



**Tuvalu**

# **DANGEROUS DRUGS ACT**

**2022 Revised Edition**

**CAP. 10.10**





Tuvalu

## DANGEROUS DRUGS ACT

### Arrangement of Sections

Section

<b>PART I - PRELIMINARY</b>	<b>7</b>
1 Short title.....	7
2 Interpretation.....	7
3 Dangerous drugs to be dealt with through approved ports .....	10
<b>PART II - RAW OPIUM, INDIAN HEMP AND COCA LEAF</b>	<b>10</b>
4 Application of Part II; Import and export of certain substances prohibited.....	10
5 Import and export of certain seeds prohibited .....	10
6 Forfeiture of articles.....	10
7 Cultivation of certain plants prohibited .....	10
8 Offences.....	10
9 Power of entry and of arrest.....	11
10 Seizure and destruction of plants .....	11
<b>PART III - PREPARED OPIUM</b>	<b>11</b>
11 Importation or exportation of prepared opium prohibited .....	11
12 Manufacturing, selling or using prepared opium .....	11
<b>PART IV - MEDICINAL OPIUM, MORPHINE, COCAINE AND CERTAIN OTHER DRUGS</b>	<b>12</b>
13 Application of Part IV.....	12
14 Importation or exportation of certain substances prohibited.....	12
15 Rules .....	13
16 Certain drugs to be deposited in store.....	14
17 Drugs may be withdrawn on authority of the Senior Medical Officer .....	14
18 The Senior Medical Officer may delegate authority.....	14
19 Withdrawals.....	14
20 Drugs not to be kept in a place other than the store without authority .....	14
21 Export of dangerous drugs .....	14

22	Export without authorisation prohibited.....	15
23	Export authorisation to be produced .....	15
24	Export to be in accordance with Act .....	15
25	Importation of dangerous drugs .....	15
26	Permission to withdraw drugs from store.....	16
27	Importation without authorisation prohibited.....	16
28	Export authorisation or diversion certificate to accompany drug .....	16
29	Importation to be In accordance with Act.....	16
30	Exception of certain substances and preparations from certain provisions of Part IV.....	16

## **PART V - DANGEROUS DRUGS IN TRANSIT AND DIVERSION OF DANGEROUS DRUGS** **17**

---

31	Dangerous drug in transit .....	17
32	Removal licences.....	17
33	Dangerous drugs not to be tampered with.....	18
34	Diversion of dangerous drugs .....	18

## **PART VI - LEGAL PROCEEDINGS, PENALTIES AND GENERAL** **19**

---

35	Application of Customs Act.....	19
36	Search warrant.....	19
37	Exemption from liability .....	20
38	Powers of inspection and search .....	20
39	Offences and penalties .....	21
40	Power of arrest .....	22
41	Reward to informer .....	22
42	Certificate as evidence .....	22

## **SCHEDULE 1** **23**

---

CERTIFICATE OF OFFICIAL APPROVAL TO IMPORT	23
EXPORT AUTHORISATION	24
IMPORT AUTHORISATION	26
SCHEDULE SPECIFYING THE DRUGS AND QUANTITIES THEREOF TO BE IMPORTED	26
INDORSEMENT BY CUSTOMS OFFICER AT THE TIME OF IMPORTATION	27
LICENCE FOR THE REMOVAL OF DANGEROUS DRUGS IN TRANSIT	28
DIVERSION CERTIFICATE	29

---

PERMISSION TO WITHDRAW DRUGS 31

**SCHEDULE 2** 32

---

SUBSTANCES DEALINGS IN WHICH ARE SUBJECT TO CONTROL  
EXCEPT, IN THE CASE OF ANY SPECIFIED IN PART II BELOW, AS  
REGARDS IMPORTATION AND EXPORTATION 32

PREPARATIONS AND OTHER SUBSTANCES FALLING WITHIN PART I  
WHOSE IMPORTATION AND EXPORTATION IS EXCEPTED FROM  
CONTROL 34

**Supporting Documents**

---

**ENDNOTES** 36

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Tuvalu

# DANGEROUS DRUGS ACT

## AN ACT RELATING TO DANGEROUS DRUGS<sup>1</sup>

Commencement [20th October 1948]

### PART I - PRELIMINARY

#### 1 Short title

This Act may be cited as the Dangerous Drugs Act.

#### 2 Interpretation

In this Act unless the context otherwise requires —

“**cocaine**” means methyl-benzoyl laevo-ecgonine([a] D 20° = -16°4) in 20 per cent solution of chloroform of which the formula is C<sub>17</sub>H<sub>21</sub>O<sub>4</sub>N;

“**coca leaf**” means the leaf of the *Erythroxylon coca* Lamarck and the *Erythroxylon novo-granatense* (Morris) *Hieronymus* and their varieties belonging to the family *Erythroxylaceae* and the leaf of other species of this genus from which it may be found possible to extract cocaine either directly or by chemical transformation;

“**the Commission**” means the Commission on Narcotic Drugs of the Economic and Social Council of the United Nations;

“**Convention**” means the International Opium Convention signed at The Hague on 23rd January 1912 (The Hague Convention), the International Opium Convention signed at Geneva on 19th February 1925 (The Geneva Convention No.1), and the International Convention for limiting the manufacture and regulating the distribution of narcotic drugs signed at

Geneva on 13th July 1931 (The Geneva Convention No.2) as respectively amended by the Protocol;

“**conveyance**” includes ship, aircraft and any other means of transport by which goods may be brought into or taken from Tuvalu;

“**corresponding law**” means a law stated in a certificate purporting to be issued by or on behalf of the government of a country outside Tuvalu to be a law providing for the control and regulation in that country of the manufacture, sale, use, export and import of drugs and other substances in accordance with the provisions of the Single Convention or a law providing for the control and regulation in that country of the manufacture, sale, use, export and import of drugs in accordance with the provisions of the Hague Convention, the Geneva Convention (No.1) and the Geneva Convention (No.2) as respectively amended by the Protocol; and any statement in any such certificate as to the effect of the law mentioned in the certificate or a statement in any such certificate that any facts constitute an offence against that law shall be conclusive;

“**crude cocaine**” means any extract of the coca leaf which can be used directly or indirectly for the manufacture of cocaine;

“**dangerous drug**” means any of the substances which may be from time to time subject to the provisions of this Act;

“**diacetylmorphine**” means diacetylmorphine (diamorphine, heroin) having the formula  $C_{17}H_{23}O_5N$  ( $C_{17}H_{17}(C_2H_3O)_2 O_3N$ );

“**diversion certificate**” means a certificate issued by a competent authority in a country through which a dangerous drug passes in transit, authorising the diversion of such drug to a country other than that specified as the country of ultimate destination in the export authorisation, and containing all the particulars required to be included in an export authorisation together with the name of the country from which the consignment was originally exported;

“**ecgonine**” means laevo-ecgonine ( $[\alpha] D 200 = - 450$  in 5 per cent solution of water) of which the formula is  $C_9H_{15}O_3NH_2O$  and all the derivatives of laevo-ecgonine which may serve industrially for its recovery;

“**export**” means to take or cause to be taken out of Tuvalu otherwise than in transit;

“**export authorisation**” means an authorisation issued by a competent authority in a country from which a dangerous drug is exported, containing full particulars of such drug and the quantity authorised to be exported, together with the names and addresses of the exporter and the person to whom it is to be sent and stating the country to which, and the period within which, it is to be exported;

“**the Geneva Convention (No. 1)**” means the International Opium Convention signed at Geneva on 19th February 1925;

“**the Geneva Convention (No. 2)**” means the Convention signed at Geneva on 13th July 1931, being the Convention for the purpose of supplementing the Geneva Convention (No. 1) and the Hague Convention;

“**the Hague Convention**” means the International Opium Convention signed at the Hague on 23rd January 1912;

“**import**” means to bring or cause to be brought into Tuvalu otherwise than in transit;

“**import authorisation**” means a licence issued by a competent authority authorising the importation of a specified quantity of a dangerous drug and containing full particulars of the drug, together with the name and address of the person authorised to import the drug and the name and address of the person from whom the drug is to be obtained and specifying the time within which the importation must be effected;

“**import certificate**” means a certificate substantially in the Form A set out in Schedule 1 issued by a competent authority in a country into which it is intended to import dangerous drugs;

“**Indian hemp**” means either of the plants *Cannabis sativa* or *Cannabis indica* or any portion thereof;

“**in transit**” means taken or sent from any country and brought into Tuvalu (whether or not landed or transhipped in Tuvalu) for the sole purpose of being carried to another country, either by the same or another conveyance;

“**medicinal opium**” means raw opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopoeia, whether in powder form or granulated or otherwise, or mixed with neutral materials;

“**morphine**” means the principal alkaloid of opium having the formula  $C_{17}H_{19}O_5N$ ;

“**the Organisation**” means the World Health Organisation;

“**prepared opium**” means the product of raw opium obtained by a series of special operations, especially by dissolving, boiling, roasting and fermentation designed to transform it into an extract suitable for consumption, and includes dross and all other residues remaining after opium has been smoked;

“**the Protocol**” means the Protocol on Narcotic Drugs signed at Lake Success, New York, on 11th December 1946;

“**raw opium**” means the spontaneously coagulated juice obtained from the capsules of the *Papaver somniferum* which has been submitted only to the necessary manipulations for packing and transport, whatever its morphine content;

“**the Single Convention**” means the Single Convention on Narcotic Drugs signed at New York on 30th March 1961;

“**store**” means a place appointed by the Senior Medical Officer for the storage of any drug to which this Act applies on its arrival in Tuvalu.

### **3 Dangerous drugs to be dealt with through approved ports**

No person shall import, export, tranship or divert dangerous drugs except through ports approved by the Minister.

## **PART II - RAW OPIUM, INDIAN HEMP AND COCA LEAF**

### **4 Application of Part II; Import and export of certain substances prohibited**

- (1) The provisions of this Part of this Act shall apply to raw opium, coca leaf and Indian hemp and resins obtained from Indian hemp and preparations of which such resins form the base.
- (2) No person shall import or export any of the substances to which this Part applies.

### **5 Import and export of certain seeds prohibited**

No person shall import or export any seed of the opium poppy or any seed of Indian hemp or any seed of the coca leaf or any portion of the aforesaid plants.

### **6 Forfeiture of articles**

If any substance to which this Part applies is unlawfully imported or exported, the same shall be seized and forfeited, and shall be disposed of in any way the Customs Officer may direct, without any further proceedings.

### **7 Cultivation of certain plants prohibited**

No person shall cultivate in Tuvalu the opium poppy or Indian hemp or coca leaf plant.

### **8 Offences**

Every person —

- (a) who knowingly cultivates opium poppy, Indian hemp or coca leaf whether for private use or otherwise; or

- (b) found in possession of or selling, or who shall have given or sold, to any person any substance to which this Part applies;

shall be guilty of an offence under this Act.

## **9 Power of entry and of arrest**

- (1) Any police officer may, upon a warrant, enter any place in which there is a reasonable ground for suspicion that raw opium, Indian hemp or coca leaf is kept or may be found so as to constitute an offence against this Act and may seize any raw opium, Indian hemp or coca leaf found there, together with baskets, jars or packages holding the same, and apprehend and detain any person suspected of owning the same.
- (2) Any police officer may without warrant apprehend and detain any person carrying or conveying any raw opium, Indian hemp or coca leaf.
- (3) Any person apprehended under the provisions of the foregoing subsections shall be taken as soon as may be possible before the court to be dealt with according to law.

## **10 Seizure and destruction of plants**

All opium poppy, Indian hemp or coca leaf found upon any plantation, whether growing or not, may be seized and destroyed by the owner or manager or any person duly authorised by either of them.

# **PART III - PREPARED OPIUM**

## **11 Importation or exportation of prepared opium prohibited**

No person shall import or export any prepared opium, or any pipes or other utensils for use in connection with the smoking of opium, or any utensil for use in connection with the preparation of opium for consumption.

## **12 Manufacturing, selling or using prepared opium**

- (1) If any person —
- (a) manufactures, sells or otherwise deals in prepared opium; or
  - (b) has in his possession any prepared opium; or
  - (c) being the occupier of any premises, permits those premises to be used for the preparation of opium for consumption or the sale of smoking or prepared opium; or

- (d) is concerned in the management of any premises used for any such purposes as aforesaid; or
  - (e) has in his possession any pipes or other utensils for use in connection with the smoking of opium, or any utensils used in connection with the preparation of opium for smoking; or
  - (f) smokes or otherwise uses prepared opium, or frequents any place used for the purpose of opium smoking,
- he shall be guilty of an offence against this Act.

- (2) If any prepared opium, or any article used in the preparation of or used in connection with the smoking of prepared opium, is imported or exported or found in Tuvalu, the same shall be seized and forfeited and shall be disposed of in such manner as the Customs Officer may direct, without further proceedings.

## **PART IV - MEDICINAL OPIUM, MORPHINE, COCAINE AND CERTAIN OTHER DRUGS**

### **13 Application of Part IV**

- (1) The provisions of this Part shall apply to the substances for the time being specified in Part I of Schedule 2.
- (2) If—
  - (a) it appears to the Minister that a decision of the Commission or of the Organisation to alter any of the Schedules to the Single Convention or to apply to a substance measures of control applicable under that Convention to substances specified in Schedule 1 thereto requires the addition of a substance to, or the removal of a substance from, Part I or Part II of Schedule 2 or both the removal of a substance from Part I of that Schedule and the removal of a substance from Part II thereof; or
  - (b) it appears to the Minister probable that there will be taken such a decision as aforesaid of the Commission or of the Organisation as will require the addition of a substance to Part I of Schedule 2 and that, in the circumstances of the case, it is expedient to anticipate the decision,he may by order make the requisite modifications in the said Schedule.

### **14 Importation or exportation of certain substances prohibited**

No person shall import or export any substance to which this Part applies, except in accordance with sections 21 to 29.

## 15 Rules

- (1) For the purpose of preventing the improper use of the dangerous drugs to which this Part applies, the Minister may make rules not inconsistent with the provisions of this Act for controlling the manufacture, sale, possession, distribution and custody of any or all of the dangerous drugs to which this Part relates; and in particular, but without prejudice to the generality of the foregoing power, for —
  - (a) prohibiting the manufacture of any dangerous drugs to which this Part applies, except on premises licensed for the purpose and subject to any conditions specified in the licence;
  - (b) prohibiting the manufacture, sale or distribution of any such dangerous drugs, except by persons licensed or otherwise authorised under the rules and subject to any conditions specified in the licence or authority;
  - (c) regulating the issue by medical practitioners of prescriptions containing any such dangerous drug and the dispensing of any such prescription;
  - (d) requiring persons engaged in the manufacture, sale or distribution of any such dangerous drug to keep such books and to furnish such information, either in writing or otherwise, as may be prescribed; and
  - (e) requiring persons engaged in the manufacture, sale or distribution of any such dangerous drug to furnish such estimates of amounts of any such dangerous drug as are likely to be required annually.
- (2) The rules under this section shall provide for authorising any person lawfully carrying on the business of a pharmaceutical chemist and druggist in accordance with the Pharmacy and Therapeutic Products Act<sup>2</sup> —
  - (a) to manufacture at his shop in the ordinary course of his retail business any preparation, admixture or extract of any dangerous drug to which this Part applies; and
  - (b) to carry on at his shop the business of retailing, dispensing or compounding any such dangerous drug,subject to the power of the Minister to withdraw the authorisation in the case of any person convicted of an offence against this Act.
- (3) Nothing in any rules made under this section shall be taken to authorise the sale or the keeping of an open shop for the retailing, dispensing or compounding of poisons by any person who is not qualified in that behalf under, or otherwise than in accordance with, the provisions of the Pharmacy and Therapeutic Products Act, or to be in derogation of the provisions of the said Act for prohibiting, restricting or regulating the sale of poisons.

**16 Certain drugs to be deposited in store**

- (1) All dangerous drugs to which this Part applies imported into Tuvalu shall be deposited at the cost, risk and peril of the persons importing the same, in such store as shall be appointed by the Minister for that purpose.
- (2) Any person in possession of any dangerous drug to which this Part of this Act applies, shall keep a stock book in such form as shall be prescribed by rule made under this Part.

**17 Drugs may be withdrawn on authority of the Senior Medical Officer**

No dangerous drug to which this Part applies shall be delivered or withdrawn from the appointed store except on the written authority of the Senior Medical Officer or an officer authorised by him as hereinafter provided.

**18 The Senior Medical Officer may delegate authority**

The Senior Medical Officer may authorise in writing an officer in his department to sign the authority required by this Act for the withdrawal from the store of the dangerous drugs to which this Part applies.

**19 Withdrawals**

No officer shall authorise the withdrawal of any dangerous drug to which this Part applies from the store, except to a person whose name appears in the Medical and Dental Register kept in pursuance of the Health Professionals Act<sup>3</sup> or who is a registered pharmacist or qualified veterinary surgeon.

**20 Drugs not to be kept in a place other than the store without authority**

When any dangerous drug to which this part of this Act applies is found in the possession of any person or kept in any place other than the appointed store, such person or the occupier of such place, unless he can prove that such drug was obtained under the authority of this Act, or in accordance with the prescription of a person whose name appears in the said Medical and Dental Register, or from a person having authority to sell it, or was deposited there without his knowledge or consent, and also the owner of, or any person guilty of keeping, the said dangerous drug, shall be guilty of an offence against this Act.

**21 Export of dangerous drugs**

- (1) Upon the production of an import certificate duly signed by the competent authority in any country, the Senior Medical Officer may issue an export authorisation, in the Form B set out in Schedule 1, in respect of any dangerous drugs to which this Part applies referred to in the import certificate, to any

person who is named as the exporter in such certificate, and is, under the provisions of this Act otherwise lawfully entitled to export such drugs.

- (2) The export authorisation shall be prepared in triplicate and 2 copies shall be issued to the exporter, who shall send 1 copy with the drug to which it refers, when such drug is exported.
- (3) The Senior Medical Officer shall send the third copy direct to the appropriate authority of the country of ultimate destination.
- (4) Where the intended exportation is to a country which is not a party to the Convention, it shall not be necessary to produce an import certificate as aforesaid.
- (5) In all cases it shall be in the absolute discretion of the Senior Medical Officer to issue or refuse an export authorisation, as he may deem fit.

## **22 Export without authorisation prohibited**

No dangerous drug to which this Part applies shall be exported unless the exporter is in possession of a valid and subsisting export authorisation relating to such drug granted under this Act.

## **23 Export authorisation to be produced**

At the time of exportation of any dangerous drug, the exporter shall produce to the Customs Officer the dangerous drug, the export authorisation relating thereto, and such other evidence as the latter may require to satisfy him that the dangerous drug is being lawfully exported to the place and person named in the authorisation which refers to it.

## **24 Export to be in accordance with Act**

No person shall export, cause to be exported, or take any steps preparatory to exporting, any dangerous drug except in accordance with and in pursuance of the provisions of this Act.

## **25 Importation of dangerous drugs**

- (1) An import authorisation, in the Form C set out in Schedule 1, permitting the importation of any dangerous drug specified therein, may be granted by the Senior Medical Officer, subject to such conditions as he shall deem fit, to any person who may lawfully import such drug.
- (2) When an import authorisation is issued in pursuance of subsection (1), the Senior Medical Officer shall also issue in relation to the dangerous drug intended to be imported an import certificate as set out in Form A in Schedule

1, which shall be forwarded by the intending importer to the person from whom the drug is to be obtained, and when an importer to whom an import authorisation is issued under this section intends to import the drug or drugs to which such authorisation related in more than one consignment, a separate import certificate shall be issued to him in respect of each such consignment.

## **26 Permission to withdraw drugs from store**

- (1) Upon the arrival of any dangerous drugs in Tuvalu, the person to whom such drugs are sent shall apply in writing to the Senior Medical Officer for permission to withdraw such drugs from the appointed store; and such application shall state the manner in which the drugs were imported, the number and date of import authorisation and the quantity of such drugs.
- (2) The Senior Medical Officer, or the officer authorised by him under section 18, if satisfied that the said drugs agree in all particulars with the drugs specified in the import authorisation, may grant permission, in the Form F in Schedule 1, for the removal of the said drugs from the store.

## **27 Importation without authorisation prohibited**

No dangerous drug shall be imported unless the person to whom the drug is consigned is in possession of a valid and subsisting import authorisation granted in pursuance of this Act.

## **28 Export authorisation or diversion certificate to accompany drug**

Every dangerous drug imported from a country which is a party to the Convention or the Single Convention shall be accompanied by a valid and subsisting export authorisation or diversion certificate.

## **29 Importation to be In accordance with Act**

No person shall import, cause to be imported, or take any steps preparatory to importing, any dangerous drug to which this Part applies except in accordance with the provisions of this Act.

## **30 Exception of certain substances and preparations from certain provisions of Part IV**

The provisions of sections 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 shall not apply to any preparation or other substance for the time being falling within Part II of Schedule 2.

## PART V - DANGEROUS DRUGS IN TRANSIT AND DIVERSION OF DANGEROUS DRUGS

### 31 Dangerous drug in transit

- (1) No person shall bring any dangerous drug to Tuvalu in transit unless —
  - (a) the drug is in course of transit from a country from which it may lawfully be exported to another country into which such drug may lawfully be imported; and
  - (b) except where the drug comes from a country not a party to the Convention or the Single Convention, it is accompanied by a valid and subsisting export authorisation or diversion certificate, as the case may be.
- (2) When any dangerous drug in transit is accompanied by an export authorisation or diversion certificate and the Customs Officer has reasonable grounds for believing that such authorisation or certificate is false, or that it has been obtained by fraud or wilful misrepresentation of a material particular, the Customs Officer may seize and detain the drug to which such authorisation or certificate relates; and upon being satisfied that such authorisation or certificate is valid, or has not been obtained by fraud or misrepresentation as aforesaid, the Customs Officer shall release the drug.
- (3) When a dangerous drug in course of transit is not accompanied by an export authorisation or diversion certificate by reason of the fact that the drug comes from a country not a party to the Convention or the Single Convention and the Customs Officer has reasonable grounds for believing it is being conveyed in an unlawful manner, or for an unlawful purpose, or is in course of transit for the purpose of being imported into another country in contravention of the laws of that country, the Customs Officer may seize and detain the drug.
- (4) When a dangerous drug in course of transit is landed or transhipped in Tuvalu, it shall remain under the control of the Senior Medical Officer and shall be moved only under and in accordance with a removal licence granted in pursuance of section 32.
- (5) Nothing in this section contained shall be deemed to apply to any dangerous drug in transit by post or in transit by air, if the aircraft passes over Tuvalu without landing; or to such quantities of dangerous drugs as may *bona fide* reasonably form part of the medical stores of any ship or aircraft.

### 32 Removal licences

- (1) No person shall —
  - (a) remove any dangerous drug from any conveyance in which it is brought into Tuvalu in transit; or

- (b) in any way move any such drug in Tuvalu at any time after removal from such conveyance,

except under and in accordance with a licence (in the Form D set out in Schedule 1 and in this Act referred to as a “removal licence”) issued by the Senior Medical Officer; and in all cases it shall be in the absolute discretion of the Senior Medical Officer to issue or refuse a removal licence as he shall deem fit.

- (2) No removal licence for the transfer of any such drug to any conveyance for removal out of Tuvalu shall be issued unless and until a valid and subsisting export authorisation or diversion certificate relating to it is produced to the Senior Medical Officer; save that when the drug has come from a country not a party to the Convention or the Single Convention this subsection shall not apply.
- (3) The provisions of this section shall not apply to dangerous drugs in transit by post.

### **33 Dangerous drugs not to be tampered with**

No person shall cause any dangerous drug in transit to be subjected to any process which would alter its nature, or wilfully open or break any package containing any dangerous drug in transit except upon the instructions of the Senior Medical Officer, and in such a manner as he may direct.

### **34 Diversion of dangerous drugs**

- (1) No person shall, except under the authority of a diversion certificate in the Form E in Schedule 1, cause or procure any dangerous drug brought into Tuvalu in transit to be diverted to any destination other than that to which it was originally consigned; and in the case of any dangerous drug in transit accompanied by an export authorisation or a diversion certificate issued by a competent authority of some other country, the country stated in such export authorisation or diversion certificate, as the case may be, to be the country of destination, shall be deemed to be the country to which the drug was originally consigned.
- (2) The Senior Medical Officer may, in his absolute discretion, issue a diversion certificate in respect of any dangerous drug in transit, on the production to him of a valid and subsisting import certificate issued by a competent authority in the country to which it is intended to divert the drugs; or, if that country is not a party to the Convention or the Single Convention, on such evidence as may satisfy him that the drug is to be sent in a lawful manner and for a proper purpose.
- (3) A diversion certificate shall be issued in duplicate and 1 copy thereof shall accompany the drug when it is exported, and another copy shall be despatched

by the Senior Medical Officer to the proper authority in the country to which the dangerous drug has been diverted.

- (4) Upon the issue of a diversion certificate, the export authorisation or diversion certificate (if any) accompanying the drug on its arrival in Tuvalu shall be detained by the Senior Medical Officer and returned to the authority issuing such authorisation or diversion certificate, together with a notification of the name of the country to which such drug has been diverted.

## **PART VI - LEGAL PROCEEDINGS, PENALTIES AND GENERAL**

### **35 Application of Customs Act**

- (1) Articles the importation of which is prohibited by this Act and, to the extent to which their importation is prohibited, articles the importation of which is restricted by this Act, shall be deemed to be goods the importation of which is prohibited under the Customs Revenue and Border Protection Act;<sup>4</sup> and, subject to the provisions of this Act, the said Act and any Act amending the same shall apply to such articles.
- (2) If any goods the exportation of which is prohibited or restricted by this Act are exported in contravention thereof, or brought to a wharf or other place to be shipped in any conveyance, the exporter or his agent shall be liable for each offence to forfeit either treble the value of the goods or \$200, at the option of the Customs Officer.

### **36 Search warrant**

- (1) A magistrate, if satisfied by information on oath that any drug or other substance to which this Act applies is being unlawfully kept, landed, conveyed or sold in contravention of this Act, in any place, whether a building or not, or in any ship not having the status of a ship of war, or in any vehicle, may grant a warrant to enter at any time, and if needs be by force, on Sundays as well as any other days, the place, ship or vehicle named in such warrant, and every part thereof to examine and to search for any such drug or other article unlawfully kept therein, and to demand from the owner or occupier thereof the production of the authority for being in possession of the same.
- (2) When the officer or other person executing such warrant has reasonable cause to believe that any drug or other article to which this Act applies, found by him in any place, ship or vehicle, is being kept, conveyed, landed or sold in contravention of this Act, he may seize and detain the same until the court has decided whether the same is liable to be forfeited or not.

- (3) Proceedings in the court shall be commenced as soon as possible after the seizure.

### **37 Exemption from liability**

Any person acting under the aforementioned warrant shall not be liable to any suit for seizing or detaining any drug or other article to which this Act applies.

### **38 Powers of inspection and search**

- (1) Any medical officer, officer of customs or police officer, or other person authorised in that behalf by any general or special order of the Senior Medical Officer, shall, for the purposes of this Act, have power to enter the premises of any person carrying on the business of a producer, manufacturer, seller or distributor of any drug to which this Act applies, and to demand the production of, and to inspect, any books or documents relating to dealings in any such drugs, and to inspect any stocks of any such drugs.
- (2) If a magistrate is satisfied by information on oath that there is a reasonable ground for suspecting that —
- (a) any drugs to which this Act applies are, in contravention of the provisions of this Act or any rules made thereunder, in the possession of or under the control of any person in any premises; or
- (b) any document relating to, or connected with, any transaction or dealing which was, or any intended transaction or dealing which would, if carried out, be, an offence against this Act, or in the case of a transaction or dealing carried out or intended to be carried out in any place outside Tuvalu, an offence against the provisions of any corresponding law in force in that place, is in the possession of, or under the control of, any person in any premises,

he may grant a search warrant authorising any police officer named in the warrant to enter, if need be by force, the premises named in the warrant, and to search the premises and any person found therein, and if there be reasonable ground for suspecting that an offence has been committed against this Act in relation to any such drugs which may be found in the premises or in possession of any such persons, or that any document which may be so found is such a document as aforesaid, to seize and detain those substances and that document as the case may be.

- (3) If any person wilfully delays or obstructs any person in the exercise of his powers under this section, or fails to produce, or conceals, or attempts to conceal, any such books, drugs, stocks or documents as aforesaid, he shall be guilty of an offence under this Act.
- (4) Where any search is made upon a female it shall be conducted by a female.

**39 Offences and penalties**

- (1) Any person who —
  - (a) acts in contravention of or fails to comply with any of the provisions of this Act or any rules made under this Act; or
  - (b) acts in contravention of or fails to comply with the conditions of any licence issued or any authority granted under or in pursuance of this Act; or
  - (c) for the purpose of obtaining for himself or for any other person, the issue, grant or renewal of any such licence or authority as aforesaid, makes any declaration or statement which is false in any particular, or knowingly utters, produces or makes use of, any such statement or declaration or any document confirming the same; or
  - (d) in Tuvalu aids, abets, counsels or procures the commission in any place outside Tuvalu of any offence punishable under the provisions of any corresponding law in force in that place, or does any act preparatory to, or in furtherance of, any act which, if committed in Tuvalu, would constitute an offence against this Act,

shall be guilty of an offence under this Act.

- (2) Every person guilty of an offence under this Act shall, in respect of each offence for which no penalty is otherwise prescribed, be liable —
  - (a) on conviction by the High Court sitting with assessors, to a fine of \$4,000 and to imprisonment for 10 years; or
  - (b) on summary conviction, to a fine not exceeding \$1,000 and to imprisonment for 5 years;

and shall in every case, on conviction for the offence, forfeit to His Majesty all articles in respect of which the offence was committed; and the court before which the offender was convicted may order the forfeited articles to be destroyed or otherwise disposed of, as the court deems fit.<sup>5</sup>

- (3) No person shall be proceeded against under subsection (1) (a) unless the proceedings are instituted by, or with the consent of, the Attorney-General; and no person, on conviction for any offence of contravening or failing to comply with any rules made under this Act, relating to the keeping of books, or the issuing or dispensing of prescriptions containing drugs to which this Act applies, shall be sentenced to imprisonment without the option of a fine, or to pay a fine exceeding \$100, if the court dealing with the case is satisfied that the offence was committed through inadvertence and was not preparatory to, or committed in the course of, or in connection with, the commission of, or intended commission of, any other offence against this Act.
- (4) If any person attempts to commit an offence against this Act, or solicits or incites another person to commit such an offence, he shall, without prejudice to any other liability, be liable to the same punishment and forfeiture as if he had committed an offence against this Act.

- (5) When a person convicted of an offence against this Act is a company, the chairman and every director and every officer concerned in the management of the company shall be guilty of the like offence, unless he proves that the act constituting the offence took place without his knowledge or consent.
- (6) Notwithstanding any enactment prescribing the time within which such proceedings may be brought, any such proceedings for an offence against this Act may be brought either within the time so specified or 3 months from the date on which evidence sufficient in the opinion of the Attorney-General to justify a prosecution for the offence comes to his knowledge, whichever is the longer; and for the purposes of this subsection, a certificate purporting to be signed by the Attorney-General as to that date on which such evidence as aforesaid comes to his knowledge, shall be conclusive evidence thereof; and this provision of this subsection shall apply to proceedings for attempting or soliciting or inciting another person to commit such an offence, as they apply to proceedings for such an offence.

#### **40 Power of arrest**

Any officer of customs or police officer may arrest without warrant any person who has committed, or attempted to commit, or is reasonably suspected by an officer of customs or police officer of having committed or attempted to commit, an offence against this Act, if he has reasonable ground for believing that that person will abscond unless arrested, or if the name and address of that person are unknown to him and cannot be ascertained by him.

#### **41 Reward to informer**

The court before which any person is convicted for any offence under this Act may direct a portion of the fine actually paid into court, and not exceeding one-half, to be paid to an informer.

#### **42 Certificate as evidence**

In any proceedings under this Act the production of a certificate purporting to be signed by a government chemist shall be *prima facie* evidence of the facts therein stated.

**SCHEDULE 1**

**FORM A**

(Section 2)

**Import Certificate issued by the Government of Tuvalu**

**SERIAL NO.....**

**FILE NO.....**

International Conventions on Narcotic Drugs

**CERTIFICATE OF OFFICIAL APPROVAL TO IMPORT**

I, being the person charged with the administration of the law relating to Dangerous Drugs to which the International Conventions on Narcotic Drugs apply, hereby certify that I have approved the importation by [here insert name, address and business of importer] of [here insert exact description and amount of drug to be imported] from [here insert name and address of firm in exporting country from which drugs are to be obtained] subject to the conditions, that —

- (1) the consignment shall be imported before the .....and
- (2) the consignment shall be imported by .....and that I am satisfied that the proposed consignment to be imported is required —
  - (1) for legitimate purposes;
  - (2) solely for medicinal or scientific purposes.

**SIGNATURE AND STAMP OF ISSUING AUTHORITY.....**

**DATE .....**

This document is solely for production to the Government of the country from which the drug is proposed to be exported.

**FORM B**

(Section 21)

**SERIAL NO.....FILE NO.....****APPLICANT'S REFERENCE NO.....****TUVALU DANGEROUS DRUGS ACT****EXPORT AUTHORISATION**

In pursuance of the Dangerous Drugs Act, the Senior Medical Officer hereby authorises .....hereinafter called "the exporter" to export from —

- (1) the port of .....by s.s.
- (2) Tuvalu by parcel post in parcels from the General Post Office in .....to .....in virtue of Import Certificate No. ....dated .....issued by .....the following drugs, namely —

This authorisation is issued subject to the following conditions —

1. This authorisation is not a licence to obtain or be in possession of the drugs named herein.
2. This authorisation is available only for drugs of the exact quantity, kind and form specified above.
3. This authorisation does not relieve the exporter from compliance with any Customs Act in force for the time being, relating to the exportation of goods from Tuvalu, nor from any provision of the Post Office Act, or of any Post Office Regulations, for the time being in force, nor from any rules or regulations, respecting the transmission of articles by post, which may for the time being be in force within Tuvalu or elsewhere.
4. If the drugs are authorised to be exported by ship, the duplicate copy which is attached shall accompany the consignment to the place of destination, and for this purpose the exporter shall cause it to be delivered to the master of the vessel by which the consignment is despatched (see footnote 3).
5. If the drugs are authorised to be despatched by post, the attached duplicate copy shall be placed inside the outer wrapper of the parcel containing the drugs. If the drugs are contained in more than one parcel, the duplicate copy shall be placed inside the outer wrapper of one of them, the parcels shall be consecutively numbered on the outer wrapper, and on each parcel shall be legibly stated the number of the parcel in which the duplicate copy is to be found (see footnote 2).

- 6. The exporter, if so required by the Customs Officer, shall produce to him within such time as he may allow, proof to his satisfaction that the said drugs were duly delivered at the destination named in the authorisation; and in the event of non-compliance with this condition, the authorisation shall be deemed void and of no effect.
- 7. The exporter shall furnish to the Senior Medical Officer returns of the goods exported by him in pursuance of this authorisation, as may from time to time be required.
- 8. The authorisation is valid only for the exporter named above and may be revoked at any time by the Senior Medical Officer. It shall be produced for inspection when required by any authorised person.
- 9. This authorisation, unless sooner revoked, shall continue in force for 3 calendar months from the date thereof. It must be produced at the time of export to an officer of —
  - (1) the Customs Staff; or
  - (2) the Post Office,
 who will retain it; if not used it shall be surrendered to the Senior Medical Officer within 7 days of the date of expiry.

**SIGNATURE AND STAMP.....**

*Date .....**Title.....*

NOTE.-

- (1) If any alteration is desired in this authorisation it must be returned with a request for amendment and a statement of the reasons therefor. No unauthorised alteration is permissible.
- (2) In the case of a drug to be exported by post, failure to comply with this condition may lead to delay or confiscation of the parcels in the country of destination.
- (3) In the case of drugs exported by ship, this document is required in pursuance of the International Opium Convention of 1925, Article 25, and by the Single Convention on Narcotic Drugs to be presented to the competent authority of the country through which the consignment passes whether it is transhipped or not. Failure to comply with this condition may lead to delay or confiscation of the consignment.

**FORM C**

(Section 25)

**AUTHORISATION NO.**.....**FILE NO.**.....**TUVALU DANGEROUS DRUGS ACT****IMPORT AUTHORISATION**

In pursuance of the Dangerous Drugs Act (hereinafter called “the Act”) the Senior Medical Officer hereby authorises (hereinafter called the “Importer”) to import the drugs referred to in the Schedule hereto from

This authorisation is issued subject to the following conditions —

1. The drugs shall be imported before
2. This authorisation is not a licence to be in possession of or to supply the drug imported.
3. This authorisation is valid only for the importer and may be revoked at any time by the Senior Medical Officer to whom it shall in that event be immediately surrendered. It shall be produced for inspection when required by any duly authorised person.
4. This authorisation does not relieve the importer from compliance with any customs regulations in force for the time being relating to the importation of goods into or transshipment of goods in Tuvalu or any Post Office Regulations for the time being in force in Tuvalu.
5. This authorisation unless sooner revoked shall be produced to the customs officer at the time of importation and shall be surrendered to the customs officer at the time when the last consignment of drugs is imported.
6. If the importation of all the drugs specified in the Schedule is not effected before the date specified in condition No.1 this authorisation shall immediately after that date be surrendered to the Senior Medical Officer.
7. The copy of the export authorisation, if any, which accompanies the drugs shall be forwarded to the Senior Medical Officer immediately the importation of the drugs has been effected.

**DATE**..... **SENIOR MEDICAL OFFICER**.....

**SCHEDULE SPECIFYING THE DRUGS AND QUANTITIES THEREOF TO BE IMPORTED**

Name of Drug	Quantity
1	
2	
3	
4	
5	
6	

This authorisation is not to leave the possession of the importer until it is surrendered to the Senior Medical Officer or to the customs officer who will complete the indorsement on the back and return the authorisation to the Senior Medical Officer.

**INDORSEMENT BY CUSTOMS OFFICER AT THE TIME OF IMPORTATION**

Date	Description of drugs imported	No. and date of Export Authorisation	Quantity	How imported	Customs entry or parcel No.	Signature, rank and station of customs officer

This authorisation, when all the drugs to which it refers have been imported, must be returned by the customs officer to the Senior Medical Officer.

**FORM D**

(Section 32)

**TUVALU DANGEROUS DRUGS ACT**

**LICENCE FOR THE REMOVAL OF DANGEROUS DRUGS IN TRANSIT**

.....is hereby authorised to move the dangerous drugs described hereunder from.....to.....Nature and quantity of dangerous drugs.....

Particulars of export authorisation or diversion certificate (if any), relating thereto .....

Name of ship in which the drugs were brought into Tuvalu .....

Number of packages .....

Date of arrival.....

Marks and numbers on packages .....

This licence is issued subject to the following conditions —

- 1. This licence is valid only for the removal of the drugs specified above.
- 2. The removal of the drugs shall take place between .....a.m./p.m. and .....a.m./p.m. on the ..... 20.....
- 3. If the removal of the drugs does not take place within the hours and on the day specified this licence must be returned to the Senior Medical Officer forthwith; and in any case shall be surrendered when the removal has taken place.
- 4. The drugs must not be removed unless an officer of the Customs Staff is present.
- 5. This licence does not authorise the person named above to be in possession of the drugs, otherwise than for the purpose of removing them in accordance with this licence.
- 6. The packages containing the drugs are not to be opened or broken in the course of the removal.
- 7. This licence must be produced at any time when required by a duly authorised person.

**DATE.....SIGNED.....**

*Title.....*

**FORM E**  
(Section 34)

TUVALU INTERNATIONAL CONVENTIONS ON NARCOTIC DRUGS

**DIVERSION CERTIFICATE**

I, being the person charged with the administration of the law relating to the dangerous drugs to which the International Conventions on Narcotic Drugs apply hereby certify that I have authorised the diversion of the consignment of drugs of which particulars are given below, to the destination stated below.

Description and quantity of drugs .....

Name of vessel in which the consignment was brought to Tuvalu .....

Name and address of exporter .....

Number and date of export authorisation and authority by whom issued .....

Name and address of the original consignee named in the export authorisation .....

Name and address of the consignee to whom the consignment is authorised to be diverted .....

Number and date of import certificate (and authority by whom issued) by virtue of which this diversion is authorised .....

Name of vessel on which the consignment is authorised to be carried from.....

[Name of Port] .....

Period within which the consignment) is to be carried from Tuvalu.....

This certificate is issued subject to the following conditions —

1. The duplicate copy of this certificate must accompany the consignment to the place of destination and for this purpose must be delivered to the master of the vessel by which the consignment is despatched.
2. This certificate does not relieve any person who is concerned with the carriage of the consignment of the drugs specified above from compliance with the Customs Regulations in force for the time being relating to the exportation of goods from Tuvalu.

3. This certificate is valid only for the consignment and for the period specified above and may be revoked at any time.
4. If the consignment is not carried from Tuvalu within the period specified above this certificate must be surrendered to the Senior Medical Officer.
5. This certificate must be produced at any time when required by a duly authorised person.

**DATE.....SIGNED.....**

*Title.....*

NOTE.-

- (1) If any alteration is desired in this certificate it must be returned with a request for amendment. No unauthorised alteration is permissible.
- (2) This document is required in pursuance to the International Opium Convention, 1925, Article 15, and by the Single Convention on Narcotic Drugs to be produced to the competent authorities of the country through which the dangerous drug passes, whether it is transhipped or not. Failure to comply with the conditions may lead to delay or confiscation of the consignment.

**FORM F**  
 (Section 26)  
*(In duplicate)*

NO.....

**TUVALU DANGEROUS DRUGS ACT**  
**PERMISSION TO WITHDRAW DRUGS**

To the Customs Officer in Charge,  
 Dangerous Drugs Store,  
 Permission is hereby granted .....[business]  
 of .....to withdraw from the Dangerous Drugs store the undermentioned drugs —  
 Import authorisation

**FILE NO**.....

**SERIAL NO**.....

**DATE**.....

How imported

Name of Drug	Quantity
1	
2	
3	
4	
5	
6	

**DATE**.....**SENIOR MEDICAL OFFICER**.....

**SCHEDULE 2**

(Section 13)

**SUBSTANCES DEALINGS IN WHICH ARE SUBJECT TO CONTROL UNDER  
PART IV OF THE ACT****PART I****SUBSTANCES DEALINGS IN WHICH ARE SUBJECT TO CONTROL EXCEPT,  
IN THE CASE OF ANY SPECIFIED IN PART II BELOW, AS REGARDS  
IMPORTATION AND EXPORTATION**

1. The following substances, namely —

Acetyldihydrocodeine.	Diampromide (N-[2-(N-methylphenethylamino)propyl] propionanilide).
Alphaprodine.	Diethylthiambutene.
Allylprodine.	Dihydrocodeine.
Alphacetylmethadol.	Dihydromorphine.
Alphameprodine.	Dimenoxadole.
Alphamethadol.	Dimepheptanol.
Anileridine.	Dimethylthiambutene.
Benzethidine.	Dioxaphetyl butyrate.
Benzylmorphine (3-benzylmorphine).	Diphenoxylate.
Betacetylmethadol.	Dipipanone.
Betameprodine.	Ethylmethyithiambutene.
Betamethadol.	Ecgonine.
Betaprodine.	Ethylmorphine (3-ethylmorphine).
Clonitazene.	Etonitazene.
Cocaine.	Etoxeridine.
Codeine.	Fentanyl.
Desomorphine.	Furethidine.
Dextromoramide.	Hydrocodone (dihydrocodeinone).
Dextropropoxyphene.	
Diamorphine.	

Hydromorphanol.	Oxymorphone.
Hydromorphone.	Pethidine.
Hydroxypethidine.	Phenadoxone.
Isomethadone.	Phenampramide.
Ketebemidone.	Phenazocine.
Levomethorphan.	Phenomorphane.
Levomoramide.	Phenoperidine.
Levophenacymorphan.	Pholcodine.
Levorphanol.	Piminodine.
Metazocine.	Proheptazine.
Methadone.	Properidine (1-methyl-4-phenylpiperidine-4-carboxylic acid isopropyl ester).
Methadyl acetate.	Racemethorphan.
Methyldesorphine.	Racemoramide.
Methyldihydromorphan (6-methyldihydromorphan).	Racemorphan.
Metopon.	Thebacon.
Morpheridine.	Thebaine.
Morphine methobromide, morphine-N-oxide and other pentavalent nitrogen morphine derivatives.	Trimeperidine.
Morphine.	4-Cyano-2-dimethylamino-4,4-diphenylbutane.
Myrophine.	4-Cyano-1-methyl-4-phenylpiperidine.
Nicocodine.	1-methyl-4-phenylpiperidine-4-carboxylic acid.
Nicomorphan (3,6-dinicotinylmorphine).	2-Methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid.
Noracymethadol.	4-Phenylpiperidine-4-carboxylic acid ethyl ester.
Norcodeine.	
Norlevorphanol.	
Normethadone.	
Normorphine.	
Norpipanone.	
Oxycodone.	

2. Any ester (other than one expressly mentioned in paragraph 1 above) or ether (other than one so mentioned) of a substance for the time being specified in that paragraph.
3. Any salt of a substance for the time being specified in paragraph 1 or 2 above.
4. Any derivative of ecgonine which is convertible to ecgonine or to cocaine.
5. Concentrate of poppy-straw (that is to say, the material arising when poppy-straw has entered into a process for the concentration of its alkaloids).
6. Medicinal opium.
7. Any extract or tincture of cannabis.
8. Any preparation, admixture, extract or other substance containing any proportion of a substance for the time being specified in paragraph 1 above or in any of the paragraphs 2 to 7 above.

## PART II

### **PREPARATIONS AND OTHER SUBSTANCES FALLING WITHIN PART I WHOSE IMPORTATION AND EXPORTATION IS EXCEPTED FROM CONTROL**

9.
  - (1) A preparation of not more than 1 of the substances to which this paragraph applies, when —
    - (a) compounded with 1 or more other ingredients in such a way that the preparation has no, or a negligible, risk of abuse, and that the substance cannot be recovered by readily applicable means or in a yield which would constitute a risk to health; and
    - (b) containing no more than 100 milligrammes of the substance per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations.
  - (2) The substances to which this paragraph applies are acetyldihydrocodeine, codeine, dextropropoxyphene, dihydrocodeine, ethylmorphine (3-ethylmorphine), norcodeine, pholcodine and their respective salts.
10. A preparation of cocaine containing not more than 0.1 per cent of cocaine calculated as cocaine base, being a preparation compounded with 1 or more other ingredients in such a way that the preparation has no, or a negligible, risk of abuse and that the cocaine cannot be recovered by readily applicable means or in a yield which would constitute a risk to health.
11. A preparation of medicinal opium or of morphine containing (in either case) not more than 0.2 per cent of morphine calculated as anhydrous morphine base, being a preparation compounded with 1 or more other ingredients in

such a way that the preparation has no, or a negligible, risk of abuse and that the opium or, as the case may be, the morphine, cannot be recovered by readily applicable means or in a yield which would constitute a risk to health.

12. Solid dose preparations of diphenoxylate containing, per dosage unit, not more than 2.5 milligrammes of diphenoxylate calculated as base and not less than 25 microgrammes of atropine sulphate.
13. Pulvis Ipecacuanhae et Opii Compositus 10 per cent opium, in powder, 10 per cent Ipecacuanha root, in powder, well mixed with 80 per cent of any other powdered ingredient containing neither a drug to which Part II or Part III of this Act applies nor a substance for the time being specified in paragraph 1 of this Schedule or in any of paragraphs 2 to 8 thereof.
14. Mixtures containing not more than 1 of the preparations specified in paragraphs 9 to 13 above, being mixtures whereof none of the other ingredients is either a drug to which Part II or III of this Act applies or a substance for the time being specified in paragraph 1 of this Schedule or in any of paragraphs 2 to 8 thereof.

**ENDNOTES**

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<sup>1</sup> 1990 Revised Edition, Cap. 32 - Acts 6 of 1948, 10 of 1949, 3 of 1966, 10 of 1967, 8 of 1968, 2 of 1969, 8 of 1971, 14 of 1974, LN 33/1976

Amended by Act 4 of 2009, commencement 6 July 2009

<sup>2</sup> Cap 28.32

<sup>3</sup> Cap 28.12

<sup>4</sup> Cap 26.04

<sup>5</sup> Amended by Act 4 of 2009