



BRITISH ANTARCTIC TERRITORY

## **THE MISUSE OF DRUGS ORDINANCE 2020**

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**THE MISUSE OF DRUGS ORDINANCE 2020**

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# BRITISH ANTARCTIC TERRITORY

Enacted by the Commissioner,  
Ben Merrick,  
XX XXXX 2020

## Ordinance No. 17 of 2020

### THE MISUSE OF DRUGS ORDINANCE 2020

*AN ORDINANCE to make provision with respect to dangerous or otherwise harmful drugs and related matters, and to provide for purposes connected therewith.*

Citation and commencement.

1. This Ordinance may be cited as the Misuse of Drugs Ordinance 2020 and shall come into force on XXXXXX.

Interpretation.

2. (1) In this Ordinance, unless the contrary intention appears –

“cannabis” (except in the expression “cannabis resin”) means any plant of the genus *Cannabis* or any part of any such plant (by whatever name designated) except that it does not include cannabis resin or any of the following products after separation from the rest of the plant, namely –

- (a) mature stalk of any such plant,
- (b) fibre produced from mature stalk of any such plant, and
- (c) seed of any such plant;

“cannabis resin” means the separated resin, whether crude or purified, obtained from any plant from the genus *Cannabis*;

“controlled drug” has the meaning assigned by section 3;

“corresponding law” has the meaning assigned by section 22;

“prepared opium” means opium prepared for smoking and includes grass and any other residues remaining after opium has been smoked;

“prescribed” means prescribed by regulations made by the Commissioner under section 8 or having effect as if so made;

“produce”, where the reference is to producing a controlled drug, means producing it by manufacture, cultivation or any other method; and

“supplying” includes distributing.

(2) References in this Ordinance to misusing a drug are references to misusing it by taking it; and the reference in the foregoing provision to the taking of a drug is a reference to the taking of it by a human being by way of any form of self-administration, whether or not involving assistance by another.

(3) For the purposes of this Ordinance the things which a person possesses shall be taken to include any thing subject to his or her control which is in the custody of another.

(4) Without prejudice to section 18(2) of the Interpretation and General Provisions Ordinance 2020, references in this Ordinance to the Misuse of Drugs Act 1971, or to particular provisions of that Act, or to regulations made thereunder, are references to that Act, or those provisions, or those regulations, as for the time being in force.

Controlled drugs and their classification for purposes of this Ordinance.

**3. In this Ordinance –**

(a) the expression “controlled drug” means any substance or product for the time being specified in Part I, Part II or Part III of Schedule 2 to the Misuse of Drugs Act 1971; and

(b) the expressions “Class A drug”, “Class B drug” and “Class C drug” mean any of the substances and products for the time being specified respectively in Part I, Part II and Part III of that Schedule;

and the provisions of section 37 of that Act and of Part IV of that Schedule shall have effect, for the purposes of this Ordinance, with respect to the meanings of expressions used in that Schedule.

Restriction of importation and exportation of controlled drugs.

**4. (1) Subject to subsection (2) –**

(a) the importation of a controlled drug; and

(b) the exportation of a controlled drug

are hereby prohibited.

(2) Subsection (1) does not apply –

(a) to the importation or exportation of a controlled drug which is for the time being excepted from paragraph (a), or as the case may be, paragraph (b) of that subsection by regulations made under, or having effect as if made under, section 8; or

(b) to the importation or exportation of a controlled drug under and in accordance with the terms of a licence issued by the Commissioner and in compliance with any conditions attached thereto.

Restriction of production and supply of controlled drugs.

**5.** (1) Subject to any regulations made under, or having effect as if made under, section 8 which are for the time being in force, it shall not be lawful for a person –

(a) to produce a controlled drug; or

(b) to supply or offer to supply a controlled drug to another.

(2) Subject to section 19, it is an offence for a person –

(a) to produce a controlled drug in contravention of subsection (1); or

(b) to be concerned in the production of such a drug, in contravention of that subsection, by another.

(3) Subject to section 19, it is an offence for a person –

(a) to supply or offer to supply a controlled drug to another in contravention of subsection (1); or

(b) to be concerned in the supplying of such a drug to another in contravention of that subsection; or

(c) to be concerned in the making to another, in contravention of that subsection, of an offer to supply such a drug.

Restriction of possession of controlled drugs.

**6.** (1) Subject to any regulations made under, or having effect as if made under, section 8 that are for the time being in force, it shall not be lawful for a person to possess a controlled drug.

(2) Subject to section 19 and to subsection (4), it is an offence for a person to possess a controlled drug in contravention of subsection (1).

(3) Subject to section 19, it is an offence for a person to possess a controlled drug, whether lawfully or not, with intent to supply it to another in contravention of section 5(1).

(4) In any proceedings for an offence under subsection (2) in which it is proved that the accused person had possession of a controlled drug, it shall be a defence for the accused to prove –

(a) that, knowing or suspecting it to be a controlled drug, the accused took possession of it for the purpose of preventing another from committing or continuing to commit an offence in connection with it and that as soon as possible after taking possession of it the accused took all such steps as were reasonably open to the accused to destroy the drug or to deliver it into the custody of a person lawfully entitled to take custody of it; or

(b) that, knowing or suspecting it to be a controlled drug, the accused took possession of it for the purpose of delivering it into the custody of a person lawfully entitled to take custody of it and that as soon as possible after taking possession of it the accused took all such steps as were reasonably open to the accused to deliver it into the custody of such a person.

(5) Nothing in subsection (4) shall prejudice any defence, which it is open to a person charged with an offence under this section to raise, apart from that subsection.

Restriction of cultivation of cannabis plant.

7. (1) Subject to any regulations made under, or having effect as if made under, section 8 that are for the time being in force, it shall not be lawful for a person to cultivate any plant of the genus *Cannabis*.

(2) Subject to section 19, it is an offence to cultivate any such plant in contravention of subsection (1).

Regulations.

8. (1) The Commissioner may, by regulations, make such provision for the purposes of or in relation to this Ordinance, or for the purposes of or in relation to particular provisions of this Ordinance, as the Secretary of State may make by regulations under section 7, section 10 or section 22 of the Misuse of Drugs Act 1971 for the purposes of or in relation to that Act or for the purposes of or in relation to provisions of that Act corresponding to those particular provisions of this Ordinance.

(2) Regulations made by the Commissioner under this section (“Commissioner’s regulations”) may, whether or not they also make such provision as is referred to in subsection (1), make provision (“an excluding or qualifying provision”) whereby the application as part of the law of the Territory of regulations made by the Secretary of State under section 7, section 10 or section 22 of the Misuse of Drugs Act 1971 (“Secretary of State’s regulations”) is excluded or is subject to such modifications, adaptations, qualifications and exceptions as the Commissioner’s regulations may specify; but subject to any such excluding or qualifying provision and save to the extent that a Secretary of State’s regulation is otherwise inconsistent with a Commissioner’s regulation, all Secretary of State’s

regulations shall have effect for the purposes of this Ordinance as if they were Commissioner's regulations:

Provided that –

(a) a Secretary of State's regulation shall have effect as aforesaid only so far as it is applicable to local circumstances and shall be read with such modifications, adaptations, qualifications and exceptions as local circumstances render necessary; and

(b) without prejudice to the generality of paragraph (a), a Secretary of State's regulation shall, in its effect as aforesaid, be construed, unless the context otherwise requires, as if –

(i) any references therein to (or its application in relation to) particular provisions of the Misuse of Drugs Act 1971 were references to (or operated as an application in relation to) the provisions of this Ordinance corresponding to those particular provisions of that Act;

(ii) any references therein to the Secretary of State were references to the Commissioner; and

(iii) any references therein to a practitioner were references to a doctor, dentist, veterinary practitioner or veterinary surgeon, duly qualified as such and practising as such in the Territory;

(c) any provision of a Secretary of State's regulation relating to record-keeping shall have effect as aforesaid only if and to the extent that a Commissioner's regulation expressly so provides; and

(d) any provision of a Secretary of State's regulation excluding the application of certain provisions of the Customs and Excise Management Act 1979 in so far as they apply in relation to a prohibition or restriction of importation or exportation having effect by virtue of section 3 of the Misuse of Drugs Act 1971 shall have effect as aforesaid as if it excluded the application of section 19(1)(b) of the Customs Ordinance 2020 in so far as it applies in relation to such a prohibition or restriction having effect by virtue of section 4 of this Ordinance.

Occupiers, etc., of premises to be punishable for permitting certain activities to take place there.

**9.** A person commits an offence if, being the occupier or concerned in the management of any premises, he or she knowingly permits or suffers any of the following activities to take place on those premises, that is to say –

(a) producing or attempting to produce a controlled drug in contravention of section 5(1);

(b) supplying or attempting to supply a controlled drug to another in contravention of section 5(1) or offering to supply a controlled drug to another in contravention of section 5(1);

(c) preparing opium for smoking;

(d) smoking cannabis, cannabis resin or prepared opium.

Prohibition of certain activities, etc., relating to opium.

**10.** (1) Subject to section 19, it is an offence for a person –

(a) to smoke or otherwise use prepared opium; or

(b) to frequent a place used for the purpose of opium smoking; or

(c) to possess –

(i) any pipes or other utensils made or adapted for use in connection with the smoking of opium, being pipes or utensils which have been used by that person or with that person's knowledge and permission in that connection or which that person intends to use or permit others to use in that connection; or

(ii) any utensils which have been used by that person or with that person's knowledge and permission in connection with the preparation of opium for smoking.

Prohibition of supply, etc., of articles for administering or preparing controlled drugs.

**11.** (1) A person who supplies or offers to supply any article which may be used or adapted to be used (whether by itself or in combination with another article or other articles) in the administration by any person of a controlled drug to himself, herself or another, believing that the article (or the article as adapted) is to be so used in circumstances where the administration is unlawful, is guilty of an offence.

(2) It is not an offence under subsection (1) to supply or offer to supply a hypodermic syringe or any part of one.

(3) A person who supplies or offers to supply any article which may be used to prepare a controlled drug for administration by any person to himself, herself or another, believing that the article is to be used in circumstances where the administration is unlawful, is guilty of an offence.

(4) For the purposes of this section, any administration of a controlled drug is unlawful except –

(a) the administration by any person of a controlled drug to another in circumstances where the administration of the drug is not unlawful under section 5(1); or



(b) the administration by any person of a controlled drug to himself or herself in circumstances where having the controlled drug in his or her possession is not unlawful under section 6(1).

(5) In this section, references to the administration by any person of a controlled drug to himself or herself include a reference to that person administering it to himself or herself with the assistance of another.

Miscellaneous offences.

**12.** (1) It is an offence for a person to contravene any regulations made under, or having effect as if made under, this Ordinance.

(2) It is an offence for a person to contravene a condition or other terms of a licence issued under section 4 or of a licence or other authority issued under regulations made under, or having effect as if made under, this Ordinance.

(3) A person commits an offence if, in purported compliance with any obligation to give information to which that person is subject under or by virtue of regulations made under, or having effect as if made under, this Ordinance, that person gives any information which he or she knows to be false in a material particular or recklessly gives any information which is so false.

(4) A person commits an offence if, for the purpose of obtaining, whether for himself, herself or another, the issue or renewal of a licence or other authority under this Ordinance or under any regulations made under, or having effect as if made under, this Ordinance, that person –

(a) makes any statement or gives any information which he or she knows to be false in a material particular or recklessly gives any information which is so false; or

(b) produces or otherwise makes use of any book, record or other document which to his or her knowledge contains any statement or information which he or she knows to be false in a material particular.

Incitement to commit offences.

**13.** It is an offence for a person to incite another to commit an offence under any other provision of this Ordinance.

Assisting in or inducing commission outside the Territory of offence punishable under a corresponding law.

**14.** A person commits an offence if, in the Territory, that person assists in or induces the commission in any place outside the Territory of an offence punishable under the provisions of a corresponding law in force in that place.

Offences by corporations.

**15.** Where any offence under this Ordinance committed by a body corporate or unincorporate is proved to have been committed with the consent or

connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body, or any person purporting to act in any such capacity, that person as well as the body shall be guilty of that offence and shall be liable to be proceeded against accordingly.

Powers to search and obtain evidence.

**16.** (1) If a public officer has reasonable grounds to suspect that any person is in possession of a controlled drug in contravention of this Ordinance or of any regulations made under, or having effect as if made under, this Ordinance the public officer may –

- (a) search that person and detain him or her for the purpose of searching him or her;
- (b) search any vehicle or vessel or aircraft and for that purpose require the person in control of any vehicle or vessel to stop it;
- (c) seize and detain, for the purposes of proceedings under this Ordinance, anything found in the course of the search which appears to the public officer to be evidence of an offence under this Ordinance.

(2) Nothing in subsection (1) shall prejudice any power of search or any power to seize or detain property which is exercisable apart from this subsection.

(3) A person commits an offence if that person intentionally obstructs a public officer in the exercise of powers provided by this section.

Prosecution and punishment of offences.

**17.** (1) Subject to subsections (3), (4) and (5), the Schedule to this Ordinance shall have effect, in accordance with subsection (2), with respect to the way in which offences under this Ordinance are punishable on conviction.

(2) In relation to an offence under a provision of this Ordinance specified in column 1 of the Schedule (the general nature of the offence being described in column 2) –

- (a) columns 3, 4 and 5 show respectively the punishments which may be imposed on a person convicted of the offence according to whether the controlled drug in relation to which the offence was committed was a Class A drug, a Class B drug or a Class C drug; and
- (b) column 6 shows the punishment which may be imposed on a person convicted of the offence, whether or not it was committed in relation to a controlled drug and, if it was so committed, irrespective of whether the drug was a Class A drug, a Class B drug or a Class C drug;

and in columns 3, 4, 5 and 6 a reference to a period gives the maximum term of imprisonment and a reference to a sum of money the maximum fine.

(3) An offence under section 11 (supply, etc., of articles for administering or preparing controlled drugs), or under section 13 (incitement) where the substantive offence is an offence under section 11, may be tried only summarily and a person convicted of such an offence shall be liable to a term of imprisonment or a fine not exceeding the statutory maximum or to both such imprisonment and such fine.

(4) Subject to subsection (5), the punishments which may be imposed on a person convicted of an offence under section 13 (other than where the substantive offence is an offence under section 11) are the same as those which, under the Schedule, may be imposed on a person convicted of the substantive offence.

(5) If the Attorney General certifies, in a particular case, that an offence under this Ordinance, or an offence under section 19(1)(b) of the Customs Ordinance 2020 which is constituted by the contravention of section 4(1) of this Ordinance, is appropriate to be tried summarily in that case, it shall be triable only summarily in that case and a person who, after such trial, is convicted of the offence shall be liable to a term of imprisonment not exceeding the statutory maximum or to a fine not exceeding the statutory maximum or both such imprisonment and such fine.

(6) A person who is convicted by the Supreme Court or the Magistrate's Court of an offence under section 19(1)(b) of the Customs Ordinance 2020 which is constituted by the contravention of section 4(1) of this Ordinance shall, if the goods in respect of which the offence was committed were a Class A drug or a Class B drug, be liable to a term of imprisonment not exceeding 14 years or to an unlimited fine or to both such imprisonment and such fine or, if those goods were a Class C drug, to a term of imprisonment not exceeding 5 years or to an unlimited fine or to both such imprisonment and such fine.

(7) In this section the "substantive offence", in relation to an offence under section 13, means the offence under this Ordinance to which the incitement mentioned in section 13 was directed.

Forfeiture.

**18.** (1) Subject to subsection (2), the court by which a person is convicted of an offence under this Ordinance may order anything shown to the satisfaction of the court to relate to the offence to be forfeited (on such terms, if any, as the court thinks just) and either destroyed or dealt with in such other manner as the court may order.

(2) The court shall not order anything to be forfeited under this section where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to that person to show cause why the order should not be made.

Proof of lack of knowledge, etc., to be a defence in proceedings for certain offences.

**19.** (1) This section applies to offences under any of the following provisions, that is to say, sections 5(2), 5(3), 6(2), 6(3) and 10.

(2) Subject to subsection (3), in any proceedings for an offence to which this section applies it shall be a defence for the accused person to prove that he or she neither knew of, nor suspected, nor had reason to suspect, the existence of some fact alleged by the prosecution which it is necessary for the prosecution to prove if he or she is to be convicted of the offence charged.

(3) Where in any proceedings for an offence to which this section applies it is necessary, if the accused person is to be convicted of the offence charged, for the prosecution to prove that some substance or product involved in the alleged offence was the controlled drug which the prosecution alleges it to have been, and it is proved that the substance or product in question was that controlled drug, the accused person –

(a) shall not be acquitted of the offence charged by reason only of proving that he or she neither knew nor suspected nor had reason to suspect that the substance or product in question was the particular controlled drug alleged; but

(b) shall be acquitted thereof –

(i) if he or she proves that he or she neither believed nor suspected nor had reason to suspect that the substance or product in question was a controlled drug; or

(ii) if he or she proves that he or she believed the substance or product in question to be a controlled drug, or a controlled drug of a description, such that, if it had in fact been that controlled drug or a controlled drug of that description, he or she would not at the material time have been committing any offence to which this section applies.

(4) Nothing in this section shall prejudice any defence which it is open to a person charged with an offence to which this section applies to raise apart from this section.

Licences and authorities.

**20.** Without prejudice to the generality of sections 24 and 26 of the Interpretation and General Provisions Ordinance 2020, a licence or other authority issued by the Commissioner for the purposes of this Ordinance or of regulations made under, or having effect as if made under, this Ordinance may be, to any degree, general or specific, may be issued on such terms and subject to such conditions (including, in the case of a licence, the payment of a prescribed fee) as the Commissioner thinks proper, and may be modified or revoked by the Commissioner at any time.

General provisions as to regulations.

**21.** (1) Regulations made by the Commissioner under section 8 –

(a) may make different provision in relation to different controlled drugs, different classes of persons, different provisions of this Ordinance or other different cases or circumstances; and

(b) may make the opinion, consent or approval of a prescribed authority or of any person authorised in a prescribed manner material for the purposes of any provision of the regulations; and

(c) may contain such supplementary, incidental and transitional provisions as appear expedient to the Commissioner.

(2) All regulations made by the Commissioner under section 8 shall be published in the *Gazette*.

Meaning of “corresponding law”, and evidence of certain matters by certificate.

**22.** (1) In this Ordinance the expression “corresponding law” means –

(a) a law stated in a certificate purporting to be issued by or on behalf of the Government of a country outside the Territory to be a law providing for the control and regulation in that country of the production, supply, use, export and import of drugs and other substances in accordance with the provisions of the Single Convention on Narcotic Drugs signed at New York on 30 March 1961; or

(b) a law providing for the control and regulation in that country of the production, supply, use, export and import of dangerous or otherwise harmful drugs in pursuance of any treaty, convention or other agreement or arrangement to which Her Majesty’s Government in the United Kingdom and the Government of that country are for the time being parties.

(2) The provisions contained in subsection (1)(b) shall also apply to a country or territory which is otherwise bound by any such treaty, convention or agreement without directly being a party to it.

(3) A statement in any such certificate as aforesaid to the effect that any facts constitute an offence against the law mentioned in the certificate shall be evidence of the matters stated.

Exclusion of law of England on misuse of drugs.

**23.** (1) For the avoidance of doubt it is hereby declared –

(a) that the foregoing provisions of this Ordinance (being “specific laws” within the meaning of that term in section 5 of the Administration of Justice Ordinance 2020) exclude the operation as part of the law of the Territory, by virtue of section 5(1)(b) of that Ordinance, of the law of England relating specifically to the misuse of drugs (but not the law relating to trafficking in drugs and to connected matters); but

(b) that the law of England, as for the time being in force in England, is otherwise in force in the Territory by virtue of the said section 5(1)(b) for the purposes of the administration and enforcement of this Ordinance.

(2) Subsection (1) is without prejudice to sections 3 and 8 (which provide that certain provisions of the Misuse of Drugs Act 1971 and of regulations made under that Act shall have effect for the purposes and to the extent specified in those sections).

**SCHEDULE**

**(Section 17)**

Section Creating Offence	General Nature of Offence	P U N I S H M E N T			
		Class A drug involved	Class B drug involved	Class C drug involved	General
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Section 5(2)	Production, or being involved in the production, of a controlled drug.	Life or an unlimited fine, or both.	14 years or an unlimited fine, or both.	5 years or an unlimited fine, or both.	-
Section 5(3)	Supplying or offering to supply a controlled drug or being concerned in the doing of either activity by another.	Life or an unlimited fine, or both.	14 years or an unlimited fine, or both.	5 years or an unlimited fine, or both.	-
Section 6(2)	Having possession of a controlled drug.	7 years or an unlimited fine, or both.	5 years or an unlimited fine, or both.	2 years or an unlimited fine, or both.	-
Section 6(3)	Having possession of a controlled drug with intent to supply it to another.	Life or an unlimited fine, or both.	14 years or an unlimited fine, or both.	5 years or an unlimited fine, or both.	-
Section 7(2)	Cultivation of cannabis plant.	-	-	-	14 years or an unlimited fine, or both.
Section 9	Being the occupier, or concerned in the management, of premises and permitting or suffering certain activities to take place there.	14 years or an unlimited fine, or both.	14 years or an unlimited fine, or both.	5 years or an unlimited fine, or both.	-
Section 10	Offences relating to opium.	-	-	-	14 years or an unlimited fine, or both.

Section Creating Offence	General Nature of Offence	P U N I S H M E N T			
		Class A drug involved	Class B drug involved	Class C drug involved	General
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Section 12(1)	Contravention of regulations.	-	-	-	2 years or an unlimited fine, or both.
Section 12(2)	Contravention of terms of licence or other authority.	-	-	-	2 years or an unlimited fine, or both.
Section 12(3)	Giving false information in purported compliance with obligation to give information imposed under or by virtue of regulations.	-	-	-	2 years or an unlimited fine, or both.
Section 12(4)	Giving false information, or producing document, etc., containing false information, for purposes of obtaining issue or renewal of licence or other authority.	-	-	-	2 years or an unlimited fine, or both.
Section 14	Assisting in or inducing commission outside Territory of an offence punishable under a corresponding law.	-	-	-	14 years or an unlimited fine, or both.
Section 16(3)	Obstructing exercise of powers of search, etc.	-	-	-	2 years or an unlimited fine, or both.