

# Misuse of Drugs Amendment Act 1985

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**Schedule**  
**NEW SECOND SCHEDULE ADDED TO MISUSE OF**  
**DRUGS AMENDMENT ACT 1978**

12

**An Act to amend the Misuse of Drugs Act 1975 to define the circumstances in which persons may be detained on belief of concealing Class A controlled drugs or Class B controlled drugs within their bodies for unlawful purposes, to define the rights of persons while so detained, and to define the powers and duties of the Police and Customs Officers in respect of such detained persons**

**BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:**

**1 Short Title and commencement**

- (1) This Act may be cited as the Misuse of Drugs Amendment Act 1985, and shall be read together with and deemed part of the Misuse of Drugs Act 1975 (hereinafter referred to as the principal Act).
- (2) This Act shall come into force on the 1st day of October 1985.

**2 New heading and sections (relating to detention on belief of internal concealment) inserted**

The Misuse of Drugs Amendment Act 1978 is hereby amended by inserting, after section 13, the following heading and sections:

*“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.

**“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 the Second Schedule 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 Comptroller of Customs, 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.

**“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 Comptroller of Customs, 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.

**“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.

**“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.

**“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.

### “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.

#### **“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.

#### **“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:

- “(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) 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.

### “13j Powers of officers of Customs

The powers conferred by sections 13a to 131 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.

### “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.

### “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 131 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.

**“13m Commissioner of Police and Comptroller of Customs to report to Parliament**

The Commissioner of Police shall include in every annual report prepared by the Commissioner for the purposes of section 65 of the Police Act 1958, and the Comptroller of Customs shall include in every annual report prepared by the Comptroller 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.”

### **3 Internal search of person under arrest**

Section 18a of the principal Act (as inserted by section 2 of the Misuse of Drugs Amendment Act 1979) is hereby amended by adding the following subsection:

“(5) Nothing in this section shall limit or affect the provisions of sections 13a to 13m of the Misuse of Drugs Amendment Act 1978.”

### **4 Second Schedule added to Misuse of Drugs Amendment Act 1978**

The Misuse of Drugs Amendment Act 1978 is hereby amended by adding, as the Second Schedule, the Second Schedule set out in the Schedule to this Act.

## **Schedule**

### **NEW SECOND SCHEDULE ADDED TO MISUSE OF DRUGS AMENDMENT ACT 1978**

Section 4

#### **“SECOND SCHEDULE Statement of Rights**

Section 13b(b)

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

**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.”

This Act is administered in the Department of Health.