therefrom or therewith and containing one-tenth or more per cent of cocaine or of any derivative of cocaine;
- "cannabis", "dagga", "motokwane", "intsangu" or "Indian hemp", under whatever name it may be described, 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 therefrom (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;
- "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 derivative of ecgonine;

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

“prepared opium”, opium prepared for smoking; the expression shall include 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 the 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;

(2)(a) All esters of morphine, dihydro-oxycodone, dihydro-codeinone, dihydro-morphinone, their salts and preparations; and

(b) Acetyldihydrocodeinone and its salts and any preparation, admixture, extract or other substance containing any proportion of acetyldihydrocodeinone.

Returns of Habit-forming Drugs.

3. (1) Every person who at the date of the taking effect of this Proclamation is lawfully entitled to keep for sale and sell within Botswana any habit-forming drug shall, prior to a date to be fixed by the President and notified in the *Gazette* make a return to the District Officer of the district in which such person resides, or in which his business is situated, of all stocks of such drugs in his possession. The District Officer, on being satisfied of the accuracy of the said return, shall issue a permit authorising such person to possess the stocks so declared, and to sell or dispose of the same so long as he continues to be entitled to keep such drugs for sale.

(2) Every such return shall be made in a form prescribed by regulation.

(3) Any such person who fails to make such return within the period prescribed as aforesaid or who wilfully supplies a misleading or an incorrect return or who sells, supplies, or is found in possession of any such drug without being in possession of a permit issued as in this section provided, shall be liable on conviction to the penalties mentioned in section 8.

Restrictions on Dealing in Drugs.

4. (1) Save as in this Proclamation is provided 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
- (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 contained in this Proclamation no person shall import into Botswana¹ or export therefrom any prepared opium.

Permits to Import and Export Drugs.

5. (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 President¹ by such officer or officers as may from time to time be designated by him, import from without Botswana¹ or acquire by purchase or otherwise from a licensed producer or manufacturer within Botswana stated quantities of any such drug. Such permit shall be in the form and shall contain such conditions as may be prescribed by regulation.

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

(3) A duly registered medical practitioner, dentist, chemist and druggist, or a duly qualified veterinary surgeon may, when authorised thereto by permit issued under the authority of the President by such officer or officers as may from time to time be designated by him, export a stated quantity of any such drug. Such permit shall be in the form and shall contain such conditions as may be prescribed by regulation.

Issue of Permits.

6. On being satisfied that there is a reasonable and legitimate demand¹ for medical, surgical, dental or veterinary purposes, for any drug which can be extracted, derived, produced or manufactured within Botswana,¹ the President¹ 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;

(1) As amended by L.N. 84/1966

- (b) licences for the extraction, derivation, production or manufacture of such drug.

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 President may deem necessary for the purpose of giving effect to the objects of this Proclamation.

Use of Drugs and Particulars to be Kept.

7. (1) Any such drug imported or acquired by a medical practitioner, dentist, or veterinary surgeon, or, as hereinafter provided, sold or supplied by a chemist and druggist to a medical practitioner, dentist or veterinary surgeon 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 Proclamation 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; or
- (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) when it occurs as an incidental ingredient in any recognised pharmacopoeial preparation or in any medicinal preparation which the President⁽¹⁾ 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.

Every such order or prescription shall state —

- (i) the quantity and description of such drug which may be sold or supplied thereon;
- (ii) the name and address of the person for or by whom such drug is prescribed or required or the name and address of the institution for which it is ordered, as the case may be;

(1) As amended by L.N. 84/1966

(iii) the full name and address and the profession or qualification of the person signing such order or prescription ;

(iv) the date of issue of such order or prescription.

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 the same except upon the order of the President.¹

(3) 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 ;

(d) the quantity which has been disposed of and the manner in which and the person to whom such disposal has taken place.

Every such book 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.

(4) Every such order or prescription as is referred to in sub-section (2) and every record made in such book as is referred to in sub-section (3) 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 President,¹ and any such 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 so to retain and preserve or forthwith upon demand to produce such order, prescription or book for inspection shall be liable upon conviction to a fine not exceeding R40 or, in default of payment, to imprisonment with or without hard labour for a period not exceeding three months.

Restrictions on Use of Drugs.

8. 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 6 and 7, consume, be in possession of, or use any habit-forming drug or plant from which such drug can be derived, extracted, produced, or manufactured

(1) Amended by L.N. 84 1966

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.

Powers of Policemen.¹

9. (1) In this section "authorised officer" means any member of the Botswana² Police of the rank of Sergeant or above or any other member of such Police holding a written authority from a member of such Police of the rank of Sub-Inspector or above authorising him to act as an authorised officer for the purposes of this section.

(2) If any authorised officer has reasonable grounds for believing that any person has committed an offence under the provisions of this Proclamation or the regulations, he may —

- (a) enter without a search warrant upon any land and there require any such person to produce for his inspection any habit-forming drug in his possession or any permit or licence or other document issued to him or required to be kept by him under the provisions of this Proclamation or the regulations ;
- (b) without a search warrant search such person or any animal in the possession of such person and enter and search any land, building, vehicle, aircraft or boat in the possession or use of such person, and open and search any receptacle or thing in the possession of such person :

Provided that whenever a woman is searched, the search shall only be made by a woman and shall be made with strict regard to decency and if there is no woman available for such search who is a member of the Botswana Police, the search may be made by any woman specially named for the purpose by a Peace Officer ;

- (c) subject to the provisions of sub-section (2), seize any habit-forming drug or any article or substance which he suspects of being a habit-forming drug, or any plant from which any such drug can be derived, extracted, produced or manufactured, or any pipe, receptacle or material for smoking opium, Indian hemp or dagga, in the possession of such person and any vehicle, aircraft, boat, receptacle, animal or thing in or upon which such habit-forming drug or article or substance or plant or pipe, receptacle or material was found, and unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest him without warrant and detain him ;

(1) As replaced by Law 31/1962

(2) As amended by L.N. 84/1966

(d) undertake any inspection which he may deem necessary to determine whether the provisions of this Proclamation or the regulations are being complied with.

(3) Every person who is detained and everything seized under the provisions of sub-section (1) shall be taken as soon as possible before a court of competent jurisdiction to be dealt with according to law.

Penalties.¹

10. (1) Save as is provided by section 7(4), any person who contravenes any of the provisions of sections 4, 5, or 8 or any condition of a permit or licence issued under the provisions of sections 5 or 6 shall be guilty of an offence and liable on conviction to a fine not exceeding R1000 or, in default of payment thereof, to imprisonment not exceeding three years or to such imprisonment without the option of a fine or to both such fine and imprisonment.

(2) Where any person is convicted under the provisions of this Proclamation or the regulations the court shall order any habit-forming drug or plant or pipe, receptacle or material in respect of which the offence has been committed or any vehicle, aircraft, boat, animal, receptacle or thing in or upon which such habit-forming drug or plant or pipe, receptacle or material was found to be forfeited to the State.²

Provided that if the President² is satisfied that such vehicle, aircraft, boat animal, receptacle or thing is not the property of the person convicted and that the owner thereof was unable to prevent its use by the person so convicted, he may, if he considers it expedient to do so, order the return thereof to the owner.

(3) (a) If the convicted person used any motor vehicle to convey or carry the drug or plant or pipe, receptacle or material in respect of which the offence was committed, the court may suspend for a period not exceeding five years any driver's licence issued to that person in terms of the Motor Vehicle and Road Traffic Proclamation (Chapter 168 of the Laws of Botswana²) or any law hereafter substituted for the same and may cancel any motor vehicle plying-for-hire licence issued to that person in terms of the above Proclamation or any law hereafter substituted for the same, and may declare him to be disqualified from obtaining another such licence for a period not exceeding five years; and

(b) If the convicted person is the holder of any licence issued under the provisions of any law relating to the issue of trading licences, and it is proved to the satisfaction of the court that he used the licence to conceal or assist him in concealing the offence, the court may cancel the licence, and may declare that person to be disqualified from securing another such licence for a period not exceeding five years.

(1) As replaced by Law 31/1962

(2) As amended by L.N. 84/1966

(4) The provisions of sub-sections (2) and (3) shall be in addition to and not in derogation of the provisions of sub-section (1).

(5) Anything forfeited to the State² under the provisions of this sub-section shall be disposed of as the President² may direct.

Subordinate Courts' Special Jurisdiction.¹

10A. Notwithstanding anything to the contrary contained in any law relating to Subordinate Courts, a Subordinate Court of the First Class shall have special jurisdiction to impose any penalties provided in this Proclamation for any contravention of the provisions of this Proclamation or the regulations.

Vicarious Liability in Relation to Drugs.

11. (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 7 where 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 Botswana² of a company shall be liable to the penalties prescribed for a contravention of this Proclamation by such company.

Onus of Proof.

12. (1) If in any charge under this Proclamation 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 be 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 drug or drug mentioned in section 2 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 purpose of this Proclamation, 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 Proclamation shall lie upon the person charged.

(1) As inserted by Law 31/1962

(2) As amended by L.N. 84/1966

(4) Every person required by this Proclamation 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 Proclamation it shall be sufficient to set forth the offence charged in the words of this Proclamation or in similar words without negating any exception, exemption or qualification.

Regulations.¹

13. (1) The President² may, by notice in the *Gazette*, make regulations not inconsistent with the provisions of this Proclamation for the better carrying out of the objects and purposes of any provision or requirement thereof.

(2) The regulations may provide that any person who contravenes any provision thereof or who fails to comply with any order, requirement or condition lawfully issued to or imposed on him by virtue of any regulation and with which it is his duty to comply shall be guilty of an offence. The regulations shall specify what penalty may be imposed for each offence thereby created and may also provide different penalties in the case of successive or continuous offences but no such penalty shall exceed a fine of R200 or, in default of payment thereof, imprisonment for a period of six months, or such imprisonment without the option of a fine or both such fine and imprisonment.

(3) Any regulations made under this section shall be laid before the National Assembly within four days after they are made if the National Assembly is then sitting or, if the National Assembly is not then sitting, on the next sitting day thereafter. If within the next subsequent twenty-one days on which the National Assembly sits after any such regulations are laid before it, the National Assembly resolves that the regulations shall be annulled, the regulations shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the making of any new regulations.

14.³

Payment to Informer.

15. The President² may pay out of the public revenue of Botswana² to a person (other than an officer in the public service) on whose information a charge is laid resulting in a conviction under this Proclamation, a sum not exceeding R40.

(1) As replaced by Law 31/1962

(2) As amended by L.N. 84/1968

(3) Repealed by Law 31/1962

Extension of List of Habit-forming Drugs.

16. The President¹ may by notice in the *Gazette* declare that any substance other than those defined in section 2 shall be a habit-forming drug within the meaning of this Proclamation; or that any of the substances defined in section 2 shall no longer be deemed to be a habit-forming drug within the meaning of this Proclamation; or may amend any of the definitions therein contained; and the provisions of this Proclamation shall apply to the definitions contained therein as altered by such addition, omission or amendment.

Saving.

17. This Proclamation shall be in addition to and not in substitution for any law or regulation which may be in force in Botswana² regulating the sale or disposal of drugs or poisons.

(1) As amended by Law 31/1962 and L.N. 84/1966

(2) As amended by L.N. 84/1966