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## ACT NO. 1 OF 2022

**Drugs of Abuse (Amendment) Act, 2022**

An Act to amend the Drugs of Abuse Act, 2008<sup>1</sup>

Enacted by the Parliament of Lesotho.

**Citation and commencement**

1. This Act may be cited as the Drugs of Abuse (Amendment) Act, 2022 and shall come into operation on the date of publication in the Gazette.

**Interpretation**

2. Section 3 of the Drugs of Abuse Act [referred to in this Act as the Principal Law] is amended by -

- (a) inserting the following definitions in their chronological arrangement -

“dealer” means a person registered and licensed to engage in the business of wholesale, company, partnership, sole trader and corporation of drugs;

“drug of abuse plant” means a plant or part of a plant from which a drug of abuse listed in the Schedule can be derived;

“medical hemp” means a plant and a part of a plant of the genera Cannabis, the leaves and flowering heads which do not contain more than 1% THC w/w and includes the derivatives of the genera cannabis and the non-viable cannabis seed;

“herbalist” means a person registered as such under the Medicine and Herbalist Act, 1978<sup>2</sup>;

“THC” means tetrahydrocannabinol as a psychoactive compound extracted from Cannabis;

- (b) by deleting the definition of -

- (i) “dentist”;
- (ii) “medical practitioner”;
- (iii) “pharmacist”; and
- (iv) “veterinary Surgeon”,

and substituting the following in their chronological arrangement -

“dentist” means a person registered as such under the Medical, Dental and Pharmacy Order, 1970<sup>3</sup>;

“medical practitioner” means a person registered as such under the Medical, Dental and Pharmacy Order, 1970;

“nurse” means a person registered as such under the Nurses and Midwives Act, 1998<sup>4</sup>;

“pharmacist” means a person registered as such under the Medical, Dental and Pharmacy Order, 1970; and

“veterinary surgeon” means a person registered as such under the Veterinary Surgeon Act, 1973<sup>5</sup>.

### **Requirements of licences and permits for drugs of abuse operators**

3. Section 9 of the Principal law is amended by -

(a) deleting subsection (1) and substituting the following -

“(1) A person is prohibited from -

- (a) cultivating a drug of abuse plant;
- (b) manufacturing, acquiring or administering to another person, a drug of abuse or analogue;
- (c) buying a drug of abuse with an intention

of distributing a drug of abuse to a pharmacy or hospital;

- (d) operating an independent analytical laboratory; or
- (e) transporting a drug of abuse,

unless the person is licensed as an operator and is acting in accordance with the terms and conditions of a license granted by the Minister under section 12”.

- (b) by deleting subsection (3) and substituting the following -

“(3) Subsection (1) does not apply to -

- (a) an authorised person in terms of section 28(1) to supply and administer a drug of abuse;
- (b) a person who is in custody of an animal under veterinary treatment, to possess it for purposes of administering it to the animal under treatment; and
- (c) a person who is in possession of an analogue for purposes of personal treatment of a medical condition which is supplied by an authorised person in terms of section 28 (1)”.

### **Application for operators license**

4. Section 11 of the Principal Law is amended -

- (a) in subsection (2), by

- (i) deleting -

(aa) “and” at the end of paragraph (a); and

- (bb) the fullstop at the end of paragraph (b) and substituting a semi-colon; and
  - (ii) inserting after paragraph (b), the following paragraphs -
    - “(c) an environmental impact assessment licence, issued under the Environment Act, 2008<sup>6</sup>; and
    - (d) a criminal clearance certificate of directors and executive managers of a company”;
- (b) by inserting after subsection (2), the following subsections -
  - “(3) An operator who is licensed prior to the coming into operation of subsection 2(c) and (d), shall be given a period of six months to comply.
  - (4) The Minister shall, in addition to the requirements of subsections (1) and (2), where an applicant is a foreigner, request a vetting report with the assistance of Lesotho Mounted Police and INTERPOL”.

### **Grant of licence**

5. Section 12 of the Principal Law is amended -

- (a) by deleting paragraph (a) and substituting the following paragraph -
  - “(a) an applicant, and in the case of a company, a director, company secretary and executive manager, has never been convicted or charged of an offence however described, relating to a drug of abuse, controlled chemical, controlled equipment or controlled material;

- 
- (b) by deleting “and” at the end of paragraph “(e)”; and
  - (c) by deleting the full-stop at the end of paragraphs (f) and substituting a semi-colon;
  - (d) by inserting the following paragraphs after paragraph “(f)” :
    - “(g) granting a licence to an applicant will lead to a production of adequate and uninterrupted supply of a drug of abuse based on the demand for medical, scientific or research purposes; and
    - (h) an applicant has experience in handling a controlled substance or a drug of abuse in a lawful manner”.

#### **Variation, suspension or revocation of registration, licences, permits or authorisations**

6. Section 23(1) of the Principal Law is amended -

- (a) in paragraph (c) by deleting “or” at the end of the paragraph;
- (b) by deleting the full-stop at the end of paragraph (d) and substituting a semi-colon and “or”;
- (c) by inserting after paragraph “(d)”, the following paragraphs -
  - “(e) a licence is dormant because an applicant or an operator has failed to operate an establishment or a drug of abuse business for a period prescribed in the licence;
  - (f) there is a report from a police officer, a competent authority or the United Nations, which indicates that an operator is believed to be involved in the diversion of a drug of abuse or precursor to an illicit market or use; and
  - (g) there is a report from a police officer, a competent

authority or the United Nations, which indicates that an operator has provided a drug of abuse to a youth or has facilitated access of a drug of abuse to a youth for recreational use”.

### **Power to limit licensees stock**

7. Section 27 of the Principal law is amended by inserting after subsection (3), the following subsection:

“(4) A licensee shall provide a report on a drug of abuse received, imported, cultivated, supplied, exported and destroyed, to assist government to fulfil its international obligations in relation to a drug of abuse and controlled chemical”.

### **Insertion of a new section**

8. The Principal Law is amended by inserting the following new section after section 27 -

#### **“Power to limit number of licences**

27A. The Minister may, on the advice of the Narcotics Bureau, refuse to grant a license, if the proposed project development impact is enough to warrant an additional license in terms of jobs to be created, value addition or empowerment of the local private sector”.

### **Persons authorised to engage in professional supply of drugs of abuse**

9. Section 28 of the Principal Law is amended -

- (a) in subsection (1) by deleting “or” after “drug” in line two and substituting “of”; and
- (b) by inserting the following subsections after subsection (1):

“(1a) An operator may supply a drug of abuse only to the following persons -



- 
- (a) another operator licensed in terms of the Act;
  - (b) the Ministry of Health;
  - (c) another licensed manufacturer;
  - (d) a licensed dealer; or
  - (e) a licensed pharmacy wholesaler

(1b) A dealer may supply a drug of abuse product in a suitable form approved by the Minister to the following people who are registered and licensed to deal with a drug of abuse -

- (a) pharmacist;
- (b) a hospital with a valid requisition”.
- (c) a herbalist; and
- (d) a medical practitioner”.

### **Persons authorised to possess drugs of abuse**

10. The Principal Law is amended by inserting the following new sections after section 28 -

#### **“Persons authorised to possess a drug of abuse**

28A. A person who is authorised to possess a drug of abuse shall be -

- (a) registered and licensed in accordance with this Act;
- (b) a person who is given a prescription of a drug of abuse to use it for his medical purpose or to a person who assists another person whom he is responsible for, to use for the persons medical purpose;
- (c) a health care practitioner or a nurse who is in the course of treatment for a medical condition;

- (d) an employee of a laboratory, who is in possession of a drug of abuse for purposes of or in connection with his employment; and
- (e) an employee of an operator who is licensed to transport a drug of abuse for purposes of or in connection with his employment”.

### **Drugs of abuse register**

11. Section 37 is amended by inserting after, subsection (6), the following subsections -

“(7) An operator shall, prior to engaging in any commercial drug of abuse activity, create and maintain a track and trace system which is auditable and accessible to the Bureau, including the purchase, sale, test, packaging, transfer, transport, return, destination or disposal of a drug of abuse product”.

(8) A medical practitioner, a pharmacy, a nurse, a herbalist and a hospital, shall keep and maintain a system that records the prescription and sale of a drug of abuse and shall make it available to the Bureau.

### **Unlawful manufacture, possession etc of drugs of abuse or analogues, controlled chemicals, equipment or material**

12. The Principal Law is amended by deleting section 43 and substituting the following -

**“Unlawful cultivation, manufacture, possession or any other usage of a drug of abuse or analogue, controlled chemical, equipment or material.**

43. (1) No person shall cultivate, produce, manufacture, extract, prepare, offer, offer for sale, distribute, sell, deliver on any terms whatsoever, brokage, dispatch, dispatch in transit, transport, import or export a drug of abuse, chemical or precursor contrary to this Act.

(2) No person shall organise, manage or finance any of the activities mentioned in subsection (1).

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(3) No person shall possess or purchase a drug of abuse for the purpose of activities mentioned in subsection (1);

(4) No person shall manufacture, transport or distribute any equipment, material or substance listed in Schedule 4 having knowledge that they are to be used in or for illicit cultivation, production or manufacture of a drug of abuse.

(5) A person who contravenes the provisions of subsection (2) commits an offence and is liable on conviction to a fine not exceeding One Million Maloti or to imprisonment for a period not exceeding twenty years or both.

(6) A policeman or custom officer in the presence of a policeman, may identify, seize, confiscate or freeze a drug of abuse, controlled chemical, equipment or material, if he has reasonable grounds for suspecting that the drug of abuse, controlled chemical, equipment or material is to be used for activities under subsection (1).

(7) A person who contravenes the provisions of subsection (1) commits an offence in trafficking and is liable on conviction to a fine not exceeding One Million Maloti or to imprisonment for a period not exceeding twenty years or both.

(8) An operator who is a manufacturer shall not, in relation to any controlled chemical, equipment or material -

(a) manufacture or supply a controlled chemical or material; or

(b) acquire or possess a controlled chemical, equipment or material for the purpose of such supply or manufacture, if the person knows or has reasonable grounds for believing that the controlled chemical, equipment or material is to be used in Lesotho or elsewhere -

(i) for the unlawful manufacture of a drug of abuse or any other drug or analogue; or

- (ii) in the unlawful cultivation of a plant which is a drug of abuse.

(9) A person who contravenes subsection (8) commits an offence and is liable on conviction to a fine not exceeding Fifty Thousand Maloti or to imprisonment for a period not exceeding Ten years or both, or in the case of a legal person, a fine not exceeding One Hundred and Fifty Thousand Maloti”.

### **Supply of toxic chemical inhalants and drug of abuse**

13. Section 45 of the Principal law is amended by inserting “inhalant drug of abuse in -
- (a) the heading, after “of”; and
  - (b) subsection (1), line one, after “any”.”.

### **Establishment of the Narcotics Bureau**

14. (1) Section 58 of the Principal Law is amended by -
- (a) deleting -
    - (i) subsection (1) and substituting the following -  
“(1) There is established a body to be known as the Lesotho Narcotics Bureau, which is responsible for all duties of the National Narcotics Agency provided for under the Single Convention on Narcotics Drugs of 1961 and may exercise the powers and perform the duties conferred or imposed upon it by or in terms of this Act”.
  - (ii) subsection (2) and substituting the following -  
“(2) The Bureau shall consist of the following members who shall be appointed by the Minister by notice published in the Gazette -
    - (a) a representative from the Ministry of Trade and Industry;

- 
- (b) a medical doctor who shall be nominated by the Medical Council;
  - (c) the head of pharmaceutical services from the Ministry of Health;
  - (d) the head of Mental Health from the Ministry of Health;
  - (e) the Commissioner of police or his representative;
  - (f) the head of legal services from the Ministry of Health;
  - (g) the Director of Environment from the Ministry of Tourism, Environment and Culture;
  - (h) the Director of Research or his representative from the Ministry of Agriculture and Food Security;
  - (i) the head of Research Department of the National University of Lesotho;
  - (j) the Commissioner of Lands or his representative;
  - (k) one Principal Chief nominated by the College of Chiefs;
  - (l) Principal Secretary, Ministry of Health, who shall be the Chairperson;
  - (m) a representative from Lesotho Chamber of Commerce; and
  - (n) a specialist in pharmacology from the Medical, Dental and Pharmacy Council.

(2a) The Minister may, on an ad hoc basis and with the advice and approval of the Bureau, appoint three pharmacists to the Bureau, who have expertise and are competent in medicine regulation and pharmacovigilance, to attend meetings but shall not vote”.

- (b) inserting the following subsections after subsection (2):

“(3) The Coordinator of the Secretariat shall be the Secretary of the Bureau and shall attend meetings but shall not vote.

(4) The members of the Bureau shall appoint among themselves, a Deputy-Chairperson”.

### **Powers and duties of the Bureau**

15. Section 59 (1) of the Principal Law is amended by -

- (a) deleting the full-stop in paragraph (e);
- (b) inserting a semi-colon at the end of paragraph (e);
- (c) inserting the following paragraphs after paragraph (e);
  - “(f) evaluate applications submitted to the Minister in terms of section 11;
  - (g) examine applications submitted to the Minister and seek other relevant information pertaining to the application;
  - (h) prepare and submit recommendations to the Minister based on the application and on any other relevant information and submit them to the Minister for consideration and decision;
  - (i) communicate the decision of the Minister to the applicants;
  - (j) vary, suspend or revoke licenses, permits or authorisations; and
  - (k) investigate and determine compliance relating to licenses, or authorisations”.

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## Meetings of the Bureau

16. Section 60 of the Principal law is amended by inserting after subsection(4), the following subsection -

“(5) The Bureau shall keep a record of its proceedings in writing or through any other means ”.

## Insertion of new sections

17. The principal Law is amended by inserting the following sections after section 60 -

### “Tenure and resignation from office of a member of the Bureau

60A. (1) A member of the Bureau shall hold office for a period of three years from the date of his appointment unless he is an ex-officio member;

(2) A member of the Bureau shall hold office for not more than two consecutive terms;

(3) A member of the Bureau may, at any time, in writing, to the Minister, resign as a member.

### Removal from office of a member of the Bureau

60B. A member of the Bureau may be removed from office if he -

- (a) is absent from three consecutive meetings of the Bureau without consent of or authorisation from the Chairperson;
- (b) becomes a member of Parliament unless he is a Principal Chief nominated in terms of this Act;
- (c) ceases to be a member of the institution or organisation he represents in the Bureau;

- (d) is convicted of an offence which is punishable by a penalty of death or imprisonment for a period of more than twenty-four months, which occurred in Lesotho or any other jurisdiction; and
- (e) for serious misconduct in relation to his duties”.

### **Establishment of Narcotics Secretariat**

18. Section 61 of the Principal Law is amended -

- (a) in subsection (2) by -
  - (i) deleting -
    - (aa) “and” at the end of paragraph (d);
    - (bb) a full stop at the end of paragraph (e);
    - (cc) inserting a semi-colon and “and” at the end of paragraph (e);” and
  - (ii) inserting the following paragraph after paragraph (e);
    - “(f) coordinate meetings of the Bureau”.
- (b) by inserting the following subsection after subsection (2);

“(3) The Coordinator shall be responsible for the day to day business of the Secretariat and is the head of the Secretariat”.

### **Remuneration and allowances of the Secretariat and members of the Bureau**

19. Section 62 of the Principal Law is amended by deleting “who are not public officers”.



**Search warrant**

20. Section 74 of the Principal Law is amended by inserting before the word “seize” wherever it appears, the following:

“freeze, confiscate or”.”.

**NOTE**

1. Act No. 5 of 2008
2. Act No. 10 of 1978
3. Act No. 12 of 1970
4. Act No. 8 of 1998
5. Act No. 13 of 1973
6. Act No. 10 of 2008

## GOVERNMENT NOTICE NO. 1 OF 2022

**The Parliament of Lesotho****Statement of Objects and Reasons of the Drugs of Abuse Act, 2022****(Circulated by the Authority of Minister of Health)**

The purpose of the Drugs of Abuse Amendment Bill, 2022 is to put in place more measures to prevent diversion from lawful trade of controlled chemicals, controlled equipment and controlled materials for use in the unlawful manufacture of drugs of abuse. The Bill enables the Minister to limit the number of operator licenses based on the likelihood of diversion and once licensed all operators must implement a track and traces system to ensure that records of all activities from seed to sale of operations are kept and made available for inspectors.

The Bill creates an offence to engage in the organization, management of financing of any of the offences provided for in the Act. It is also an offence to engage in brokerage of psychotropic substances. Competent authorities will be able to identify and trace property or instrumentalities used or intended to be used in the commission of the offences under the Act.

Furthermore, the Bill changes the composition of the Lesotho Narcotics Bureau which is Multi-Sectorial Body in order to make it 'more diverse and inclusive for the benefit of the Cannabis Business Industry and the Health Sector. The Bureau is given more powers and duties which include submitting recommendations to the Minister on the issuance, variance, suspension or revocation of operator licenses to ensure transparency. The Bill also provides for tenure of office and resignation from office of members of the Bureau.



