

**Reprint  
as at 1 October 2018**

**Misuse of Drugs Amendment Act 1978**

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**Contents**

	Page
Title	4
1 Short Title	4
<b>Part 1</b>	
<b>Amendments to principal Act</b>	
2 Functions of Minister	5
3 Maximum penalties for dealing with controlled drugs increased	5
4 Conspiring to commit certain offences	5
5 Court to consider possibility of fine in addition to imprisonment <i>[Repealed]</i>	5
6 Use of premises or vehicle	5
7 Issue of usable quantity	5
8 Analyst's certificate to be evidence of weight <i>[Repealed]</i>	5
9 Protection of Police officers	5
<b>Part 2</b>	
<b>Special provisions relating to detection, enforcement, and sentencing</b>	
10 Interpretation	5

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this eprint. See the notes at the end of this eprint for further details.

**This Act is administered by the Ministry of Health.**

11	Application of Part	8
	<i>Special powers of Police and Customs officers</i>	
12	Allowing delivery of unlawfully imported drugs or precursor substances for purpose of detection, etc	8
12A	Searches relating to persons involved in delivery under section 12 <i>[Repealed]</i>	10
12B	Seizure of items found during search under section 12A <i>[Repealed]</i>	10
12C	Obligations on member of police or Customs officer conducting search under section 12A to identify self and power relied on <i>[Repealed]</i>	10
12D	International controlled delivery and liability for offences	10
13	Use of tracking devices by Police and Customs officers <i>[Repealed]</i>	11
	<i>Internal concealment</i>	
13A	Power to detain on belief of internal concealment	11
13B	Duties of officer in ordering detention	12
13C	Internal examination of detained person	12
13D	Certificate by person conducting examination	13
13E	Detention warrant	14
13EA	Searches associated with detention warrant	15
13EB	Definition of rub-down search	16
13EC	Definition of strip search	17
13ED	Restrictions on searches associated with detention warrant	18
13EE	Reporting search associated with detention warrant	18
13F	On grant of warrant, Judge to appoint barrister or solicitor and medical practitioner	18
13G	Rights of access to person in detention	19
13H	Expiry of detention	20
13I	Renewal of warrants	20
13J	Powers of officers of Customs	22
13K	Inadmissibility of certain confessions or admissions by detained person	23
13L	Appeal against grant or renewal of detention warrant, etc	23
13M	Commissioner of Police and Chief Executive of New Zealand Customs Service to report to Parliament	24
	<i>Applications for interception warrants in relation to drug dealing offences</i> <i>[Repealed]</i>	
14	Application by Police for warrant to intercept private communications <i>[Repealed]</i>	25
15	Matters on which Judge must be satisfied in respect of applications <i>[Repealed]</i>	25

*Applications for interception warrants in relation to prescribed  
cannabis offences*

*[Repealed]*

15A Application by Police for warrant to intercept private communications in relation to prescribed cannabis offences 25  
*[Repealed]*

15B Matters on which Judge must be satisfied in respect of applications relating to prescribed cannabis offences 25  
*[Repealed]*

*General provisions relating to interception of private  
communications*

*[Repealed]*

16 Contents and term of warrant *[Repealed]* 26

17 Effect of warrant *[Repealed]* 26

18 Renewal of warrants *[Repealed]* 26

19 Emergency permits *[Repealed]* 26

20 Security of applications *[Repealed]* 26

21 Destruction of irrelevant records made by use of interception device *[Repealed]* 26

22 Destruction of relevant records made by use of interception device *[Repealed]* 26

23 Prohibition on disclosure of private communications lawfully intercepted *[Repealed]* 26

24 Notice to be given of intention to produce evidence of private communication *[Repealed]* 27

25 Inadmissibility of evidence of private communications unlawfully intercepted *[Repealed]* 27

26 Restriction on admissibility of evidence of private communications lawfully intercepted *[Repealed]* 27

27 Privileged evidence *[Repealed]* 27

28 Report to be made to Judge on use of warrant or permit *[Repealed]* 27

29 Commissioner of Police to give information to Parliament *[Repealed]* 27

*Bail*

30 Bail allowable for drug dealing offence only by order of Judge *[Repealed]* 27

30A Bail may be continued or renewed by District Court *[Repealed]* 27

31 Judge may impose conditions of bail *[Repealed]* 28

32 Arrest of defendant who has absconded or is about to abscond while on bail *[Repealed]* 28

33 Arrest of defendant who fails to comply with any conditions of bail *[Repealed]* 28

34	Application of certain provisions of Summary Proceedings Act 1957 <i>[Repealed]</i>	28
35	Appeals against decisions of Judge relating to bail <i>[Repealed]</i>	28
36	Court of Appeal to hear and determine appeal <i>[Repealed]</i>	28
37	Execution of decision of Court of Appeal <i>[Repealed]</i>	28
	<i>Imposition of fines</i>	
38	Fine may reflect illicit gains	28
39	Court may impose greater fine having regard to previous dealings	29
40	Court's power not to be exercised in certain cases	29
41	Inability of offender to explain source of money or assets may be evidence	30
42	Court may treat alienated property as offender's	30
	<i>Enforcement of fines</i>	
43	Enforcement of fines	30
44	Enforcement of fines imposed in District Court <i>[Repealed]</i>	31
45	Fine imposed in District Court may be enforced in High Court	31
46	Garnishee proceedings <i>[Repealed]</i>	31
	<i>Parole</i>	
47	Parole <i>[Repealed]</i>	31
	<i>Administration of Part</i>	
48	Part to be administered in Ministry of Justice	31
	<b>Schedule 1</b>	32
	<b>Interception warrant</b>	
	<i>[Repealed]</i>	
	<b>Schedule 2</b>	32
	<b>Statement of rights</b>	

**An Act to facilitate the detection of certain drug dealing offences, to increase the maximum penalties that may be imposed in respect of such offences, and to amend the Misuse of Drugs Act 1975**

## **1 Short Title**

This Act may be cited as the Misuse of Drugs Amendment Act 1978, and shall be read together with and deemed part of the Misuse of Drugs Act 1975 (hereinafter referred to as the principal Act).

## **Part 1**

### **Amendments to principal Act**

#### **2 Functions of Minister**

This section inserted s 4A in the principal Act.

#### **3 Maximum penalties for dealing with controlled drugs increased**

(1) This subsection substituted a new subsection for s 6(2) of the principal Act.

(2) *[Repealed]*

Subsection (2) was repealed, as from 13 January 1983, by section 3(2) Misuse of Drugs Amendment Act 1982 (1982 No 151).

#### **4 Conspiring to commit certain offences**

(1) This subsection inserted subsection (2A) in s 6 of the principal Act.

(2) *[Repealed]*

Subsection (2) was impliedly repealed, as from 13 January 1983, by section 3(1) Misuse of Drugs Amendment Act 1982 (1982 No 151).

#### **5 Court to consider possibility of fine in addition to imprisonment**

*[Repealed]*

Section 5 was repealed, as from 1 October 1985, by section 150(1) Criminal Justice Act 1985 (1985 No 130).

#### **6 Use of premises or vehicle**

This section amended s 12(1) of the principal Act.

#### **7 Issue of usable quantity**

This section inserted s 29A of the principal Act.

#### **8 Analyst's certificate to be evidence of weight**

*[Repealed]*

Section 8 was repealed, as from 13 January 1988, by section 6(2)(a) Misuse of Drugs Amendment Act (No 2) 1987 (1987 No 193).

#### **9 Protection of Police officers**

This section inserted s 34A of the principal Act.

## **Part 2**

### **Special provisions relating to detection, enforcement, and sentencing**

#### **10 Interpretation**

(1) In this Part of this Act, unless the context otherwise requires,—

**Dealing in cannabis on a substantial scale** means—

- (a) Dealing (in any of the ways referred to in section 6(1) of the principal Act) with a substantial amount of a controlled drug in respect of which a prescribed cannabis offence may be committed:
- (b) Cultivation of a prohibited plant (being a prohibited plant in respect of which a prescribed cannabis offence may be committed) on a substantial scale:

Dealing in cannabis on a substantial scale: this definition was inserted, as from 1 February 1998, by section 3(2) Misuse of Drugs Amendment Act (No 2) 1997 (1997 No 96).

**Drug dealing offence** means,

- (a) In sections 30, 34, 38 to 41, 43, and 47, any offence against section 12C(1)(a) of the principal Act:
- (b) Any offence against section 6 of the principal Act—

in relation to a Class A controlled drug or a Class B controlled drug

Drug dealing offence: this definition was substituted, as from 12 May 1998, by section 13 Misuse of Drugs Amendment Act 1998 (1998 No 14).

**Emergency permit** means a permit granted under section 19 of this Act to intercept a private communication by means of an interception device

Emergency permit: this definition was amended, as from 1 October 2003, by section 35 Crimes Amendment Act 2003 (2003 No 39) by substituting the words “an interception device” for the words “a listening device”.

**facility** means an electronic address, phone number, or similar facility that enables private communications to—

- (a) take place between individuals; or
- (b) be sent to or from an identified individual

facility: this definition was inserted, as from 1 October 2003, by section 35 Crimes Amendment Act 2003 (2003 No 39).

**intercept**, in relation to a private communication, includes hear, listen to, record, monitor, acquire, or receive the communication either—

- (a) while it is taking place; or
- (b) while it is in transit

intercept: this definition was substituted, as from 1 October 2003, by section 35 Crimes Amendment Act 2003 (2003 No 39).

**interception device**—

- (a) means any electronic, mechanical, or electromagnetic instrument, apparatus, equipment, or other device that is used or is capable of being used to intercept a private communication; but
- (b) does not include a hearing aid or similar device used to correct subnormal hearing of the user to no better than normal hearing.

interception device: this definition was inserted, as from 1 October 2003, by section 35 Crimes Amendment Act 2003 (2003 No 39).

**Interception warrant** means a warrant granted under section 15 or section 15B of this Act to intercept a private communication by means of an interception device

Interception warrant: this definition was amended, as from 1 February 1998, by section 3(1) Misuse of Drugs Amendment Act (No 2) 1997 (1997 No 96) by inserting, after the expression “section 15”, the expression “or section 15B”.

Interception warrant: this definition was amended, as from 1 October 2003, by section 35 Crimes Amendment Act 2003 (2003 No 39) by substituting the words “an interception device” for the words “a listening device”.

**Listening device** [*Repealed*]

Listening device: this definition was repealed, as from 1 October 2003, by section 35 Crimes Amendment Act 2003 (2003 No 39).

**Organised criminal enterprise** means a continuing association of 3 or more persons having as its object or as 1 of its objects the acquisition of substantial income or assets by means of a continuing course of criminal conduct

Organised criminal enterprise: this definition was inserted, as from 1 February 1998, by section 3(2) Misuse of Drugs Amendment Act (No 2) 1997 (1997 No 96).

**Prescribed cannabis offence** means an offence against—

- (a) Section 6 of the principal Act in relation to a Class C controlled drug specified or described in Part 1 of Schedule 3 of the principal Act (other than *catha edulis* plant or coca leaf); or
- (b) Section 9 of the principal Act in relation to a prohibited plant of the genus *Cannabis*:

Prescribed cannabis offence: this definition was inserted, as from 1 February 1998, by section 3(2) Misuse of Drugs Amendment Act (No 2) 1997 (1997 No 96).

**private communication**—

- (a) means a communication (whether in oral or written form or otherwise) made under circumstances that may reasonably be taken to indicate that any party to the communication desires it to be confined to the parties to the communication; but
- (b) does not include such a communication occurring in circumstances in which any party ought reasonably to expect that the communication may be intercepted by some other person not having the express or implied consent of any party to do so.

private communication: this definition was substituted, as from 1 October 2003, by section 35 Crimes Amendment Act 2003 (2003 No 39).

**Tracking device** means a device capable of transmitting a signal to a receiver for the purpose of indicating the location of the device.

- (2) A reference in this Part of this Act to a party to a private communication is a reference to—

- (a) Any originator of the communication and any person intended by the originator to receive it; and
  - (b) A person who, with the express or implied consent of any originator of the communication or any person intended by the originator to receive it, intercepts the communication.
- (3) For the purposes of section 12 of this Act,—

**Craft, goods, package, and vehicle** have the same meanings as in section 5(1) of the Customs and Excise Act 2018

**Postal article** [*Repealed*]

Postal article: this definition was repealed, as from 1 April 1998, by section 62(1) Postal Services Act 1998 (1998 No 2). *See* clause 2 Postal Services Act Commencement Order 1998 (SR 1998/49).

**Proper officer of Customs** [*Repealed*]

Proper officer of Customs: this definition was repealed, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

Section 10(1) **drug dealing offence** paragraph (a): amended, on 26 March 2015, by section 4 of the Misuse of Drugs Amendment Act 1978 Amendment Act 2015 (2015 No 25).

Subsection (3) was substituted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

Section 10(3): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Subsection (3) was amended, as from 31 October 2003 by section 3(2) Misuse of Drugs Amendment Act (No 2) 2003 (2003 No 107) by substituting the expression “section 12” for the words “Sections 12 and 13”.

## 11 Application of Part

This Part of this Act shall apply notwithstanding anything in the Postal Services Act 1998 or the Customs and Excise Act 2018.

Section 11: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 11 was amended, as from 1 April 1998, by section 62(1) Postal Services Act 1998 (1998 No 2) by substituting the words “Postal Services Act 1998” for the words “Post Office Act 1959”. *See* clause 2 Postal Services Act Commencement Order 1998 (SR 1998/49).

### *Special powers of Police and Customs officers*

## 12 Allowing delivery of unlawfully imported drugs or precursor substances for purpose of detection, etc

- (1) Where any Customs officer acting in the course of his or her official duties believes on reasonable grounds that there is in or on any craft, package, mail, vehicle, or goods any controlled drug or precursor substance that has been imported into New Zealand in contravention of section 6(1)(a) or section 12AB of the principal Act, he or she may, for the purpose of his or her investigation of the matter, leave or replace that drug or precursor substance, or any portion of it, in or on the craft, package, mail, vehicle, or goods and may, in the same manner as if there had been delivery from Customs control,—



- (a) allow the craft or vehicle to leave; or
  - (b) allow the package, goods, or mail to be collected by or delivered to or on behalf of the consignee; or
  - (ba) allow the package, goods, or mail to be delivered by a person who has agreed to co-operate with Customs; or
  - (bb) deliver the package, goods, or mail; or
  - (c) return the package, goods, or mail to the appropriate carrier for delivery to the addressee—  
as the case may require.
- (2) No Customs officer who exercises any power conferred by subsection (1), and no officer or employee of any carrier who, in the course of his or her duties, does anything in respect of any package, goods, or mail returned to a carrier in accordance with that subsection (whether or not he or she knows that the package, goods, or mail contains a controlled drug or precursor substance), is under any criminal or civil liability in respect of the exercise of that power or, as the case requires, the doing of that thing.

The heading to section 12 was amended, as from 22 June 2005, by section 24(1) Misuse of Drugs Amendment Act 2005 (2005 No 81) by inserting the words “or precursor substances” after the words “imported drugs”.

Section 12 was substituted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

Subsection (1) was amended, as from 22 June 2005, by section 24(2)(a) Misuse of Drugs Amendment Act 2005 (2005 No 81) by inserting the words “or precursor substance” after the words “any controlled drug”.

Subsection (1) was amended, as from 22 June 2005, by section 24(2)(b) Misuse of Drugs Amendment Act 2005 (2005 No 81) by inserting the words “or section 12AB” after the expression “section 6(1)(a)”.

Subsection (1) was amended, as from 22 June 2005, by section 24(2)(c) Misuse of Drugs Amendment Act 2005 (2005 No 81) by inserting the words “or precursor substance” after the words “leave or replace that drug”.

Subsection (1) (except paragraph (c)) was amended, as from 1 April 1998, by section 62(1) Postal Services Act 1998 (1998 No 2) by substituting the word “mail” for the words “postal article”. *See* clause 2 Postal Services Act Commencement Order 1998 (SR 1998/49).

Section 12(1)(b): amended, on 1 October 2012, by section 334(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 12(1)(ba): inserted, on 1 October 2012, by section 334(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 12(1)(bb): inserted, on 1 October 2012, by section 334(3) of the Search and Surveillance Act 2012 (2012 No 24).

Subsections (1)(c) and (2) were substituted, as from 1 April 1998, by section 62(1) Postal Services Act 1998 (1998 No 2). *See* clause 2 Postal Services Act Commencement Order 1998 (SR 1998/49).

Section 12(1)(c): amended, on 1 October 2012, by section 334(4) of the Search and Surveillance Act 2012 (2012 No 24).

Section 12(2): amended, on 1 October 2012, by section 334(5) of the Search and Surveillance Act 2012 (2012 No 24).

Subsection (2) was amended, as from 22 June 2005, by section 24(3) Misuse of Drugs Amendment Act 2005 (2005 No 81) by inserting the words “or precursor substance” after the words “controlled drug”.

## **12A Searches relating to persons involved in delivery under section 12**

*[Repealed]*

Section 12A: repealed, on 1 October 2012, by section 334(6) of the Search and Surveillance Act 2012 (2012 No 24).

## **12B Seizure of items found during search under section 12A**

*[Repealed]*

Section 12B: repealed, on 1 October 2012, by section 334(6) of the Search and Surveillance Act 2012 (2012 No 24).

## **12C Obligations on member of police or Customs officer conducting search under section 12A to identify self and power relied on**

*[Repealed]*

Section 12C: repealed, on 1 October 2012, by section 334(6) of the Search and Surveillance Act 2012 (2012 No 24).

## **12D International controlled delivery and liability for offences**

- (1) In this section, an **international controlled delivery** means allowing a controlled drug or precursor substance (or substance substituted in the place of a controlled drug or precursor substance) to pass through or into the territory of 1 or more countries—
  - (a) with the agreement of the relevant law enforcement agencies of the countries which it is to pass through or into; and
  - (b) with a view to identifying persons involved in the commission of an offence—
    - (i) under section 6(1)(a) or section 12AB of the principal Act; or
    - (ii) that would, if done or committed in New Zealand, be an offence under either of those sections.
- (2) Nothing in subsection (3) affects the liability of any person charged with an offence under section 6(1)(a) or section 12AB or section 12AC of the principal Act.
- (3) Any member of the police, Customs officer, or officer of a relevant law enforcement agency with which there is an agreement under subsection (1)(a) who is involved in an international controlled delivery—
  - (a) does not commit an offence under section 6(1)(a), 12AB, or 12AC of the principal Act by reason of taking part in that international controlled delivery; and

- (b) unless he or she is acting in bad faith, is not subject to any criminal or civil liability as a result of taking part in that international controlled delivery.

Section 12D: inserted, as from 22 June 2005, by section 25 Misuse of Drugs Amendment Act 2005 (2005 No 81).

### 13 Use of tracking devices by Police and Customs officers

*[Repealed]*

The original subsection (2) was amended, as from 1 April 1987, by section 32(1) State-Owned Enterprises Act 1986 (1986 No 124) by substituting the words “New Zealand Post Limited” for the words “the Post Office”.

The words “District Court” and “District Court Judge” were substituted, as from 1 April 1980, for the words “Magistrate’s Court” and “Magistrate” pursuant to section 18 District Courts Amendment Act 1979 (1979 No 125).

Subsections (1) and (2) were substituted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

Subsection (2) was substituted, as from 1 April 1998, by section 62(1) Postal Services Act 1998 (1998 No 2). *See* clause 2 Postal Services Act Commencement Order 1998 (SR 1998/49).

Subsection (3) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting the words “the Customs officer” for the words “proper officer of Customs”.

Subsection (4) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting the words “Chief Executive of the New Zealand Customs Service” for the words “Comptroller of Customs”.

Section 13 was repealed, as from 31 October 2003 by section 3(1) Misuse of Drugs Amendment Act (No 2) 2003 (2003 No 107).

#### *Internal concealment*

### 13A Power to detain on belief of internal concealment

- (1) If any member of the Police or officer of Customs has reasonable cause to believe that any person has any Class A controlled drug or Class B controlled drug secreted within that person’s body for any unlawful purpose, the member of the Police or officer of Customs may cause that person to be detained under this section.
- (2) For the purposes of subsection (1) of this section, a person has any Class A controlled drug or Class B controlled drug secreted within that person’s body if—
- (a) The drug is within any of that person’s body cavities; or
  - (b) That person has swallowed the drug in such a manner that it may pass through the body, or be regurgitated, intact, but the drug is still within the body at the material time.
- (3) In subsection (1) of this section, **unlawful purpose** means the commission of an offence against the principal Act, and the concealment of the commission of any such offence.

Sections 13A to 13M (and the preceding heading “Internal concealment” were inserted, as from 1 October 1985, by section 2 Misuse of Drugs Amendment Act 1985 (1985 No 130).

### **13B Duties of officer in ordering detention**

On causing any person to be detained under section 13A of this Act, a member of the Police or an officer of Customs shall as soon as possible, unless the detention sooner ceases in accordance with paragraph (a) or paragraph (b) or paragraph (c) of section 13H of this Act,—

- (a) Inform the detained person of the reason for the detention, in words sufficient to give the detained person notice of the true reason for the detention; and
- (b) Hand to the detained person a Statement of Rights in the form set out in Schedule 2 to this Act; and
- (c) Arrange for the attendance of a medical practitioner (who shall be nominated or approved for the purpose by the Commissioner of Police or the Chief Executive of the New Zealand Customs Service, either generally or in any particular case or class of case), and, in the presence of that medical practitioner, ask the detained person if he or she wishes to undergo an examination of one or more of the kinds specified in section 13C(1) of this Act; and
- (d) Apply to a District Court Judge, in accordance with section 13E of this Act, for a warrant authorising the continued detention of the detained person under section 13A of this Act.

Sections 13A to 13M (and the preceding heading “Internal concealment”) were inserted, as from 1 October 1985, by section 2 Misuse of Drugs Amendment Act 1985 (1985 No 130).

Paragraph (c) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27), by substituting the words “Chief Executive of the New Zealand Customs Service” for the words “Comptroller of Customs”.

### **13C Internal examination of detained person**

- (1) The kinds of examination that a person who is detained under section 13A of this Act may undergo are as follows:
  - (a) A physical examination (whether or not facilitated by an instrument or device) to be conducted by a medical practitioner nominated or approved for the purpose by the Commissioner of Police or the Chief Executive of the New Zealand Customs Service, either generally or in any particular case or class of case:
  - (b) An X-ray examination with or without a contrast agent:
  - (c) An ultrasound scan.
- (2) Except in a case where the detained person immediately makes it clear that he or she does not wish to undergo any examination, the medical practitioner called under section 13B(c) of this Act shall explain to the detained person what is involved in each kind of examination.

- (3) If the detained person wishes to undergo an examination of a kind described in subsection (1) of this section, the detained person shall sign a written statement to the effect that he or she consents to the examination, and the medical practitioner shall endorse on the written consent a certificate to the effect that the medical practitioner has advised the detained person of what is involved in the examination and is satisfied that the detained person, when giving consent, understood what is involved in that examination.
- (4) Notwithstanding that any such detained person states that he or she does not wish to undergo any examination of a kind described in subsection (1) of this section, the detained person may subsequently, at any time while the detention is continuing, advise any member of the Police or officer of Customs that he or she now wishes to undergo such an examination, in which case the provisions of subsections (2) and (3) of this section shall apply with any necessary modifications.
- (5) As soon as practicable after any such detained person has consented to undergo any such examination, a member of the Police or an officer of Customs shall make all necessary arrangements for that examination to take place.
- (6) Notwithstanding any of the foregoing provisions of this section, no such detained person shall be entitled to insist on undergoing an examination of a particular kind if the necessary equipment is not reasonably available for the purpose.
- (7) Nothing in the foregoing provisions of this section shall preclude the detained person from requesting or consenting to the administration to him or her of a laxative or any other similar substance; and, where the detained person makes any such request or gives any such consent, a member of the Police or an officer of Customs shall record the particulars of the case, and those particulars shall be supplied to the Judge whenever an application for the grant or renewal of a detention warrant is made.

Sections 13A to 13M (and the preceding heading "Internal concealment") were inserted, as from 1 October 1985, by section 2 Misuse of Drugs Amendment Act 1985 (1985 No 130).

Subsection (1)(a) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27), by substituting the words "Chief Executive of the New Zealand Customs Service" for the words "Comptroller of Customs".

### **13D Certificate by person conducting examination**

- (1) The medical practitioner or other person who conducts an examination of any person detained under section 13A of this Act shall, on concluding the examination, certify the results of the examination in whichever of the following forms is appropriate:
  - (a) That, in his or her professional judgment, the detained person has nothing secreted within that person's body, or within that part of the body to which the examination related, that could be or contain a Class A controlled drug or a Class B controlled drug:

- (b) That, in his or her professional judgment, the detained person has something secreted within that person's body that could be or contain a Class A controlled drug or a Class B controlled drug:
  - (c) That the results of the examination are inconclusive.
- (2) A copy of every certificate given under subsection (1) of this section shall be given to—
- (a) The detained person; and
  - (b) The barrister or solicitor appointed under section 13F of this Act; and
  - (c) The medical practitioner appointed under that section.

Sections 13A to 13M (and the preceding heading "Internal concealment") were inserted, as from 1 October 1985, by section 2 Misuse of Drugs Amendment Act 1985 (1985 No 130).

### **13E Detention warrant**

- (1) Subject to subsection (2) of this section, every application for a warrant authorising the continued detention of any person under section 13A of this Act shall be made by a member of the Police or an officer of Customs in writing and on oath, and shall set out, or be accompanied by, the following particulars:
- (a) The facts relied upon to show that there is reasonable cause to believe that the detained person has any Class A controlled drug or Class B controlled drug secreted within that person's body for any unlawful purpose:
  - (b) The time at which, the date on which, and the place at which the detention commenced under section 13A of this Act:
  - (c) The address, and a description of the nature, of the premises in which the detained person is being detained, and, if it is proposed that the detained person be moved to any other premises for the purposes of the detention, the address, and a description of the nature, of those other premises:
  - (d) The time or times at which, and the date or dates on which, the detained person was asked if he or she wished to undergo any examination of a kind described in section 13C(1) of this Act, and the detained person's response to any such question, including the reasons given by the detained person for any negative response:
  - (e) If any such examination has been conducted, the results of that examination as set out in the certificate given under section 13D(1) of this Act.
- (2) In any case where, because of the urgency of the matter or for any other sufficient cause, it seems proper to do so, a District Court Judge may permit an application under this section to be made on oath orally, but in that event the Judge shall make a note in writing of the particulars referred to in paragraphs (a) to (e) of subsection (1) of this section.
- (3) In considering an application made under this section, the Judge may take into account any oral or documentary material that the Judge considers relevant, whether or not it would be admissible in a Court of law.

- (4) If, on an application made under this section, a Judge is satisfied—
- (a) That there has been reasonable compliance with the requirements of section 13B of this Act; and
  - (b) That there is reasonable cause to believe that the detained person has secreted within that person's body any Class A controlled drug or Class B controlled drug for any unlawful purpose; and
  - (c) That the premises in which the detained person is being detained, or any other premises in which it is proposed to detain that person, are suitable for the purpose,—

the Judge may grant a detention warrant in the prescribed form authorising the continued detention of the person to whom it relates under section 13A of this Act.

- (5) A detention warrant issued under subsection (4) of this section shall authorise the continued detention of the person named in it in the premises specified in it until—
- (a) The expiry of the period of 7 days commencing with the date on which the detention under section 13A of this Act commenced, or such shorter period as the Judge may specify in the warrant; or
  - (b) The detention is sooner brought to an end in any of the circumstances described in section 13H of this Act.
- (6) On granting a detention warrant under this section, a Judge—
- (a) Shall record in writing his or her reasons for granting the warrant; and
  - (b) May impose all such conditions relating to the circumstances and conduct of the detention as the Judge thinks fit.

Sections 13A to 13M (and the preceding heading "Internal concealment") were inserted, as from 1 October 1985, by section 2 Misuse of Drugs Amendment Act 1985 (1985 No 130).

### **13EA Searches associated with detention warrant**

- (1) If the circumstances in subsection (2) exist, a member of the police or a Customs officer may undertake any of the following in relation to a person (**person A**):
- (a) a rub-down search (as defined in section 13EB);
  - (b) a strip search (as defined in section 13EC);
  - (c) both a rub-down search and a strip search.
- (2) The circumstances are that—
- (a) a detention warrant has been issued under section 13E in relation to person A; and
  - (b) the member of the police or the Customs officer has reasonable cause to suspect that person A has hidden on or about his or her person any Class A controlled drug or Class B controlled drug.

- (3) In deciding what type of search to undertake under subsection (1), a member of the police or a Customs officer must have regard to all of the relevant circumstances, including, without limitation, the matters referred to in section 13ED(2).
- (4) If, as a result of a search under subsection (1), a member of the police or a Customs officer finds any Class A controlled drug or Class B controlled drug, he or she may take possession of it.
- (5) Reasonable force may be used, if necessary, to undertake a search under subsection (1).
- (6) If a person who is undergoing a search under subsection (1) makes a request for an internal examination under section 13C(4), the member of the police or the Customs officer conducting the search may continue with and complete the search before arranging for the internal examination to take place.

Sections 13EA to 13EE were inserted, as from 22 June 2005, by section 26 Misuse of Drugs Amendment Act 2005 (2005 No 81). See section 30 of that Act as to the transitional provisions relating to a person detained under section 13A of this Act.

### 13EB Definition of rub-down search

- (1) For the purposes of this section, section 13EA and sections 13ED to 13M, a **rub-down search** means a search of a clothed person in which the person conducting the search may do all or any of the following:
  - (a) run or pat his or her hand over the body of the person being searched, whether outside or inside the clothing (other than any underclothing) of that person:
  - (b) insert his or her hand inside any pocket or pouch in the clothing (other than any underclothing) of the person being searched:
  - (c) for the purpose of permitting a visual inspection, require the person being searched to do all or any of the following:
    - (i) open his or her mouth:
    - (ii) display the palms of his or her hands:
    - (iii) display the soles of his or her feet:
    - (iv) lift or rub his or her hair.
- (2) For the purpose of facilitating any of the actions referred to in any of paragraphs (a) to (c) of subsection (1), the person conducting a rub-down search may require the person being searched—
  - (a) to remove, raise, lower, or open any outer clothing (including (without limitation) any coat, jacket, jumper, or cardigan) being worn by the person being searched, except where that person has no other clothing, or only underclothing, under that outer clothing; and
  - (b) to remove any head covering, gloves, or footwear (including socks or stockings) being worn by that person.



- (3) Authority to conduct a rub-down search includes the authority to conduct a visual examination (whether or not facilitated by any instrument or device designed to illuminate or magnify) of the mouth, nose, and ears, but does not authorise the insertion of any instrument, device, or thing into any such orifice.
- (4) Authority to conduct a rub-down search of a person includes the authority to search—
  - (a) any item carried by, or in the possession of, the person; and
  - (b) any outer clothing removed, raised, lowered, or opened for the purposes of the search; and
  - (c) any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.

Sections 13EA to 13EE were inserted, as from 22 June 2005, by section 26 Misuse of Drugs Amendment Act 2005 (2005 No 81). See section 30 of that Act as to the transitional provisions relating to a person detained under section 13A of this Act.

### 13EC Definition of strip search

- (1) For the purposes of this section, section 13EA, and sections 13ED to 13M, a **strip search** means a search where the person conducting the search may require the person being searched to remove, raise, lower, or open all or any of that latter person's clothing.
- (2) For the purpose of facilitating a strip search, the person conducting the search may require the person being searched to do all or any of the following:
  - (a) open his or her mouth:
  - (b) display the palms of his or her hands:
  - (c) lift or rub his or her hair:
  - (d) display the soles of his or her feet:
  - (e) raise his or her arms to expose his or her armpits:
  - (f) with his or her legs spread apart, bend his or her knees.
- (3) Authority to conduct a strip search includes the authority to conduct a visual examination (whether or not facilitated by any instrument or device designed to illuminate or magnify) of the mouth, nose, and ears, but does not authorise the insertion of any instrument, device, or thing into any such orifice.
- (4) Authority to conduct a strip search of a person includes the authority to search—
  - (a) any item of clothing removed, raised, lowered, or opened for the purposes of the search; and
  - (b) any item carried by, or in the possession of, the person.

Sections 13EA to 13EE were inserted, as from 22 June 2005, by section 26 Misuse of Drugs Amendment Act 2005 (2005 No 81). See section 30 of that Act as to the transitional provisions relating to a person detained under section 13A of this Act.

**13ED Restrictions on searches associated with detention warrant**

- (1) A rub-down search or strip search, or both, may be carried out only by a person of the same sex as the person to be searched, and no strip search may be carried out in view of any person who is not of the same sex as the person to be searched.
- (2) A person who carries out a rub-down search or strip search, or both, must conduct the search with decency and sensitivity and in a manner that affords to the person being searched the greatest degree of privacy and dignity consistent with the purpose of the search.
- (3) No member of the police or Customs officer may conduct a strip search unless another member or officer is also present.
- (4) A strip search of a person must not be carried out in view of any other person who is detained or being searched.

Sections 13EA to 13EE were inserted, as from 22 June 2005, by section 26 Misuse of Drugs Amendment Act 2005 (2005 No 81). *See* section 30 of that Act as to the transitional provisions relating to a person detained under section 13A of this Act.

**13EE Reporting search associated with detention warrant**

A member of the police or a Customs officer who undertakes a search under section 13EA must, within 3 working days of the search, give a written report of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable cause to suspect required by section 13EA(2)(b) to,—

- (a) in the case of a member of the police, the Commissioner of Police; and
- (b) in the case of a Customs officer, the chief executive of the New Zealand Customs Service.

Sections 13EA to 13EE were inserted, as from 22 June 2005, by section 26 Misuse of Drugs Amendment Act 2005 (2005 No 81). *See* section 30 of that Act as to the transitional provisions relating to a person detained under section 13A of this Act.

**13F On grant of warrant, Judge to appoint barrister or solicitor and medical practitioner**

- (1) On granting a detention warrant under section 13E of this Act, a District Court Judge shall appoint, or arrange for the appointment of, a barrister or solicitor and a medical practitioner to report to the Court on the matters referred to in subsections (2) and (3) of this section.
- (2) The function of the barrister or solicitor appointed under this section shall be to satisfy himself or herself—
  - (a) That the detention is being conducted in accordance with the provisions of this Act, the terms of the detention warrant, and any directions given by the Judge; and

- (b) That the detained person is aware of his or her rights in relation to the detention, and that the exercise of any of those rights by that person is not being interfered with unreasonably,—
- and to report to the Judge if the barrister or solicitor is not so satisfied in any particular respect.
- (3) The function of the medical practitioner appointed under this section shall be to satisfy himself or herself—
- (a) That the detained person is being accommodated, fed, and generally cared for in a reasonable and proper manner; and
- (b) That the detained person is being offered all such medical care (if any) as may seem to the medical practitioner to be necessary or desirable in the interests of that person,—
- and to report to the Judge if the medical practitioner is not so satisfied in any particular respect.
- (4) Notwithstanding anything in subsection (2) or subsection (3) of this section, where—
- (a) The detained person consults a barrister or solicitor of that person's choosing and that barrister or solicitor agrees to act for that person, the barrister or solicitor appointed under subsection (1) of this section shall not be responsible for any matter falling within the normal responsibilities of a barrister or solicitor acting for a client; or
- (b) The detained person consults a medical practitioner of that person's choosing and that medical practitioner agrees to attend that person as a patient, the medical practitioner appointed under subsection (1) of this section shall not be responsible for any matter falling within the normal responsibilities of a medical practitioner attending a patient.
- (5) On appointing a barrister or solicitor or a medical practitioner under this section, or at any time thereafter while the detention continues, a District Court Judge may give to the barrister or solicitor or medical practitioner all such directions relating to the functions of the barrister or solicitor or medical practitioner as the Judge thinks fit.

Sections 13A to 13M (and the preceding heading "Internal concealment") were inserted, as from 1 October 1985, by section 2 Misuse of Drugs Amendment Act 1985 (1985 No 130).

### **13G Rights of access to person in detention**

- (1) The following persons shall at all times have the right of access to any person who is being detained under section 13A of this Act:
- (a) The barrister or solicitor appointed under section 13F of this Act;
- (b) The medical practitioner appointed under that section.
- (2) The following persons shall at all reasonable times have the right of access to any person who is being detained under section 13A of this Act:

- (a) Any barrister or solicitor who is acting for the detained person:
  - (b) Any medical practitioner who is attending the detained person as a patient:
  - (c) Any other person whom the detained person reasonably wishes to see.
- (3) Nothing in subsection (2) of this section, or any other enactment or rule of law, shall entitle any person to have access to the detained person—
- (a) In the absence of any member of the Police or officer of Customs who is for the time being guarding the detained person; or
  - (b) Otherwise than subject to such reasonable conditions as may be necessary to ensure the safety of the detained person or to avoid the frustration of the purpose of the detention.

Sections 13A to 13M (and the preceding heading “Internal concealment”) were inserted, as from 1 October 1985, by section 2 Misuse of Drugs Amendment Act 1985 (1985 No 130).

### **13H Expiry of detention**

The detention of any person under section 13A of this Act shall cease in each of the following circumstances:

- (a) Where the detained person is arrested:
- (b) Where a certificate is given under section 13D of this Act, following an examination, to the effect that, in the professional judgment of the person conducting the examination, the detained person has nothing secreted within that person’s body that could be or contain a Class A controlled drug or a Class B controlled drug:
- (c) Where the member of the Police or officer of Customs who is in charge of the case forms the view that there is no longer reasonable cause to believe that the detained person has any Class A controlled drug or Class B controlled drug secreted within that person’s body for any unlawful purpose:
- (d) Where an application to a District Court Judge for a detention warrant, or for the renewal of a detention warrant, in respect of the detained person is declined:
- (e) Where the warrant is cancelled on appeal under section 13L of this Act.

Sections 13A to 13M (and the preceding heading “Internal concealment”) were inserted, as from 1 October 1985, by section 2 Misuse of Drugs Amendment Act 1985 (1985 No 130).

### **13I Renewal of warrants**

- (1) Any District Court Judge may from time to time grant a renewal of a detention warrant upon application made at any time before the warrant (or any current renewal of the warrant) has expired.
- (2) Every application for renewal of a detention warrant shall be made by a member of the Police or an officer of Customs in writing and on oath, and shall set out, or be accompanied by, the following particulars:

- (a) The facts relied upon to show that there is still reasonable cause to believe that the detained person has any Class A controlled drug or Class B controlled drug secreted within that person's body for any unlawful purpose:
  - (b) The date or dates on which the detained person was asked to consent to undergo any examination of a kind described in section 13C of this Act, and the detained person's response to that request, including any reasons given by the detained person for any negative response:
  - (c) If any such examination has been conducted, the results of that examination as set out in the certificate given under section 13D(1) of this Act:
  - (ca) the date or dates of any rub-down search or strip search undertaken under section 13EA, the circumstances in which it was conducted, and the results of the search:
  - (d) Any matters that the barrister or solicitor appointed under section 13F of this Act wishes to draw to the attention of the Judge who is to consider the application for renewal:
  - (e) Any matters that the medical practitioner appointed under that section wishes to draw to the attention of that Judge:
  - (f) Any matters that any barrister or solicitor who is acting for the detained person, or any medical practitioner who is attending the detained person as a patient, wishes to draw to the attention of that Judge.
- (3) Every such application shall be supported by such other information as the Judge may require.
  - (4) Notice of every such application shall be given to the barrister or solicitor appointed under section 13F of this Act and to any barrister or solicitor who is acting for the detained person.
  - (5) Notwithstanding any of the preceding provisions of this section or any enactment or rule of law to the contrary, neither the detained person nor any person referred to in any of paragraphs (d) to (f) of subsection (2) of this section shall be entitled to see or hear any evidence that was adduced in support of the original application for the grant of the detention warrant, or any evidence adduced in support of the application for the renewal of the warrant and relating to any matter other than one to which paragraph (b) or paragraph (c) or paragraph (ca) of that subsection applies; and for the purposes of this subsection, every such person shall be excluded from the hearing while any such evidence is being given.
  - (6) In considering an application made under this section, the Judge may take into account any oral or documentary material that the Judge considers relevant, whether or not it would be admissible in a Court of law.

- (7) Without limiting subsection (3) of this section, before determining an application for the renewal of a detention warrant under this section, a District Court Judge may—
- (a) Call for a report from the barrister or solicitor referred to in paragraph (d) of subsection (2) of this section, or from the medical practitioner referred to in paragraph (e) of that subsection, on any matter relating to the detention or to the application for the renewal of the detention warrant; and
  - (b) Hear any person referred to in any of paragraphs (d) to (f) of that subsection in respect of the application.
- (8) A renewal of a detention warrant may be granted under this section if the Judge is satisfied that the circumstances described in section 13A of this Act still obtain.
- (9) Every renewal of a detention warrant shall be valid for a period of 7 days commencing with the date on which it is granted, or such shorter period as the Judge may specify in the renewal.
- (10) Where an application for the renewal of a detention warrant is duly made before the expiration of the warrant (or of any current renewal of the warrant), the warrant shall continue in force until the application is determined notwithstanding the expiration of the period for which the warrant was issued or last renewed.
- (11) Nothing in this section shall prevent a Judge from granting a second or subsequent renewal of a detention warrant upon an application duly made under this section:
- Provided that no detention under section 13A of this Act shall continue for longer than 21 days.
- (12) On granting a renewal of a detention warrant under this section, a Judge—
- (a) Shall record in writing his or her reasons for granting the renewal; and
  - (b) May impose all such conditions relating to the circumstances and conduct of the detention as the Judge thinks fit.

Sections 13A to 13M (and the preceding heading “Internal concealment”) were inserted, as from 1 October 1985, by section 2 Misuse of Drugs Amendment Act 1985 (1985 No 130).

Subsection (2)(ca) was inserted, as from 22 June 2005, by section 27(1) Misuse of Drugs Amendment Act 2005 (2005 No 81).

Subsection (5) was amended, as from 22 June 2005, by section 27(2) Misuse of Drugs Amendment Act 2005 (2005 No 81) by inserting the words “or paragraph (ca)” after the words “or paragraph (c)”.

### **13J Powers of officers of Customs**

The powers conferred by sections 13A to 13I of this Act may be exercised by any officer of Customs only in respect of offences against the principal Act involving the importation into or the exportation from New Zealand of any Class A controlled drug or Class B controlled drug.

Sections 13A to 13M (and the preceding heading “Internal concealment”) were inserted, as from 1 October 1985, by section 2 Misuse of Drugs Amendment Act 1985 (1985 No 130).

**13K Inadmissibility of certain confessions or admissions by detained person**

- (1) Where any person who is being detained under section 13A of this Act makes any confession or admission in respect of any offence other than a relevant offence, no evidence of that confession or admission, or of its substance, meaning, or purport, shall be given in any Court.
- (2) For the purposes of this section, a relevant offence is one with which the detained person may be liable to be charged by virtue of having any controlled drug secreted within that person’s body at any time during the detention.

Sections 13A to 13M (and the preceding heading “Internal concealment”) were inserted, as from 1 October 1985, by section 2 Misuse of Drugs Amendment Act 1985 (1985 No 130).

**13L Appeal against grant or renewal of detention warrant, etc**

- (1) Where a District Court Judge grants a detention warrant under section 13E of this Act, or grants a renewal of a detention warrant under section 13I of this Act, or imposes any condition under either of those sections relating to the circumstances or conduct of the detention, the detained person may appeal to the High Court against that decision.
- (2) Where a notice of appeal is filed in the High Court under this section, the Registrar of the Court in which the decision under appeal was made shall forward the Court file to the High Court.
- (3) The fact that an appeal is lodged or is pending under this section shall not affect the detention, which, subject to section 13H of this Act, shall continue pending the determination of the appeal.
- (4) The detained person shall not have the right to attend or be heard personally in respect of the appeal, but may be represented by counsel.
- (5) Notwithstanding any of the provisions of this section or any enactment or rule of law to the contrary, neither the detained person nor his or her counsel shall be entitled to see or hear any evidence that was adduced in support of the original application for the grant of the detention warrant, or any evidence adduced in opposition to the appeal and relating to any matter other than one referred to in paragraph (b) or paragraph (c) of section 13I(2) of this Act; and for the purposes of this subsection, any counsel representing the detained person shall be excluded from the hearing while any such evidence is being given.
- (6) Every appeal under this section shall be by way of rehearing.
- (7) On hearing any such appeal, the High Court may take into account any oral or documentary material that the Court considers relevant, whether or not it would otherwise be admissible.
- (8) Without limiting subsection (7) of this section, before determining an appeal under this section, the Court may—

- (a) Call for a report from the barrister or solicitor or the medical practitioner appointed under section 13F of this Act on any matter relating to the detention or to the appeal; and
- (b) Hear any such barrister or solicitor or medical practitioner, or any other medical practitioner who is attending the detained person as a patient.
- (9) On hearing any appeal under this section, the High Court may confirm, reverse, or modify the decision under appeal.
- (10) Where the High Court reverses the decision to grant a detention warrant or the renewal of a detention warrant, it shall cancel the warrant.
- (11) The decision of the High Court on an appeal under this section shall be final.

Sections 13A to 13M (and the preceding heading “Internal concealment”) were inserted, as from 1 October 1985, by section 2 Misuse of Drugs Amendment Act 1985 (1985 No 130).

### **13M Commissioner of Police and Chief Executive of New Zealand Customs Service to report to Parliament**

The Commissioner of Police shall include in every annual report prepared by the Commissioner for the purposes of section 101 of the Policing Act 2008, and the Chief Executive of the New Zealand Customs Service shall include in every annual report prepared by the Chief Executive for submission to Parliament, the following information in respect of the period under review:

- (a) The number of applications for detention warrants made under section 13E of this Act by any member of the Police or (as the case may require) any officer of Customs:
- (b) The number of applications for renewals of detention warrants made under section 13I of this Act by any member of the Police or (as the case may require) any officer of Customs:
- (c) The number of such applications referred to in each of the preceding paragraphs of this section that were granted and the number that were refused:
- (d) The average duration of the detention warrants (including renewals) granted on applications by members of the Police or (as the case may require) officers of Customs:
- (e) The number of prosecutions that have been instituted in which has been adduced evidence obtained directly during the detention of any persons pursuant to detention warrants granted on applications by members of the Police or (as the case may require) officers of Customs, and the results of those prosecutions.
- (f) the number of rub-down searches and strip searches undertaken by members of the police or Customs officers under section 13EA.



Sections 13A to 13M (and the preceding heading “Internal concealment”) were inserted, as from 1 October 1985, by section 2 Misuse of Drugs Amendment Act 1985 (1985 No 130).

Section 13M was substituted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

Section 13M: amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Paragraph (f) was inserted, as from 22 June 2005, by section 28 Misuse of Drugs Amendment Act 2005 (2005 No 81).

*Applications for interception warrants in relation to drug dealing offences*

*[Repealed]*

Heading: repealed, on 18 April 2012, pursuant to section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**14 Application by Police for warrant to intercept private communications**

*[Repealed]*

Section 14: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**15 Matters on which Judge must be satisfied in respect of applications**

*[Repealed]*

Section 15: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

*Applications for interception warrants in relation to prescribed cannabis offences*

*[Repealed]*

Heading: repealed, on 18 April 2012, pursuant to section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**15A Application by Police for warrant to intercept private communications in relation to prescribed cannabis offences**

*[Repealed]*

Section 15A: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**15B Matters on which Judge must be satisfied in respect of applications relating to prescribed cannabis offences**

*[Repealed]*

Section 15B: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

*General provisions relating to interception of private communications**[Repealed]*

Heading: repealed, on 18 April 2012, pursuant to section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**16 Contents and term of warrant***[Repealed]*

Section 16: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**17 Effect of warrant***[Repealed]*

Section 17: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**18 Renewal of warrants***[Repealed]*

Section 18: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**19 Emergency permits***[Repealed]*

Section 19: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**20 Security of applications***[Repealed]*

Section 20: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**21 Destruction of irrelevant records made by use of interception device***[Repealed]*

Section 21: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**22 Destruction of relevant records made by use of interception device***[Repealed]*

Section 22: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**23 Prohibition on disclosure of private communications lawfully intercepted***[Repealed]*

Section 23: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**24 Notice to be given of intention to produce evidence of private communication**

*[Repealed]*

Section 24: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**25 Inadmissibility of evidence of private communications unlawfully intercepted**

*[Repealed]*

Section 25: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**26 Restriction on admissibility of evidence of private communications lawfully intercepted**

*[Repealed]*

Section 26: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**27 Privileged evidence**

*[Repealed]*

Section 27: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**28 Report to be made to Judge on use of warrant or permit**

*[Repealed]*

Section 28: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

**29 Commissioner of Police to give information to Parliament**

*[Repealed]*

Section 29: repealed, on 18 April 2012, by section 334(7) of the Search and Surveillance Act 2012 (2012 No 24).

*Bail*

**30 Bail allowable for drug dealing offence only by order of Judge**

*[Repealed]*

Sections 30 to 37 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). See section 75 of that Act as to the savings provisions.

**30A Bail may be continued or renewed by District Court**

*[Repealed]*

Sections 30 to 37 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). See section 75 of that Act as to the savings provisions.

**31 Judge may impose conditions of bail**

*[Repealed]*

Sections 30 to 37 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). See section 75 of that Act as to the savings provisions.

**32 Arrest of defendant who has absconded or is about to abscond while on bail**

*[Repealed]*

Sections 30 to 37 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). See section 75 of that Act as to the savings provisions.

**33 Arrest of defendant who fails to comply with any conditions of bail**

*[Repealed]*

Sections 30 to 37 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). See section 75 of that Act as to the savings provisions.

**34 Application of certain provisions of Summary Proceedings Act 1957**

*[Repealed]*

Sections 30 to 37 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). See section 75 of that Act as to the savings provisions.

**35 Appeals against decisions of Judge relating to bail**

*[Repealed]*

Sections 30 to 37 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). See section 75 of that Act as to the savings provisions.

**36 Court of Appeal to hear and determine appeal**

*[Repealed]*

Sections 30 to 37 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). See section 75 of that Act as to the savings provisions.

The words "High Court" were substituted, as from 1 April 1980, for the words "Supreme Court" pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

**37 Execution of decision of Court of Appeal**

*[Repealed]*

Sections 30 to 37 were repealed, as from 1 January 2001, by section 74(2) Bail Act 2000 (2000 No 38). See section 75 of that Act as to the savings provisions.

*Imposition of fines*

**38 Fine may reflect illicit gains**

In any case where any person is convicted of a drug dealing offence and the Court by which he is convicted is satisfied on the balance of probabilities that any money or assets owned by the offender at the date of his trial has or have been acquired by him directly or indirectly from the offence, the Court may,

having regard to the amount of such money or the value of such assets, impose a fine greater than it would otherwise have imposed on the offender for the offence.

**39 Court may impose greater fine having regard to previous dealings**

- (1) In any case where any person is convicted of a drug dealing offence (in this section referred to as the primary offence) and the Court by which he is convicted is, on the application of the Crown,—
- (a) Satisfied beyond reasonable doubt that, before the commission of the primary offence, the offender had engaged in any conduct (other than conduct that constituted the primary offence) that constitutes a drug dealing offence; and
  - (b) Satisfied on the balance of probabilities that any money or assets owned by the offender at the date of his trial has or have been acquired by him directly or indirectly from such conduct,—

the Court may, having regard to the amount of such money or the value of such assets, impose a fine greater than it would otherwise have imposed on the offender for the primary offence.

- (2) Where the prosecutor intends to seek leave to adduce evidence of the matters referred to in subsection (1) of this section, he shall give written notice of his intention and of the particulars of the evidence to be adduced to the Court and to the defendant as soon as practicable after the conviction is entered, and in any event not later than 5 days before the date set for sentencing.
- (3) Notwithstanding anything in subsection (2) of this section, where the Court is satisfied that the information on which such an application for the exercise of the Court's powers could be based has come into the prosecutor's hands too late for him to give 5 days' notice as required by that subsection, the Court may allow the prosecutor to give such shorter notice as may be necessary in the circumstances, but shall, if requested to do so by the defendant, postpone sentencing to a date not earlier than 5 days after the prosecutor gives such notice.

**40 Court's power not to be exercised in certain cases**

- (1) The power conferred by section 39(1) of this Act shall not be exercised by any Court—
- (a) In respect of any conduct in relation to which the defendant has been charged with a drug dealing offence but acquitted of that charge:
  - (b) In respect of any money or assets in relation to which the power has been previously exercised by any Court.
- (2) The powers conferred by sections 38 and 39(1) of this Act shall not be exercised by the District Court so as to impose a fine greater than the maximum prescribed by section 6(3) of the principal Act.

Section 40(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

#### **41 Inability of offender to explain source of money or assets may be evidence**

- (1) Where, in any case to which section 38 of this Act applies, the offender fails to explain to the Court's satisfaction the source of any money or assets owned by him, the Court may accept that as evidence that the money or assets was or were derived by the offender from the offence.
- (2) Where, on any application for the exercise of the Court's power under section 39 of this Act, the Court is satisfied in accordance with subsection (1)(a) of that section that the offender has committed any previous drug dealing offence, and the offender fails to explain to the Court's satisfaction the source of any money or assets owned by him, the Court may accept that as evidence that the money or assets was or were derived by the offender from that previous drug dealing offence.

#### **42 Court may treat alienated property as offender's**

Where, in any case to which section 38 or section 39 of this Act applies, it appears to the Court that any disposition of money or assets has been made, whether for value or not, by or on behalf of or by direction of or in the interests of the defendant to defeat the exercise of the Court's power under those sections, the Court may, on the application of the prosecutor or of its own motion, treat the money or assets as belonging to the offender for the purposes of those sections.

### *Enforcement of fines*

#### **43 Enforcement of fines**

- (1) If the Court sentences an offender on conviction for a drug dealing offence to pay a fine to which section 38 or 39 applies, section 19 of the Crimes Act 1961 or Part 3 of the Summary Proceedings Act 1957 applies (whichever is applicable) to the enforcement of the fine, subject to any necessary modifications.
- (2) The Court or the Registrar may make any orders as are appropriate under any of the provisions specified in subsection (1) in respect of any money or assets that are treated as belonging to the offender under section 42 (which are deemed to be the offender's property for the purposes of this subsection).
- (3) In subsection (2), **Registrar**—
  - (a) means any Registrar of the High Court or the District Court; and
  - (b) includes any Deputy Registrar.

Section 43: replaced, on 13 February 2012, by section 4 of the Misuse of Drugs Amendment Act 1978 Amendment Act 2011 (2011 No 41).

Section 43(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 43(3)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

#### **44 Enforcement of fines imposed in District Court**

*[Repealed]*

Section 44: repealed, on 13 February 2012, by section 5 of the Misuse of Drugs Amendment Act 1978 Amendment Act 2011 (2011 No 41).

#### **45 Fine imposed in District Court may be enforced in High Court**

Where the District Court sentences an offender on conviction of a drug dealing offence to pay a fine and the Registrar of that Court is satisfied that payment of that fine may be more effectively enforced in the High Court, he may file a certificate to that effect under his hand in that Court, containing full particulars of the conviction and the amount of the fine, and thereafter payment of the fine shall be enforced as if the fine had been imposed in the High Court.

Section 45: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

#### **46 Garnishee proceedings**

*[Repealed]*

Section 46: repealed, on 13 February 2012, by section 5 of the Misuse of Drugs Amendment Act 1978 Amendment Act 2011 (2011 No 41).

### *Parole*

This heading was repealed, as from 30 June 2002, by section 182(a) Sentencing Act 2002 (2002 No 9). *See* sections 148 to 160 of that Act for the transitional and savings provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

#### **47 Parole**

*[Repealed]*

Subsections (1) and (2) were amended, as from 1 October 1985, by section 150(1) Criminal Justice Act 1985 (1985 No 120) by substituting the words “have his case for parole under Part 6 of the Criminal Justice Act 1985 considered by the Parole Board or a District Prisons Board” for the words “be recommended by the Prisons Parole Board for release under Part 5 of the Criminal Justice Act 1954”.

Section 47 was repealed, as from 30 June 2002, by section 182(b) Sentencing Act 2002 (2002 No 9). *See* sections 148 to 160 of that Act for the transitional and savings provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

### *Administration of Part*

#### **48 Part to be administered in Ministry of Justice**

This Part of this Act shall be administered in the Ministry of Justice.

Section 48 was amended, as from 1 October 1995, by section 10(3) Department of Justice (Restructuring) Act 1995 (1995 No 39) by substituting the words “Ministry of Justice” for the words “Department of Justice”.

## Schedule 1

### Interception warrant

*[Repealed]*

s 16(1)

This Schedule was repealed, as from 1 February 1998, by section 17(1) Misuse of Drugs Amendment Act (No 2) 1997 (1997 No 96). See now the Schedule to the Misuse of Drugs (Interception Warrant) Regulations 2003 (SR 2003/256).

## Schedule 2

### Statement of rights

Section 13B(b)

This Schedule was inserted, as from 1 October 1985, by section 4 Misuse of Drugs Amendment Act 1985 (1985 No 130).

You have been detained under section 13A of the Misuse of Drugs Amendment Act 1978 because it is believed that you have secreted within your body any Class A controlled drugs or Class B controlled drugs for an unlawful purpose.

READ THIS NOTICE CAREFULLY. IT TELLS YOU WHAT RIGHTS YOU HAVE WHILE THE DETENTION CONTINUES.

#### **Medical examinations:**

You will be asked if you wish to undergo certain types of medical examination that may help to determine whether or not you have any Class A controlled drugs or Class B controlled drugs secreted within your body.

For this reason, a doctor will be asked to see you to explain just what is involved in each type of examination.

NO SUCH EXAMINATION MAY TAKE PLACE WITHOUT YOUR  
CONSENT

If you do wish to undergo an examination, you will be asked to put your consent to the examination in writing.

If you refuse your consent, you may change your mind later. Just tell one of the officers supervising your detention.

If you decide not to have an examination, that fact, and any reasons you give for it, may be put before the Judge in any further proceedings.

#### **Detention warrant:**

As soon as possible after detaining you, the officer must apply to a District Court Judge for a warrant to authorise your continued detention.

If the Judge grants the warrant, you may be detained for up to 7 days, or such shorter period as the Judge may order. However, a warrant may be renewed by a Judge for further periods of up to 7 days each, if the Judge is satisfied that there are still reasonable grounds for believing that you have any Class A controlled drugs or Class B con-



trolled drugs secreted within your body. You may not be detained for longer than 21 days.

### **Searches**

If a detention warrant is issued there are certain circumstances in which a member of the police or a Customs officer may undertake a rub-down search or strip search, or both.

Searches: this item was inserted, as from 22 June 2005, by section 29 Misuse of Drugs Amendment Act 2005 (2005 No 81).

### **Supervising lawyer and doctor:**

If the Judge issues a detention warrant, he or she must appoint a lawyer and a doctor to see that your rights are protected and that you are properly cared for while you are being detained. These people are NOT there as part of the team detaining you: they are there as agents of the Court to ensure fair play. You should consult them on any legal or medical matter that is worrying you.

However, you are also entitled to arrange for your own lawyer or doctor to visit and advise you.

### **Right of appeal:**

You may appeal to the High Court against the issue or renewal of a detention warrant, or against any condition of detention imposed by the District Court Judge. If you wish to appeal, consult the Court lawyer or your own lawyer.

### **Visiting rights:**

While you are detained, the Court lawyer and the Court doctor may visit you at any time. Your own lawyer, your own doctor, and any other person you may reasonably wish to see may call on you at any reasonable time.

### **End of detention:**

You must be released if the Judge refuses to grant a detention warrant, or refuses to renew it, or the warrant is cancelled by the High Court on appeal.

You must also be released if a medical examination shows that you do not have any Class A controlled drugs or Class B controlled drugs secreted within your body, or if the officers detaining you cease to believe that you have any such drugs secreted within your body.

If you are arrested, your detention under section 13A of the Misuse of Drugs Amendment Act 1978 will cease, and you will then be detained under arrest. From then on, you will have all the rights of an arrested person.

### **Court access:**

You will not be entitled to appear in Court while you are in detention. However, the Court lawyer and your own lawyer will be entitled to address the Court on appeal

against a detention warrant or a condition of detention, or where an application is made for a renewal of the warrant.

**Further advice:**

This is only a brief summary of your rights. If there is anything you do not understand, talk to the Court lawyer or your own lawyer.

## **Eprint notes**

### **1    *General***

This is an eprint of the Misuse of Drugs Amendment Act 1978 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2    *About this eprint***

This eprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

### **3    *Amendments incorporated in this eprint***

Customs and Excise Act 2018 (2018 No 4): section 443(3)

District Court Act 2016 (2016 No 49): section 261

Misuse of Drugs Amendment Act 1978 Amendment Act 2015 (2015 No 25)

Search and Surveillance Act 2012 (2012 No 24): section 334

Criminal Procedure Act 2011 (2011 No 81): section 413

Misuse of Drugs Amendment Act 1978 Amendment Act 2011 (2011 No 41)

Policing Act 2008 (2008 No 72): section 130(1)