

Malawi

Dangerous Drugs Act Chapter 35:02

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Dangerous Drugs Act
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Malawi

Dangerous Drugs Act

Chapter 35:02

Commenced on 1 April 1956

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

To control the importation, exportation, production, possession, sale, distribution, and use of dangerous drugs, and for matters incidental thereto

Preliminary

1. Short title

This Act may be cited as the Dangerous Drugs Act.

2. Interpretation

(1) In this Act, unless inconsistent with the context—

“**Corresponding law**” means a law stated in a certificate purporting to be issued by or on behalf of the government of another country to be a law providing for the control and regulation in that country of the manufacture, sale, use, export, and import of drugs in accordance with the Hague Convention, the Geneva Convention (No. 1), and the Geneva Convention (No. 2);

“**Geneva Convention (No. 1)**” means the International Opium Convention signed at Geneva on the 19th February, 1925;

“**Geneva Convention (No. 2)**” means the International Convention for limiting the manufacture, regulation, and distribution of narcotic drugs signed at Geneva on the 13th July, 1931;

“**Hague Convention**” means the International Opium Convention signed at the Hague on the 3rd January, 1912;

“**inspector**” means an inspector appointed under [section 15](#);

“**superior police officer**” means a police officer above the rank of inspector of police.

(2) In any certificate such as is referred to in the definition of “corresponding law” in subsection (1), a statement as to the effect of the law mentioned in such certificate or a statement in any such certificate that any facts constitute an offence against that law shall be conclusive.

Part I – Coca leaves, indian hemp, and raw opium

3. Application of this part

(1) The drugs to which this Part applies are—

- (a) coca leaves;
- (b) “Indian hemp”, “bhang”, “camba”, “dagga”, “mbanje” or “intsangu”, resins obtained therefrom and all preparations of which such resins form the base;
- (c) raw opium.

(2) In this section—

“coca leaves” means the leaves of any plant of the genus of the erythroxyllaceae from which cocaine can be extracted either directly or by chemical transformation;

“Indian hemp”, “bhang”, “camba”, “dagga”, “mbanje” or “intsangu” means the whole or any portion, whether green or dry, of the plant, including the seeds thereof, but excluding—

- (a) any fibre extracted from the plant for use as or in the manufacture of cordage, canvas or similar products; or
- (b) any seed which has been crushed, comminuted or otherwise processed in such a manner as to prevent germination; or
- (c) the fixed oil obtained from the seed;

“medicinal opium” means raw opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopoeia, whether it is in the form of powder or is granulated or is in any other form, and whether it is or is not mixed with neutral substances;

“raw opium” includes powdered or granulated opium, but does not include medicinal opium.

(3) Any reference in this Part or in any regulation made thereunder to plants from which such drugs are derived shall include a reference to the plant “Indian hemp”, “bhang”, “camba”, “dagga”, “mbanje” or “intsangu”.

4. Restriction on import and export of drugs to which this Part applies and of plants from which such drugs are derived

No person shall import into or export from Malawi any drugs to which this Part applies, or plants from which such drugs are derived, except under and in accordance with the terms of a licence issued by the Minister.

5. Special restriction on export to certain countries of drugs to which this Part applies and of plants from which such drugs are derived

If at any time the importation into a foreign country of a drug to which this Part applies or plant from which any such drug is derived is prohibited or restricted by the laws of that country, there shall, while that prohibition or restriction is in force, be attached to every licence which is issued under this Act authorizing the export of that drug or plant from Malawi, such conditions as appear necessary for preventing or restricting, as the case may be, the exportation of that drug or plant from Malawi to that country during such time as the importation of that drug or plant into that country is so prohibited or restricted, and any such licences issued before the prohibition or restriction came into force shall, if the Minister by order so directs, be deemed to be subject to the like conditions.

6. Regulations

The Minister may by regulation—

- (a) prohibit, control, or restrict the production, possession, sale, or distribution of drugs to which this Part applies, and the cultivation of plants from which such drugs are derived;
- (b) prescribe measures to be taken for the eradication of plants, to which regulations made under paragraph (a) apply, found to be growing wild.

Part II – Prepared opium

7. Interpretation in this Part

In this Part “prepared opium” means opium prepared for smoking and dross and any other residue remaining after opium has been smoked.

8. Import and export of prepared opium prohibited

No person shall import into or export from Malawi any prepared opium.

9. Offences

No person shall—

- (a) manufacture, sell, or otherwise deal in prepared opium;
- (b) have in his possession any prepared opium;
- (c) being the occupier of any premises, permit those premises to be used for the purpose of the preparation of opium for smoking or the sale or smoking of prepared opium;
- (d) be concerned in the management of any premises used for any purpose referred to in paragraph (c);
- (e) have in his possession any pipes or other utensils for in connexion with the smoking of opium or any utensils used in connexion with the preparation of opium for smoking; or
- (f) smoke or otherwise use prepared opium or frequent a place used for the purpose of opium smoking.

Part III – Medicinal opium, cocaine, morphine, and other drugs

10. Application of this Part

- (1) Save as is provided in Part IV, the drugs to which this Part applies are the drugs specified in the Schedule.
- (2) If it appears to the Minister that any derivative of morphine or cocaine or of any salts of morphine or cocaine or any alkaloid of opium or any other drug of whatever kind not specified in the Schedule—
 - (a) is or is likely to be productive, if improperly used, of ill effects substantially of the same character or nature as or analagous to those produced by morphine or cocaine; or
 - (b) is capable of being converted into a substance which is likely to be productive, if improperly used, of such effects;he may by notice published in the *Gazette* apply this Part to such derivative or alkaloid or drug in the same manner as it applies to drugs specified in the Schedule.
- (3) The Minister may by notice published in the *Gazette* apply this Part, with such modifications as may be specified, to any of the following drugs—
 - (a) methylmorphine (commonly known as codeine); and
 - (b) ethylmorphine; and
 - (c) their respective salts.
- (4) If it is made to appear to the Minister that a finding with respect to a preparation containing any of the drugs to which this Part applies has, in pursuance of article 8 of the Geneva Convention (No. 1),

been communicated by the Economic and Social Council of the United Nations to the parties to the said Convention, the Minister may by notice published in the *Gazette*, declare that this Part shall, as from such date as may be specified in the notice, cease to apply to the preparation specified therein.

11. Restriction on import and export of drugs to which this Part applies

No person shall import into or export from Malawi any drugs to which this Part applies, except under and in accordance with the terms of a licence issued by the Minister.

12. Power to control manufacture, sale, etc, of drugs to which this Part applies

- (1) For the purpose of preventing the improper use of the drugs to which this Part applies, the Minister may by regulation prohibit, control, or restrict the manufacture sale, possession, or distribution of those drugs and in particular, but without prejudice to the generality of the foregoing—
 - (a) prohibit the manufacture of any such drug except on premises licensed for the purpose by the Minister and subject to any conditions specified in the licence;
 - (b) prohibit the manufacture, sale or distribution of any such drug except by persons licensed or otherwise authorized under the regulations by the Minister and subject to any conditions specified in the licence or authority;
 - (c) regulate the issue of prescriptions containing any such drug and the dispensing of any such prescriptions; and
 - (d) require persons engaged in the manufacture, sale, or distribution of any such drug to keep such books and furnish such information either in writing or otherwise as may be prescribed by the regulations.
- (2) Regulations made under this section shall provide for authorizing a person lawfully carrying on business in accordance with any law relating to pharmacy and poisons as an authorized seller of poisons—
 - (a) in the ordinary course of his retail business to manufacture, at any premises duly registered under any such law, any preparation, admixture or extract of a drug to which this Part applies; or
 - (b) to carry on at any such premises as aforesaid the business of retailing, dispensing, or compounding any such drug,subject to the power of the Minister to withdraw the authorization in the case of a person who has been convicted of an offence against this Act and who cannot, in the opinion of the Minister, properly be allowed to carry on the business of manufacturing or selling or distributing, as the case may be, any such drug.
- (3) Nothing in any regulations made under this section shall be deemed to authorize the sale by retail of poisons by a person who is not qualified in that behalf under or otherwise than in accordance with any law relating to pharmacy and poisons or to be in derogation of any such law prohibiting, restricting, or regulating the sale of poisons.

Part IV – Control of trade in new drugs

13. Prohibition of trade, etc., in new drugs

No person shall trade in or manufacture for the purposes of trade any product obtained from any of the phenanthrene alkaloids of opium or from the ecgonine alkaloids of the coca leaf, noticing a product which was on the 13th July, 1931, being used for medical or scientific purposes:

Provided that if the Minister is satisfied that any such product is of medical or scientific value, he may by notice published in the *Gazette* direct that this section shall cease to apply to that product.

14. Power to apply Part III to new drugs

If it is made to appear to the Minister that a decision with respect to any product mentioned in [section 13](#) has, in pursuance of article 11 of the Geneva Convention (No. 2), been communicated by the Secretary-General of the United Nations to the parties to the said Convention, the Minister may by notice published in the *Gazette*, as the circumstances require, either declare that Part III applies or apply to that product in the same manner as they apply to the drugs to which Part III applies, or apply Part III to that product with such modifications as may be specified in the notice.

Part V – General

15. Appointment of inspectors

- (1) Subject to subsection (2), the Minister shall appoint one or more inspectors for the purpose of enforcing this Act.
- (2) No person shall be qualified for appointment as an inspector unless he is a person duly authorized to act as a compounder or dispenser of poisons or drugs in terms of any law relating to pharmacy and poisons.

16. Powers of inspection

- (1) Any inspector shall, for enforcing this Act, have power at all reasonable times to enter the premises on which any chemist and druggist, general dealer, or licensed manufacturer of any drug to which this Act applies carries on business, and any premises owned or occupied by any person authorized to be in possession of any such drug, and to enter any other premises in which he has reasonable cause to suspect that an offence against this Act has been committed, and in either case shall have power to make such examination and inquiry and do such other things, including the checking of stocks and the taking, on payment therefor, of samples as may be necessary for ascertaining whether this Act is being complied with.
- (2) All books, records, and documents required to be kept by any person under this Act shall be open to inspection by any superior police officer or by any other police officer authorized in writing by a magistrate or by a superior police officer.
- (3) If any person wilfully delays or obstructs an inspector or a police officer in the exercise of his powers under this section, or refuses to allow any sample to be taken in accordance with this section, or fails without reasonable excuse to give any information which he is duly required under this section to give, he shall be guilty of an offence.

17. Powers of search, seizure, and forfeiture

- (1) Any inspector, any customs officer any police officer of or above the rank of sergeant, and any other police officer authorized thereto in writing by a magistrate or by a superior police officer may at any time—
 - (a) search any person suspected upon reasonable grounds of being in unlawful possession of drugs to which this Act applies or plants from which such drugs are derived: Provided that a person shall be searched only by a person of like sex;
 - (b) search any premises, place, receptacle, aircraft, ship, train, or other vehicle of whatsoever description wherein or whereby it is suspected upon reasonable grounds that such drugs are being produced, kept, used, sold, or distributed in contravention of this Act.
- (2) Any inspector, any customs officer, any superior police officer, and any other police officer authorized thereto in writing by a magistrate or by a superior police officer may at any time enter upon and inspect any land, building, or other structure on or in which plants, from which drugs to

which this Act applies are derived, may be found, for the purpose of ascertaining if any such plants are being cultivated in contravention of this Act.

- (3) If on any search or inspection made under this section any drug to which this Act applies, pipe, receptacle, or appliance for smoking or using the same, or any plant which it is suspected upon reasonable grounds is being cultivated in contravention of this Act is found, it may be seized and removed, together with any books, accounts, or documents relating thereto.
- (4) Notwithstanding subsections (1) and (2), if any delay involved in securing written authority from a magistrate or a superior police officer would defeat the objects of this section, it shall be lawful for any police officer who is required by those subsections to have that written authority, to exercise, on the production by him, if he is not in uniform, of proof of his identity, the powers conferred by this section without written authority, but he shall as soon as possible thereafter report to his commanding officer or to a magistrate what he has done.
- (5) Any person who resists, hinders, or obstructs an inspector or other person in the lawful exercise of his powers under this section shall be guilty of an offence.
- (6) If on the trial of any person for contravening or failing to comply with any provision of this Act or any condition of any authority or licence issued thereunder it is proved that any drug, pipe, receptacle, appliance, or plant seized under this section was produced, possessed, kept, used, sold, distributed, or cultivated in contravention of this Act, it shall be forfeited.

18. Persons upon whom powers of inspection, etc. are conferred to produce proof of identity

Any person upon whom powers of inspection, search, seizure, or forfeiture are conferred under this Act who fails on demand to produce—

- (a) in the case of an inspector, a certificate under the hand of the Secretary for Health of his appointment as an inspector;
- (b) in the case of—
 - (i) a customs officer; or
 - (ii) a superior police officer, who is not in uniform, proof of his identity.
- (c) in the case of a police officer authorized in writing by a magistrate or by a superior police officer to exercise those powers, his authority in writing;

shall not, save as is provided in [section 17](#) (4), thereafter be entitled to exercise those powers until he has produced that certificate, proof of identity, or authority in writing, as the case may be.

19. Offences and penalties

- (1) Any person—
 - (a) who acts in contravention of or fails to comply with any provision of this Act;
 - (b) who acts in contravention of, or fails to comply with, the conditions of a licence issued or authority granted under, or in pursuance of this Act;
 - (c) who for the purpose of obtaining, for himself or for any other person, the issue grant or renewal of any such licence or authority as aforesaid, makes a declaration or statement which is false in any particular, or knowingly utters, produces, or makes use of any such declaration or statement or a document containing the same; or
 - (d) who in Malawi aids abets counsels, or procures the commission in a place outside Malawi of an offence punishable under a corresponding law in force in that place, or does an act

preparatory to or in furtherance of an act which, if committed in Malawi, would constitute an offence against this Act,

shall subject to subsection (2), be liable to a fine of K500,000 and to imprisonment for life.

- (2) No person shall, on conviction for any offence or contravening or failing to comply with any provisions of this Act relating to the keeping of books or the issuing or dispensing of prescriptions containing any drug to which this Act applies, be sentenced to imprisonment without the option of a fine or to pay a fine exceeding K2,000 if the court dealing with the case is satisfied that the offence was committed through inadvertence and was not preparatory to, or committed in the course of, or in connexion with, the commission or intended commission of any other offence against this Act.
- (3) Any drug or other article forfeited under this Act shall, unless the court otherwise directs, be burned or otherwise destroyed in the presence of a police officer of or above the rank of sergeant, who shall transmit to the court a certificate under his hand stating the circumstances in which the forfeiture took place, the quantity forfeited, and other particulars showing his compliance with the Act.

[20 of 1995]

20. Power of arrest

Any police officer may arrest without warrant a person who has committed, or attempted to commit, or is reasonably suspected by such officer of having committed or attempted to commit an offence against the Act if he has reasonable grounds for believing that a person who abscond unless arrested, or if the name and address of that person are unknown to, and cannot be ascertained by, him.

21. Licences and authorities

- (1) A licence or authority issued for the purposes of this Act by the Minister may be issued on such terms and subject to such conditions, including in the case of a licence, the payment of a fee, as the Minister may fix.
- (2) Whenever the Minister is empowered under any provision of this Act to issue any licence or authority, he may delegate to the Secretary for Health such power, subject to the right of any person to whom the issue of such licence or authority has been refused to appeal in writing to the Minister against such refusal.

Schedule

Drugs to which Part III applies

1. Medicinal opium.
2. Any medicinal extract or tincture derived from the plant *Cannabis sativa L.* and any preparation, not being a preparation capable of external use only, made from such medicinal extract or tincture.
3. Morphine and its salts.
4. Cocaine (including synthetic cocaine) and ecgonine and their respective salts, and the esters of ecgonine and their respective salts. (For the purposes of this act, the expression "ecgonine" means laevoecgonine and includes any derivatives of ecgonine from which it may be recovered industrially).
5. Any solution or dilution of morphine or cocaine or their salts in an inert substance, whether liquid or solid, containing any proportion of morphine or cocaine, and any preparation, admixture, extract, or other substance (not being such a solution or dilution as aforesaid) containing not less than one-fifth per cent, of morphine or one-tenth per cent, of cocaine or of ecgonine.
6. Diacetylmorphine (commonly known as diamorphine or heroin) and the other esters of morphine and their respective salts.
7. Dihydrohydrocodeinone (also known as oxycodone);

- Dihydrocodeinone (also known as Hydrocodone);
- Dihydromorphinone (also known as Hybromorphone);
- Acetyldihydrocodeinone;
- Dihydromorphine;
- their esters, and the salts of any of these substances and of their esters.
8. Morphine-N-oxide (commonly known as genomorphine) also the morphine-N-oxide derivatives, and the other pentavalent nitrogen morphine derivatives.
9. Thebaine and its salts, and (with the exception of methylmorphine, commonly known as codeine and ethylmorphine, and their respective salts), benzylmorphine and the other ethers of morphine and their respective salts.
10. Any preparation, admixture, extract or other substance containing any proportion of any of the substances mentioned in paragraphs 6,7, 8 and 9.
11. The following substances and their salts, and any preparation, admixture, extract, or other substance containing any proportion of any of the substances or salts—
- Pethidine (1-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester);
- Ketobemibone (4-(3-hydroxyphenyl)-1-methyl-4-piperidyl ethyl ketone or 1-methyl-4-metahydroxyphenyl-4-propionyl-piperidine);
- Hydroxypethibine (1-methyl-4-(3-hydroxyphenyl)-piperidine-4-carboxylic acid ethyl ester or 1-methyl-4-metahydroxyphenylpiperidine-4-carboxylic acid ethyl ester);
- Alphaprodine (#-1, 3-dimethyl-4-phenyl-4-propionoxypiperidine);
- Betaprodine (#-1, 3-dimethyl-4-phenyl-4-propionoxypiperidine);
- Betameprodine (#-1-methyl-3-ethyl-4-phenyl-4-propionoxypiperidine);
- Methadone (4, 4-diphenyl-6-dimethylaminoheptanone-3 or 6-dimethylamino-4, 4-diphenyl-3-heptanone);
- Isomethadone (4, 4-diphenyl-5-methyl-6-dimethylaminoheptanone-3 or 6-dimethylamino-5-methyl-4, 4-diphenyl-3-hexanone);
- Methadol (4, 4-diphenyl-6-dimethylaminoheptanol-3 or 6-dimethylamino-4,4-diphenyl-3-heptanol);
- #-Methadol (#-6-dimethylamino-4, 4-diphenyl-3-heptanol);
- Methadyl acetate (4, 4-diphenyl-6-dimethylamino-3-acetoxyheptane or 6-dimethylamino-4, 4-diphenyl-3-acetoxyheptane);
- #-Acetylmethadol (#-6-dimethylamino-4, 4-diphenyl-3-acetoxyheptane);
- #-Acetylmethadol (#-6-dimethylamino-4, 4-diphenyl-3-acetoxyheptane);
- Phenadoxone (4, 4-diphenyl-6-morpholinoheptanone-3 or 6-morpholino-4,4-diphenyl-3-heptanone);
- Racemorphan (d, l-3-hydroxy-N-methylmorphinan);
- Levorphan (1-3-hydroxy-N-methylmorphinan);
- Racemethorphan (d, l-3-methoxy-N-methylmorphinan);
- Levomethorphan. (1-3-methoxy-N-methylmorphinan);
- 3-dimethylamino-1, 1-di-(2-thienyl)-1-butene;
- 3-ethylmethylamino-1,1-di-(2-thienyl)-1-butene.