

Summary of the Drugs and Drug trafficking Act, no. 140 of 1992

It is illegal to use, carry and deal in narcotic substances.

This Act seeks as its primary aim to address the problem of drug use, abuse and trafficking in South African society. The legal framework which it provides defines it as illegal to use or be in possession of, or to deal in, drugs and in certain cases to manufacture or supply substances related to the drug trade. It also defines the duty to report certain information to the police, and how the police may use its powers to handle drug offences.

What kinds of actions are considered illegal?

No person shall be allowed to:

- Manufacture and supply scheduled substances, which are substances used in the unlawful manufacture of drugs.
- Use or possess any substance which produces a dependency. The Act allows for a number of exceptions however. These are as follows:
 - the person is a patient and has received the substance from a medical practitioner as part of a medical prescription
 - he has acquired or bought the substance for medical purposes.
 - he is legally entitled to use or deal in such substances in his professional capacity e.g. as a dentist, vet, nurse, or pharmacist.
 - he is an employer of a person legally entitled to use or deal in such substances, and therefore does so as part of his professional duties.
 - deal in drugs, or any substance that produces a dependency. The same exceptions apply to this law as those listed above.
- Provide false information to the police related to a drug offence or hinder in any way a police investigation into a drug-related offence.

What information must be reported?

A person has a legal duty to disclose to a legal authority any information related to a drug offence. This duty overrides any rule or law which prohibits him from revealing information related to the business or affairs of another person.

If the owner or manager of a place of entertainment has reason to suspect that any person in that place has drugs in his possession or is dealing in drugs, he must report his suspicion to the police as soon as possible. If requested, he must also provide information about the person concerned to the police.

If any stockbroker or financial trader has reason to believe that property he has received from another person is involved in some kind of drug offence, he must report his suspicion as soon as possible to the police or legal authority. This duty overrides any obligation to secrecy.

How should investigations be conducted?

If a police officer has reason to suspect that drug-related offence has been committed, he has the power to search any premises, vehicle, vessel or aircraft which is suspected to contain the illegal substance.

By the same measure, if a police officer suspects that any person has committed a drug-related offence, he has the power to search that person and to examine anything in that person's possession. A woman, however, may only be searched by a woman. *This has changed due to a recent case that set aside sections 11(a) and (g) of ACT 40 pertaining to the searching of a person or their home. Must abide by normal standards of the law and constitution – ie a search warrant is usually needed.*

If a police officer suspects that any article which has been sent through the post contains an illegal substance, he may intercept that article and examine its contents.

A police officer has the power to question any person who might be able to provide information about a drug-related offence. He also has the power to examine any register, record or document and to make a copy of it, in the course of investigating a drug-related offence.

If a magistrate receives information given under oath which leads him to believe that a person has withheld information related to a drug offence, he may issue a warrant of arrest for that person. Such a person will then be sent to a place of interrogation

where they will be detained until the magistrate orders their release. They will be brought before the magistrate within 48 hours of their arrest, and thereafter, not less than once every ten days.

What are the penalties for drug-related offences?

Any person who:

- **obstructs or fails to cooperate** with a police investigation into a drug-related offence shall be liable to imprisonment for no longer than **twelve months** or a fine, or to both a fine and imprisonment.
- **uses or possesses an illegal substance** or tries to frame another person by placing such a substance in their vehicle or premises, is liable to a fine or to imprisonment for no longer than **five years**, or to a fine and imprisonment.
- **deals in an illegal drug** is liable to a fine or to imprisonment for no longer than **10 years**, or to a fine and imprisonment.
- **illegally manufactures a scheduled substance, or who use or possesses a dangerous dependency-producing substance**, is liable to a fine or to imprisonment for no longer than **15 years**, or to both a fine and imprisonment.
- **deals in a dangerous dependency-producing substance** is liable to imprisonment for no longer than **25 years**, or to both imprisonment and a fine.

What are the presumptions regarding liability?

- When prosecuting a drug-related offence, it shall be assumed that the person charged is not a health professional, or wholesale dealer in, or manufacturer of, pharmaceutical products, unless otherwise proven.
- If a drug was found in the immediate vicinity of a person, it will be assumed that it was found in the possession of that person, unless otherwise proven.
- If a person was found in possession of dagga exceeding 115 grams, or possessed an illegal substance while on school grounds or within 100 metres of such grounds, it will be assumed that the person dealt in dagga or the substance in question, unless otherwise proven.

- If a person is the owner, occupier or manager of cultivated land on which dagga plants were found, it will be assumed that the person dealt in dagga plants unless otherwise proven.
- If it has been proven that a person was in possession of property which was the proceeds of a defined crime, it will be assumed that the person knew that it was the proceeds of crime, unless he proves that he acquired the property in good faith and that he had no reasonable grounds for suspecting that the property was the proceeds of crime.
- If a drug offence was committed at a place of entertainment, it will be assumed that the manager, occupier or owner of that place had reason to suspect that such an offence had occurred, unless he proves otherwise.
- Any offence committed by an employee or agent shall be considered an offence committed by his employer or principal, unless evidence proves that he was not directly involved in, or did not actively permit, the offence, or that he took all reasonable steps to prevent the offence from being committed.

What will be forfeited when a drug offence is prosecuted?

Whenever a person is convicted of a drug-related offence, any substance, animal, vehicle, container or immovable property that was used in connection the offence, will be forfeited to the State for a period of 30 days. This will not affect any interest which any person other than the convicted person may have in the property, item or article.

If any person other than the convicted person claims through application that he has an interest in such an article, item or property, the State may return it to the applicant, or compensate him for it, if it has been disposed of. The application must be made within a period of three years from the date that the item, article or property was forfeited to the State.

Schedules

SCHEDULE 1 – Part I and II -Substances useful for the manufacture of drugs.

SCHEDULE 2

PART 1 -Dependence Producing substances

PART 11 - Dangerous Dependence Producing substances

PART 111 - Undesirable Dependence Producing Substances

The salts of all substances has been added All Homologues of the listed substances added