

NARCOTIC DRUGS (CONTROL, ENFORCEMENT AND SANCTIONS) LAW, 1990 (PNDCL 236)

The purpose of this Law is to bring under one enactment offences relating to illicit dealing in narcotic drugs and to further put in place provisions that will prevent illicit narcotic drug dealers benefiting from their crimes.

In view of the rising incidence of narcotic drug abuse in the country and the threatening dimensions that illicit narcotic drug dealing has taken internationally, it has become necessary to revise the existing laws on narcotic drugs by clearly spelling out the offences and providing realistic and deterring punishments in respect of them.

Furthermore, Ghana as a signatory to the United Nations Convention on Narcotic Drugs and Psychotropic Substances is obliged to enact national laws to implement the provisions of the Convention.

To this end, provision is made in this Law for the pursuit, seizure and forfeiture of equipment used in the commission of narcotic drug offences and of properties and proceeds acquired or derived from narcotic drug offences or illicit narcotic drug dealings.

In furtherance of international co-operation and mutual assistance among member countries parties to the Convention, provision is made in this Law for assistance, on request, to foreign countries to enable them pursue and seize in Ghana, through due process of law, properties acquired or derived from illicit narcotic drug activities.

The following are the essential elements of the Law.

PART I—Section 1-6

Under this Part, importation, exportation, possession, cultivation, manufacture, supply, use and administration of any narcotic drug without lawful authority is prohibited.

Under section 7 a court or Tribunal that convicts any person has discretion not to impose the minimum sentence where the circumstances of the case demand.

Section 8 (1) repeats the provision in the current law where if an accused person with two previous convictions for specified narcotic drug offences is again convicted for such an offence he shall be liable to imprisonment for life.

Subsection (2) of section 8 enables District Magistrates and District Tribunals to try offences under Part I but since most of the stipulated minimum sentences are beyond their jurisdiction, convicts must be sent to the appropriate higher Courts or Tribunals for sentence.

Under section 9 (1) the meaning of narcotic drugs is defined and section 9(2) provides for amendment of the Schedules by the Secretary.

PART II

This Part deals with activities in relation to properties which constitute offences.

Section 10 makes any dealing directly or indirectly in relation to any property whether in Ghana or outside Ghana with the intention of managing, promoting, establishing or carrying on any activity which is an offence under Part I an offence; and a person with intention to assist or facilitate such a crime also commits an offence.

Section 11 makes possession of property or proceeds from any property known to have been obtained from activities which constitute a narcotic drug offence in Ghana, an offence, wherever the offence was committed.

Section 12 prohibits the laundering of proceeds from narcotic drug offences wherever committed.

Where any person is convicted of a narcotic drug offence under this Law, the equipment or property, the subject matter of the offence, shall be forfeited to the State under section 13 (1).

However, section 13 (2) exempts carriers from liability where the offence was committed by someone other than the owner of the carrier and it is proved to the court that the use of the carrier for the offence was without the owner's knowledge or consent.

Under section 14, once, there is proof that a narcotic drug offence has been committed, any equipment or property used for the commission of the offence shall be forfeited notwithstanding that no person has been convicted of the offence . . .

PART III

This Part deals with the pursuit and forfeiture of illegal properties.

Under section 16 the Attorney-General, may, where he has reason to believe that a person has or is holding on behalf of another person property suspected to be illegal property under this Law, make an ex parte application to a court for the forfeiture of the property specified in the application from the person named therein.

Under section 15 is specified persons, who can be proceeded against by the Attorney-General, referred to as “liable persons”, these are persons who have been convicted of narcotic drug offences, either in Ghana or of similar offences abroad; persons knowingly holding or concealing illegal properties; persons to whom such properties have been passed, unless they hold them as purchasers in good faith for valuable consideration. Where a person who can be proceeded against under section 15 dies, his personal representatives or where there are no personal representatives any beneficiaries may be pursued.

Under section 17, a court may on hearing the Attorney-General on an application under section 16, cause a notice to be issued to the liable person named in the application to show cause why the properties specified by the Attorney-General in the application should not be forfeited, and the Court shall rule after hearing the parties, and make such order as it deems just.

Under section 18, the Court has power to order forfeiture where the person named as liable fails to appear.

Under section 19, the Court may where it is satisfied that illegal property has been sold to a purchaser in good faith or that the property cannot be traced or is otherwise irrecoverable, order, among others, that an amount equal to the full value of the illegal property shall be paid.

Failure to pay attracts imprisonment under section 19 (3), and where the liable persons dies before or after the Court order, the representative of his estate or any beneficiary can be pursued.

Under section 20 (1), all contracts and dealings effected by any person against whom notice has been issued under Part III in respect of the illegal property are null and void.

Under section 21, proceedings do not abate upon the death of the liable person, and any proceedings pending are to be continued against his personal representatives or beneficiaries.

Under section 22 (1) only the High Court, National or Regional Public Tribunals have original jurisdiction under Part III of the Law.

PART IV

This Part deals with arrest, investigation and seizure.

Under section 23, a police officer has power to arrest without warrant any person whom he reasonably suspects to have committed or to be committing an offence under this Law.

Section 24 deals with powers of entry, search and seizure on premises suspected to be used for offences under the Law and section 25 deals with body searches of suspects which can include both external and internal body searches, the latter of which must be conducted by a medical officer.

Females are only to be searched by other females; obstruction of a person inspecting or searching is an offence under section 26.

Section 27 empowers a magistrate or District Tribunal to grant, on an application by a police officer, a right to intercept, detain, open and search any communication or postal article which the magistrate or District Tribunal considers likely to contain relevant information or substance for prosecution under the Law. This application can also extend to a request to the magistrate or District Tribunal for authorisation to intercept transmitted messages and to listen to any conversation by telecommunication.

Section 28 gives the Attorney-General special powers to authorise any police officer, by a written order, to investigate, inspect and take copies of any documents held by a bank or financial institution among others, for purposes relating to an investigation into a narcotic drug offence under this Law or under a corresponding foreign law.

Under section 29, the Attorney-General has further powers for the purposes of any investigation into proceedings relating to a narcotic drug offence suspected to have been committed under this Law or under any corresponding foreign law, or for purposes of Part III of this Law, to require, by written notice, any person whom the Attorney-General has reason to believe has information that

would assist in any such investigation, to furnish him in writing a sworn statement, identifying his properties both inside and outside Ghana, identifying properties sent outside the country by him within a specified period, the estimated value and whether the property is held by some other person on his behalf and setting out all his sources of income, earnings or assets. Under section 30 the Attorney-General also has power in like manner to request any public officer to furnish any document in his possession.

Under sections 31 to 34, where the Attorney-General intends to make an application against any person to show cause why certain specified properties should not be forfeited, or where he intends to institute court proceedings against any person for a narcotic drug related offence or where proceedings have already been instituted and pending, he may by order require any person named in the order to disclose the whereabouts of all properties held by him, prevent him from dealing, expending or disposing of any property the subject matter of the proceedings, not to remove the properties or not to leave Ghana without prior written approval of the Attorney-General. This order may extend to any person holding property for or on behalf of the person named in the order and the order may require such latter person to also make such disclosure and prohibit such latter person from disposing of any specified property without the written approval of the Attorney-General. Under subsection (7) of section 31, failure to comply constitutes an offence. The method of seizure of movable and immovable property suspected to be illegal for the purposes of this law is dealt with under sections 35 and 36.

Under section 37, all unauthorised dealings with regard to seized property after the seizure are void. Sections 39 and 40 provide for the release of property seized under the Law where there is no prosecution or further action in respect of the property and no claim within a specified period from the date of the seizure.

PART V

This Part deals with vesting of properties forfeited under the Law in the State.

PART VI

Section 42 deals with co-operation and assistance to foreign authorities who request for assistance in relation to drug related offences in the foreign country and enjoins the Ghanaian authorities to render assistance.

Section 44 indicates how the Ghanaian authority should assist with service of processes or documents from abroad.

Section 45 deals with transmission of copies of statements or records or results of investigations in Ghana to the requesting foreign authority.

Section 46 makes it clear that the Ghanaian authority may authorise any police officer to examine any person specified in a request from a foreign authority in respect of a drug related offence.

Under section 47, the examination of a person suspected of a drug related offence and specified by a foreign authority as being so suspected may, on an application by the Attorney-General or the Ghanaian authority to a magistrate or District Tribunal, be ordered by the magistrate or the Chairman of the District Tribunal who shall carry out the examination.

Section 48 allows the Ghanaian authority to authorise search of any person specified by a foreign authority in a request and a police officer so authorised shall search the premises and may under section 49 seize any property requested by the foreign authority as being property liable for forfeiture under the law of the foreign country or that the property is required as evidence in a drug related offence. The section sets out the modalities for transmission of any property seized and the return of the property where it is found not to be illegal property.

Under section 50, on a request from a foreign authority the Ghanaian authority may intercept communications for the purpose of rendering assistance to the foreign authority in relation to any drug related matter.

Section 52 deals with the transfer of a person in prison in Ghana to a foreign country at the request of a foreign authority as a witness in a prosecution in that country. Any such transfer must be authorised by the

Secretary and section 53 deals with arrangements that may be entered into between the foreign authority and the Government of Ghana with regard to payment.

PART VII

Section 55 sets up a Narcotics Control Board under the control and supervision of the Ministry of the Interior.

Section 56 deals with punishment for attempt and conspiracies for offences under the Law.

Section 57 deals with offences by bodies of persons. Under section 59 the powers of the police are clearly indicated to be in addition to their powers under any other law.

Section 60 imposes a penalty not exceeding ₵500,000.00 or imprisonment for a term not exceeding three years or both for any offence under the Law for which no specific penalty has been imposed and provides in subsection (2) for analyst reports.

Section 61 deals with the powers of the Secretary to make regulations and sections 62 and 63 deal with interpretation and repeals respectively.

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ARRANGEMENT OF SECTIONS

Section

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1. Importation and exportation of narcotic drugs.
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3. Prohibited business relating to narcotics.
4. Cultivation of plants for narcotic purposes.
5. Use of narcotic drugs prohibited.
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7. Special mitigating factors.
8. Previous convictions.
9. Meaning of narcotic drugs.

PART II—OFFENCES IN RELATION TO PROPERTY

10. Use of property for narcotic offences.
11. Possession of property obtained by trafficking in narcotic drugs.
12. Laundering proceeds from narcotic drug offence.
13. Forfeiture of property upon conviction.
14. Forfeiture on proof of offence under Part I or Part II.

PART III—FORFEITURE OF PROPERTY OF LIABLE PERSON

15. Persons liable to be proceeded against.
16. Application to the Court.
17. Notice to show cause against forfeiture.
18. Forfeiture of Property in certain circumstances.
19. Forfeiture of certain types of property.
20. Certain dealings to be null and void.
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22. Proceedings under this Part to be within the criminal jurisdiction of the High Court, etc.

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23. Power of arrest and detention.
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25. Search of person.
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27. Power to intercept communication.
28. Special powers of investigation.
29. Attorney-General's powers to obtain information.
30. Power of Attorney-General to request information from certain officers.
31. Order by Attorney-General in relation to a person intended to be proceeded against.
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33. Stay of civil proceedings during existence of order.
34. Cessation of order.
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37. Dealings in seized property after seizure to be void.
38. Validity of seizure or sale, etc. not to be affected by certain objections.
39. Release of property seized.
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PART V—FORFEITURE

41. Vesting of forfeited property in state.

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42. Request for an authority to render assistance.
43. Information and participation in relation to persons, bodies, etc.
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45. Transmission of copies of statements or records or results of investigation.
46. Examination of witnesses by an authorised police officer.
47. Examination of witness by a Magistrate or District Tribunal.
48. Search of person or premises.
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50. Interception of communication.
51. Exercise of powers of investigation by the Attorney-General.
52. Transfer of a person in custody in Ghana into the custody of an authority in a foreign country.
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54. Interpretation of Part V.

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55. Establishment of Narcotics Control Board.

PART VIII—GENERAL

56. Attempts, abetments and criminal conspiracies.
57. Offences by bodies of persons.
58. Notice or order not to be invalid for error in description.
59. Power of police officers under other laws relating to criminal procedure.
60. General penalty and evidence.
61. Regulations.
62. Interpretation.
63. Repeal.

SCHEDULES

Schedule I

Schedule II

IN pursuance of the Provisional National Defence Council (Establishment) Proclamation, 1981, this Law is hereby made:

PART I—OFFENCES RELATING TO NARCOTIC DRUGS

Section 1—Importation and Exportation of Narcotic Drugs.

(1) Any person who imports or exports any narcotic drug without a licence issued by the Secretary for Health for that purpose commits an offence and shall on conviction be liable to imprisonment for a term of not less than ten years.

(2) The Secretary for Health may grant a licence for the importation of narcotic drugs if on an application made to him by such persons as may be prescribed he is satisfied that the licence can be properly granted.

(3) A licence may be granted under subsection (1) of this section subject to such conditions as the Secretary for Health may specify.